

## **AGREEMENT FOR THE SUPPLY OF PRODUCTS**

between

**[\*Insert Name of Supplier\*]**

(Registration Number: **[\*Insert Registration Number of Supplier\*]**)

(the "Supplier")

and

**[\*Insert Name of AGA Contracting Entity\*]**

(Registration Number: **[\*Insert Registration Number of AGA Contracting Entity\*]**)

(the "Company")

**Contract Number: [\*Insert Contract Number\*]**

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## 1. Definitions and interpretation

- 1.1 In this Agreement, the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words) shall bear corresponding meanings:
- 1.1.1 **"Affiliates"** an **"Affiliate"** of a Party shall mean any corporation, company or other entity, now or hereafter, directly or indirectly, owned or controlled by, or owning or controlling, or under common control with the Party, but such corporation, company or other entity shall be deemed to be an Affiliate for only so long as such ownership or control exists. For purposes of this definition **"control"** of a corporation, company or other entity shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether (i) through the ownership of voting securities entitling to the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority, (ii) by contract or (iii) otherwise;
- 1.1.2 **"AGA Policies"** any policies, standards, procedures, industry codes and guidelines adopted by the Company from time to time;
- 1.1.3 **"Agreement"** this Agreement including the Schedule and Annexes hereto and referred to in this Agreement;
- 1.1.4 **"Agreement Term"** the term of this Agreement as specified in the Schedule;
- 1.1.5 **"Annexes"** the annexes to the Schedule that form part of this Agreement;
- 1.1.6 **"Authority"** any government or governmental, administrative, fiscal or judicial authority, body, court, department, commission, tribunal, registry or any state owned, controlled or legislatively constituted authority which principally performs public, governmental or regulatory functions, including, without limitation, any competition authorities;
- 1.1.7 **"Commencement Date"** as defined in the Schedule;

1.1.8	<b>"Company Representative"</b>	the Person(s) identified in the Schedule as such or a replacement for such Person(s) appointed in, and pursuant to the, terms of this Agreement;
1.1.9	<b>"Confidential Information"</b>	any information embodied in data, technical knowledge, specifications, chemical make-up, materials and/or other communications, in tangible or non-tangible form, written or oral, relating to or useful in connection with the design, construction or operation of the Company's facilities or Site, the identity and requirements of the Company's suppliers and customers, the types, specifications, quantities and prices of goods or services; the Company's feedstock, products and/or its business, including but not limited to trade information, employee remuneration and conditions of employment, business development and/or operational plans, the existence and content of contracts, costs, pricing, payment terms, procedures, forecasts, order quantities, sales volumes and raw material usage, patent application, any product or process specifications, any product developments, any product applications, formulae, processes, marketing and manufacturing methods, drawings and plans and other information technology specifications either (a) disclosed or provided by the Company, or (b) that may be learned, acquired or derived by the Supplier during any examination of the said information or during any negotiations or discussions; and the Intellectual Property of the Company and all information and data disclosed in any documentation describing and/or referring to any such Intellectual Property;
1.1.10	<b>"Delivery"</b>	delivery of the Product as set out in the Schedule, and <b>"Deliver"</b> and <b>"Delivered"</b> shall have a corresponding meaning as the context may so require;
1.1.11	<b>"Delivery Date"</b>	as provided for in a Purchase Order or the Schedule or as directed in writing by the Company;
1.1.12	<b>"Delivery Point"</b>	the delivery point nominated in the Schedule, or

		if no such point is specified, the equivalent point specified in a Purchase Order;
1.1.13	<b>"Good Industry Practice"</b>	the exercise of that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from time to time from a skilled and experienced contractor to comply with its obligations in terms of this Agreement and complying with all Laws and applicable AGA Policies;
1.1.14	<b>"Incidental Services"</b>	any incidental services to be performed by the Supplier pursuant to the supply of the Products (including the Delivery of the Products) and any services (such as for example, fitting, testing and commissioning) described in the Schedule or if no such services are specified in the Schedule, the equivalent services in the Purchase Order;
1.1.15	<b>"Intellectual Property"</b>	all intellectual property rights, whether protectable by statute or at common law, including all patents, trademarks, present and future rights of copyright, rights in and to designs, rights in and to inventions, topography rights, rights in and to trade secrets, rights in and to trade names, business names, domain names and logos, rights in and to know-how, rights in and to databases (including rights of extraction), and all rights and forms of protection of a similar nature or having equivalent effect to any of them which may subsist or be capable of protection at the Signature Date or in the future anywhere in the world, whether or not any of these is registered and including applications for any such right or registration, renewal or extension thereof;
1.1.16	<b>"Invoice"</b>	an original invoice in respect of the Products and Incidental Services (if applicable) submitted by the Supplier to the Company in accordance with this Agreement;
1.1.17	<b>"Laws"</b>	means any statutes, by-laws, rules, regulations, orders, ordinances, protocols, codes, standards, guidelines, conditions and/or requirements of any licence and/or permit, treaties, policies, notices, practices, administrative interpretations,

		directions, decrees, judgments, awards or requirements which have been duly enacted, issued or promulgated by any Authority having jurisdiction;
1.1.18	<b>"Liabilities"</b>	means any losses, liabilities, costs, awards, damages, fines, penalties, sanctions, amounts paid in settlement and expenses, including legal fees for both internal and external counsel, and reasonable costs of investigation, litigation and settlement and/or costs and expenses of any kind;
1.1.19	<b>"Parties"</b>	the parties to this Agreement, being the Company and the Supplier and <b>"Party"</b> shall mean either one of them;
1.1.20	<b>"Person"</b>	includes a natural Person, company, close corporation or other juristic Person or corporate entity, charity, partnership, trust, joint venture, syndicate or other unincorporated association of persons or entities;
1.1.21	<b>"Personnel"</b>	the directors, officers, employees, agents, approved subcontractors of a Party involved either directly or indirectly in the performance of any obligations in terms of this Agreement;
1.1.22	<b>"Products"</b>	the Products set out in the Schedule and where the context requires, the Products ordered by and supplied to the Company;
1.1.23	<b>"Product Price"</b>	the prices of the Products as described in the Schedule;
1.1.24	<b>"Product Specifications"</b>	the technical specifications of the Products referred to in the Schedule;
1.1.22	<b>"Purchase Order"</b>	an official written purchase order signed by a duly authorised Company official and issued by the Company to the Supplier stipulating, as applicable, the nature and/or quantity of the Products to be purchased in terms of this Agreement, as well as any Incidental Services to be rendered;
1.1.25	<b>"Representatives"</b>	the Company Representative and the Supplier Representative, and <b>"Representative"</b> shall mean either one of them;

- 1.1.26            **"Schedule"**                    the Schedule that forms part of this Agreement;
- 1.1.27            **"Security"**                        means the security to be provided by the Supplier for the performance of its obligations in terms of this Agreement as specified in the Schedule;
- 1.1.28            **"Signature Date"**                the latest of the dates on which this Agreement (or any counterpart) was signed by any Party;
- 1.1.29            **"Site"**                                the Company's premises specified in the Schedule;
- 1.1.30            **"Supplier Representative"**      the Person identified in the Schedule as such or a replacement for such Person appointed in terms of this Agreement;
- 1.1.31            **"Taxes"**                            means any tax imposed, levied or charged by any Authority and includes, without limitation, any excise duties, stamp or similar duties, customs duties, withholding taxes, value added or similar transaction taxes and any penalties or interest relating thereto; and
- 1.1.32            **"Termination Date"**              means the date specified in the Schedule.
- 1.2                In this Agreement unless expressly provided otherwise:
- 1.2.1                references to a Law include any subordinate legislation made from time to time under that provision and include that Law as amended, supplemented, modified or re-enacted from time to time;
- 1.2.2                words importing the masculine gender include the feminine and neuter genders and *vice versa*; the singular includes the plural and *vice versa*; and natural persons include artificial persons and *vice versa*;
- 1.2.3                if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 1.2.4                any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears;
- 1.2.5                a reference to a clause is a reference to a clause of this Agreement, unless otherwise stated or inconsistent with the context in which it appears;
- 1.2.6                where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day;
- 1.2.7                any reference to days, months, or years, shall be a reference to calendar days, months or years, as applicable, unless otherwise stated;



- 1.2.8 any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (ie *pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;
- 1.2.9 any reference in this Agreement to "this Agreement" or any other agreement, document or instrument shall be construed as a reference to this Agreement or that agreement, document or instrument as amended, varied, restated, novated or substituted from time to time;
- 1.2.10 all the headings and sub-headings in this Agreement are for convenience only and are not to be taken into account for the purposes of interpreting it;
- 1.2.11 the currency of this Agreement shall be as specified in the Schedule;
- 1.2.12 the use of any expression in this Agreement covering a process such as winding-up, liquidation or dissolution (without limitation *eiusdem generis*) shall be construed as including any equivalent or analogous proceedings under any jurisdiction; and
- 1.2.13 the use of the word "including" followed by specific example(s) shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example(s).
- 1.3 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.
- 1.4 Each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of this Agreement (ie the *contra proferentem* rule), shall not apply.

## 2. Agreement and conflict of documents

- 2.1 The following documents constitute this Agreement:
- 2.1.1 these general conditions of supplying the Products and any Incidental Services;
- 2.1.2 the Schedule; and
- 2.1.3 the Annexes.
- 2.2 If there is any conflict between the documents constituting this Agreement, the

documents shall for the purposes of interpretation rank in order of precedence in accordance with the order in which they are listed in clause 2.1 above.

### **3. Terms of appointment**

- 3.1 The Supplier agrees to supply the Products, and the Incidental Services (if any), to the Company for the Agreement Term in accordance with the terms, and subject to the conditions, as set out in this Agreement.
- 3.2 The Company gives no undertaking regarding the extent to which it will order the Supplier to supply the Products and provide the Incidental Services in terms of this Agreement, and nothing contained in this Agreement shall prevent the Company from engaging with other third party suppliers to supply the Products and provide the Incidental Services.
- 3.3 The Company shall purchase Products and request Incidental Services pursuant to a written Purchase Order issued by the Company.
- 3.4 The Supplier agrees to carry out its obligations in terms of this Agreement as an independent contractor of the Company and nothing in this Agreement, whether expressed or implied shall:
  - 3.4.1 be construed as creating an employment or labour-broking relationship between the Supplier and its Personnel, on the one hand, and the Company and the Supplier, on the other;
  - 3.4.2 be construed as creating a partnership or joint venture between the Parties;
  - 3.4.3 constitute either Party as an agent or Representative of the other Party;
  - 3.4.4 entitle the Supplier or any of its Personnel for any purpose whatsoever hold themselves out to be an employee(s) of the Company;
  - 3.4.5 afford the Supplier or any of its Personnel any employment-related claim against the Company hereunder or otherwise; and/or
  - 3.4.6 entitle either Party to bind or attempt to bind the other Party, or to represent to any third party that it has the authority to bind the other Party or to confer any obligation on the other Party, unless specifically mandated to do so in writing by the other Party.
- 3.5 The Supplier shall use its own Personnel for all the purposes of carrying out its obligations in terms of this Agreement.
- 3.6 Notwithstanding the use of Personnel by the Supplier for the supply of the Products and Incidental Services (if any), the Supplier shall remain fully responsible for the proper performance of its duties and obligations in accordance with the terms and conditions of this Agreement, and the Supplier shall ensure that all persons engaged in the supply of the Products and Incidental Services (if any) acts in accordance with the terms and conditions of this Agreement, all applicable Laws, applicable AGA Policies and Good Industry Practice.

#### 4. **Commencement and duration**

This Agreement continues for the Agreement Term unless otherwise terminated earlier under the terms of this Agreement.

#### 5. **Representatives**

- 5.1 The Supplier shall ensure that the Supplier Representative is available to the Company at all reasonable times for the Agreement Term in respect of matters concerning the Supplier's performance of this Agreement.
- 5.2 The Company Representative has the authority to give directions for and on behalf of the Company as set out in this Agreement, but shall only have the authority to agree to an amendment of this Agreement for and on behalf of the Company to the extent expressly permitted in this Agreement.
- 5.3 The Supplier Representative has full authority to represent and bind the Supplier in all matters pertaining to this Agreement, including the authority to agree to any amendment to the terms and conditions of this Agreement for and on behalf of the Supplier. Matters within the knowledge of the Supplier Representative are taken to be within the knowledge of the Supplier.
- 5.4 A Party shall be entitled to revoke the appointment of its Representative, with the approval of the other Party which approval shall not be unreasonably withheld, subject to a simultaneous appointment of a replacement by written notice to the other Party.

#### 6. **Product Specifications**

- 6.1 The Supplier shall supply and make Delivery of the Products in strict compliance with the Product Specifications, applicable AGA Policies, Good Industry Practice, all applicable Laws, the terms of any Purchase Order and all other applicable provisions of this Agreement and shall ensure that inferior or defective raw materials are not used in the manufacture of the Products.
- 6.2 The Supplier represents, warrants and undertakes that each Product supplied by it under this Agreement shall:
- 6.2.1 conform to the Product Specifications, AGA Policies, Good Industry Practice, all applicable Laws, their description (or representative sample if applicable) and all other requirements of this Agreement;
- 6.2.2 are free of encumbrances and that the Supplier has good title to them;
- 6.2.3 be new and of good and merchantable quality and fit for its intended purpose; and
- 6.2.4 be free of defects (latent and patent) in design, workmanship and material.
- 6.3 The Company reserves the right to call for certificates of raw materials and test certificates for materials and equipment used in the manufacture of any Product.

#### 7. **Statutory requirements and specification**

The Supplier must ensure that the design, fabrication, testing, packaging, loading on transport, Delivery (and installation and commissioning where specified) of Products is in accordance with the Product Specifications and all applicable Laws.

## **8. Performance of Incidental Services and standard of conduct**

### **8.1 Qualifications**

The Supplier represents and warrants that it, and each of its Personnel, are qualified and have the capacity, experience, resources, skill and expertise to perform the Incidental Services (if any) in accordance with the requirements of this Agreement.

### **8.2 Standards of conduct**

8.2.1 The Supplier represents and warrants that, in performing the Incidental Services (if any), the Supplier and its Personnel shall:

8.2.1.1 exercise the standards of diligence, skill and care normally exercised by similarly qualified and competent persons in the performance of work comparable to the Incidental Services; and

8.2.1.2 ensure the Incidental Services are fit for any purpose notified by the Company and in the absence of notification, for the purpose for which works of that or a similar type are commonly acquired.

8.2.2 In performing the Incidental Services, the Supplier and its Personnel shall:

8.2.2.1 act in accordance with all reasonable directions of the Company (including in relation to health and safety, industrial relations (whilst on the Site) and environmental matters;

8.2.2.2 act in a workmanlike, careful, safe and proper manner;

8.2.2.3 perform the Incidental Services in a timely manner;

8.2.2.4 comply with all the requirements of this Agreement; and

8.2.2.5 ensure that the Incidental Services comply with all applicable Laws, AGA Policies and Good Industry Practice.

### **8.3 Protection from Incidental Services**

Where Incidental Services are to be performed, the Supplier must take all reasonable precautions to protect persons, property or work in progress by the Company or others at or in the vicinity of the place where Incidental Services are being performed, including the erection of any necessary temporary guards and fences and warning signs. Any damage must be reported to the Company immediately.

## **9. Documentation**

9.1 Documentation which may require approval of the Company Representative pursuant to the supply of Products and any Incidental Services shall be submitted

to the Company Representative as and when required. The Parties shall address in the Purchase Order, or elsewhere as appropriate in this Agreement, the timeframes for submission of any such requests for approval and for review and approval by the Company Representative.

- 9.2 Ownership of, and Intellectual Property in, all documentation arising out of the supply of the Products and any Incidental Services shall vest in the Company. The Company shall have full right of disposal of such documentation without payment of any further consideration to the Supplier.

## **10. Tests and inspection**

- 10.1 The Company shall be entitled to inspect the Products and any Incidental Services being supplied at any time to determine whether the Products and Incidental Services are being supplied in accordance with this Agreement.
- 10.2 Further, the Company shall, upon reasonable notice to the Supplier, be entitled to conduct such tests of the Products and any Incidental Services as it deems reasonably necessary. The costs of tests carried out by the Company will be borne by the Company.
- 10.3 In the event that the Supplier is obliged to carry out tests in respect of the Products and/or any Incidental Services, the tests must be commenced on the dates and times as agreed between the Company Representative and the Supplier Representative. The Company Representative is entitled to be present at the testing; however, the testing will proceed regardless of whether the Company Representative is present. The Supplier Representative shall provide the Company with a copy of the results of the test immediately upon completion of a particular test.
- 10.4 If the results of an inspection and/or test reveal that the Products and/or any Incidental Services, as applicable, are not supplied in accordance with this Agreement, the Company shall notify the Supplier Representative of such defect and/or failure and, without limiting any other right or remedy the Company may have under this Agreement, direct the Supplier to take such measures as may be required to remedy the defect and/or failure to ensure that the Products and any Incidental Services are in accordance with this Agreement at the Supplier's cost and expense.

## **11. Product Price and adjustments**

- 11.1 The Product Price and adjustment thereof payable by the Company to the Supplier for the Products will be as described in the Schedule.
- 11.2 Adjustments to the Product Price, if any, shall be determined in accordance with the Product Price adjustment provisions referred to in the Schedule.
- 11.3 For the avoidance of doubt, the Product Price includes all recoverable expenses incurred by the Supplier in relation to the supply of the Product and any Incidental Services, and all taxes (including customs and excise duties and value-added tax, or

equivalent value-added tax payable in the relevant jurisdiction in which the Products and any Incidental Services are supplied) to the extent permitted by Law and the costs of packaging, insurance and Delivery of the Products.

- 11.4 Notwithstanding the provisions of any Laws to the contrary, the Supplier shall not be entitled to recover in addition to the Product Price any sum in consequence of or arising from any duty or increase thereon imposed in terms of any Laws relating to customs and excise, royalties, any taxes, including withholding taxes and the like.

## 12. Cancellation of Purchase Orders

### 12.1 Cancellation of Purchase Orders

If the Supplier breaches any of the terms of this Agreement the Company may at its option and without prejudice to any of its other rights or remedies, cancel any Products not Delivered or Incidental Services not provided which are the subject of a Purchase Order and the Supplier is not entitled to any compensation in respect of that cancellation.

### 12.2 Consequences of cancellation where Supplier is not in breach

- 12.3 Notwithstanding the Supplier not being in breach, the Company may, at its option, cancel any Products not Delivered or Incidental Services not provided but:

12.3.1 if the Products are any of the Supplier's standard stock, the Company must pay for Products shipped prior to the cancellation and accepted by the Company (unless such Products are supplied to the Company by the Supplier on a consignment basis, in which case the Company must pay for any Products put into use by the Company prior to cancellation); and

12.3.2 if Products are manufactured or fabricated in accordance with the Product Specifications:

12.3.2.1 upon receipt of notice of cancellation, the Supplier must cease manufacture in accordance with and to the extent specified in the notice and immediately do all things possible to mitigate any costs incurred; and

12.3.2.2 the Company must pay to the Supplier any expenditure reasonably incurred by the Supplier prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and which has not been otherwise recouped by the Supplier.

### 12.4 Title to material; incomplete Products

Title to material or incomplete Products passes to the Company upon the earlier of Delivery or payment (including payment of an amount by the Company under clause 12.3.2.2 above).

## 13. Delivery, title and risk

- 13.1 The Supplier shall Deliver the Products to the Delivery Point in accordance with the

Delivery provisions of the Schedule.

- 13.2 Unencumbered ownership of the Products shall pass to the Company upon payment for the Products by the Company in full.
- 13.3 The risk in the Products shall pass to the Company upon Delivery of the Products to the Delivery Point.
- 13.4 The Supplier must arrange and pay for the transport of the Product, by the method of transport specified in the Schedule, to the Delivery Point.

#### 14. **Packaging**

- 14.1 The Supplier must ensure that the Products are packed in accordance with the terms set out in the Schedule (if any) and otherwise in a manner consistent with applicable Laws, AGA Policies, and Good Industry Practices and suitable for road transport to, and storage at the Delivery Point.
- 14.2 The Supplier must clearly mark all packages with, at a minimum, the name of the Company, the address for Delivery, the Purchase Order number and for the attention of the Person at the Site designated by the Company in writing.
- 14.3 The Supplier is liable for loss or damage due to unsuitably packed Products and for any difference in freight charges that arises from its failure to follow any transport instruction in this Agreement or to properly describe the Products being transported. The Supplier must assist the Company in obtaining documents and other information required for the resolution of any transport dispute.
- 14.4 The Company may reject any Delivery or consignment that is not adequately packed in accordance with this clause 14.
- 14.5 For the avoidance of doubt, acceptance of the Products at the Delivery Point by any third party on behalf of the Company, such as a transport provider, shall not affect or limit :
  - 14.5.1 any right the Company may have to reject the Products upon the Company inspecting the Products when they are Delivered to the Site (if the Delivery Point is not at the Site); or
  - 14.5.2 the Supplier's warranties or other obligations under this Agreement.

#### 15. **Invoicing and payment**

- 15.1 The Supplier shall provide the Company with a monthly Invoice by no later than the last day of each month in respect of Products and Incidental Services supplied to the Company up to the 25<sup>th</sup> day of that month, or such other date as advised by the Company from time to time.
- 15.2 Each Invoice shall be in a format approved by the Company from time to time.
- 15.3 The Supplier shall promptly provide any information reasonably required by the Company to substantiate an Invoice. In the event that an Invoice and any supporting documentation are incomplete or incorrect, payment of such Invoices

will only be effected not later than the number of days for payment as specified in the Schedule following the date of receipt of a correct Invoice and the relevant supporting documentation (if any) by the Company.

- 15.4 The Company shall be entitled to dispute, and not pay, any Invoice reflecting any Products, Incidental Services, Product Prices, rebate, discount or condition at variance with the Purchase Order and/or this Agreement.
- 15.5 Subject to clauses 15.3 and 15.4, all Invoices shall be paid by the Company to the Supplier no later than the number of days for payment as specified in the Schedule after receipt of the Invoice by the Company. The Company shall at all times be entitled to the Supplier's standard discount for prompt payment.
- 15.6 Unless otherwise negotiated by the Parties, the Company shall make all payments to the Supplier directly into such bank account as stipulated by the Supplier in the Schedule or in writing from time to time.
- 15.7 Without prejudice to any of its other rights and remedies, the Company may from time to time set-off against any amounts owed to the Supplier, whether under this Agreement or otherwise, all or any of the amounts owed by the Supplier to the Company whether under this Agreement (including pursuant to any indemnity contained in this Agreement) or any other agreement or account.

#### **16. Information and investigations**

- 16.1 The Supplier acknowledges and agrees that as at the Signature Date:
  - 16.1.1 it has satisfied itself as to the suitability and correctness of any information provided by or on behalf of the Company in relation to the performance of this Agreement;
  - 16.1.2 it has carefully examined all documents provided by or on behalf of the Company in relation to the performance of this Agreement and has satisfied itself that such documents are correct and accurate in all respects;
  - 16.1.3 the Company is not responsible for any inferences and conclusions drawn by the Supplier from information provided by or on behalf of the Company in relation to the performance of this Agreement;
  - 16.1.4 it has performed all investigations and inspections necessary for the performance of this Agreement;
  - 16.1.5 the Company does not warrant the correctness, accuracy or otherwise of such information provided by or on behalf of the Company in relation to the performance of this Agreement;



- 16.1.6 the Company does not accept any responsibility for the use of information provided by or on behalf of the Company in relation to the performance of this Agreement by the Supplier nor for any losses arising therefrom, including any inferences and conclusions drawn by the Supplier from such information; and
- 16.1.7 has taken all steps necessary to fully inform itself of all matters and conditions that may affect its performance of this Agreement, and any failure on the part of the Supplier to do so does not relieve the Supplier from its obligations under this Agreement nor does it entitle the Supplier to any adjustment of the Product Price.
- 16.2 The Supplier acknowledges that following the Signature Date it may be provided with further information by or on behalf of the Company in relation to the performance of this Agreement, in which cases it agrees that the provisions of this clause 11 shall apply to such further information provided by the Company.

## 17. Access to Site

### 17.1 Conditions of access

- 17.1.1 The provisions of this clause 17 apply if and to the extent only that the Supplier or its Personnel are on the Site, including for the purposes of Delivering the Products or in connection with the Incidental Services. The Supplier, and its Personnel, may not access the Site until the Supplier receives the approval of the Company.
- 17.1.2 The Supplier:
- 17.1.2.1 enters the Site at its own risk (and must ensure its Personnel know they enter the Site at their own risk);
- 17.1.2.2 is not entitled to possession of the Site;
- 17.1.2.3 may only access the areas allocated by the Company as necessary, in the opinion of the Company, for performance of the Incidental Services or the Delivery of the Products;
- 17.1.2.4 must ensure that it and its Personnel comply with all applicable Site rules and procedures including any relating to induction or Site orientation;
- 17.1.2.5 must co-operate with the Company, its Personnel, and the Company's other contractors and workmen and give them any information or data reasonably necessary or expedient to ensure proper performance of their respective work;
- 17.1.2.6 must obtain prior approval from the Company, in a timeframe consistent with this Agreement, for any action likely to interfere with the Company's operations or the work of any other contractor; and
- 17.1.2.7 if required by the Company to do so, must (and procures that any

Person for whom the Supplier is responsible, including all Personnel) wear or carry badges or passes issued by the Company for the purpose of identification at all times whilst on or entering the Site or the Company's mining or exploration tenements.

#### 17.2 **Removal from Site**

The Company may, in its absolute discretion, require the removal from the Site of any Person for whom the Supplier is responsible (including all Personnel) who, in the opinion of the Company, is incompetent or conducts themselves in a reprehensible or irresponsible fashion or is otherwise unsuitable to continue to be employed on the Incidental Services or in connection with this Agreement and the Supplier must immediately comply with such requirement. The Company may require the replacement, within such time as the Company directs, of any such Person removed from Site, and such replacement Person must have the requisite skills and technical expertise for purposes of carrying out the Supplier's obligations in terms of this Agreement.

#### 18. **Stock to be maintained**

18.1 The Supplier must maintain stock of the Products as set out in the Schedule (or any lesser amount as may be agreed by the Company from time to time in writing).

18.2 The Company may from time to time and in its reasonable discretion stipulate in writing the purchase volumes and details of the Products to be maintained in stock for the period, to enable the Supplier to accurately meet the Company's requirements.

18.3 If at any time during this Agreement the stock maintained by the Supplier is insufficient to meet the Company's consumption as reflected in this Agreement and related Purchase Orders and/or the Schedule, the Supplier shall immediately give written notice to the Company, and the Supplier shall source and supply Products to the Company of the same specifications as the Product Specifications. Any additional costs associated with complying with the obligations of this clause 18.3 shall be at the Supplier's expense to the Company.

18.4 In the event that the Supplier fails to act in accordance with its obligations in terms of clause 18.3 the Company shall be entitled to itself source Products or a substitute at the expense of the Supplier.

18.5 The Company is not obliged to take or pay for any Products or any Incidental Services, other than in accordance with Purchase Orders placed by it. The Company may return, at the Supplier's cost, any excess Products Delivered.

#### 19. **Supplier's inspection rights**

19.1 The Company may inspect the Supplier's stock at any reasonable time, with reasonable notice, on days other than Saturdays, Sundays and public holidays in the jurisdiction where the supply of Products and any Incidental Services is required by the Company, as referred to in the Schedule.

- 19.2 The Supplier must supply manufacturing schedules and progress reports to the Company as reasonably requested by the Company from time to time.
- 19.3 The Company or the Company Representative may:
- 19.3.1 inspect all or part of the work relating to the Products specified in a Purchase Order (including any work sub contracted by the Supplier) prior to and during the manufacture of those Products until final acceptance of Products by the Company; and
- 19.3.2 reject any work which does not comply with the requirements of this Agreement.

## 20. Liens

- 20.1 The Supplier waives any lien or right of retention it may have and warrants that no subcontractor or other third party shall have any claim, lien, special notarial bond, pledge, charge or any other encumbrance whatsoever against any of the Products.
- 20.2 The Company may refuse to make payment of the Invoice until the Supplier confirms in writing that all claims and demands against the Supplier (including claims by subcontractors) that may constitute or become a claim or lien against any the Products have been paid or satisfied.

## 21. Supplier's documents, accounts and records

Upon written notice, the Supplier shall provide the Company with any certificates, books and records and such documentation and other information as may be reasonably requested by the Company from time to time in order to verify that the design, manufacture, importation, supply and Delivery of the Products, as applicable, complies with the provisions of this Agreement.

## 22. Health, safety and environment

- 22.1 The Supplier shall at all times take all reasonable steps to protect the environment and maintain the health and safety of the Supplier's Personnel and all persons on Site.
- 22.2 Without in any way limiting the generality of the foregoing, to the extent the Supplier or any of its Personnel are required to be on Site or to be near the vicinity of a Site for the purposes of supplying the Products or Incidental Services under this Agreement the Supplier shall, and shall ensure that its Personnel, comply with and implement as the case may be:
- 22.2.1 the Company's health, safety and environmental policies and standards applicable to the Site from time to time, including the health, safety and environmental policies and standards contained in the AGA Policies;
- 22.2.2 any health, safety and environmental precautions and regulations which the Company Representative may consider necessary for the proper protection of

the Supplier's Personnel and all persons on the Site;

- 22.2.3 any health and safety management plans or environmental management plans submitted by the Supplier to the Company in terms of this Agreement or otherwise;
- 22.2.4 all relevant health, safety and environmental Laws in force from time to time; and
- 22.2.5 the health, safety and environmental conditions contained in this clause 22.
- 22.3 The Supplier shall:
  - 22.3.1 at its cost provide the Supplier's Personnel and all persons allowed by the Supplier to be present on the Site with protective equipment in full compliance with the safety policies and standards of the Site in force from time to time; and
  - 22.3.2 at its cost provide and install all safety equipment reasonably required in relation to the supply of the Products and any Incidental Services and/or specified by the Company from time to time, and shall keep and maintain all such safety equipment in good and working order.
- 22.4 The Supplier shall ensure there are processes in place that implement and reinforce line accountability for safety and health outcomes.
- 22.5 The Supplier shall maintain appropriate records in accordance with the safety and environmental system in force on the Site from time to time in respect of all matters concerning safety, environmental, health and welfare of the Supplier's Personnel, and damage to or loss of any property on the Site.
- 22.6 Without limiting the generality of this clause 22 the Company shall be entitled in its sole discretion to take such steps, related to this Agreement and more specifically the work of the Supplier, at the cost of the Supplier as shall be necessary for the maintenance of the health and safety of any Person on the Site.
- 22.7 Notwithstanding any other term of this Agreement, in the event of any breach of this clause 22, the Company may:
  - 22.7.1 require the Supplier, the Supplier's Personnel and/or any other Person to leave the Site immediately; and
  - 22.7.2 require the Supplier and/or any of its Personnel to remove any material or substance from the Site at the Supplier's cost,

and the Supplier must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, Personnel and the environment.

## 23. Compliance with Laws

- 23.1 The Supplier shall, and shall ensure that its Personnel shall, at all times and in all respects comply with all applicable Laws and shall not do anything or allow

anything to be done which does or is likely to cause a contravention of any provision of any applicable Laws.

- 23.2 The Supplier shall be responsible for obtaining and maintaining all applicable quality accreditation, certification, notices, licences, authorisations and permits required by any Authority in connection with the supply of the Products and any Incidental Services, and shall also have the financial responsibility for, and shall pay, all fees and taxes associated with such accreditation, certification, notices, licences, authorisations and permits.
- 23.3 The Supplier agrees, without limiting any clause of this Agreement, to comply and to ensure that its Personnel comply with Good Industry Practice and all lawful requirements and directions of the Company.
- 23.4 The terms of every sub-contract must require compliance by the subcontractor with the requirements of this clause 23.

#### 24. **Business ethics**

- 24.1 The Supplier undertakes that it will perform in a manner consistent with and ensure that its Personnel perform in a manner consistent with the AngloGold Ashanti Limited Code of Business Principles and Ethics (the "**Code of Ethics**"), the AngloGold Ashanti Supplier Code of Conduct (the "**Supplier Code**"), and any other policies that the Company may specify from time to time.
- 24.2 The Supplier undertakes to familiarise itself with the contents of the AGA Policies described in clause 24. Copies of the Code of Ethics and the Supplier Code may be viewed at [www.anglogoldashanti.com](http://www.anglogoldashanti.com).
- 24.3 The Supplier acknowledges and hereby confirms that it does not have any interest which actually constitutes or may potentially constitute a conflict of interest relating to its obligations under this Agreement, including the supply of the Products, except as has been disclosed to and acknowledged by the Company prior to the Signature Date.
- 24.4 The Supplier agrees to undertake conflicts of interest checks for the Agreement Term and undertakes to inform the Company immediately of any actual or potential conflicts of interest with regards to its obligations under this Agreement.
- 24.5 The Supplier agrees to work with the Company and do whatever is necessary and reasonable to effectively manage such conflicts of interest to the satisfaction of the Company. In any such cases, if the Company is not satisfied in its sole discretion with the management of any such conflicts of interest, it shall have the right to take such action as it deems necessary to address the conflict of interest or protect its interest, including the immediate termination of this Agreement by written notice.
- 24.6 The Supplier undertakes that it and its Personnel are familiar with, understand and will abide by all applicable anti-bribery and anti-corruption Laws, including the US Foreign Corrupt Practices Act, and shall not and will ensure that its Personnel will

not pay any fees, commission, or grant favours, rebates, benefits, advantages; including gifts entertainments, hospitality of more than nominal value to any third party (including government officials), Personnel or agents of the Company contrary to the Laws mentioned above, as well as the Company's policy on gifts, hospitality and sponsorship, and anti-corruption policies, including the Code of Ethics and the Supplier Code.

- 24.7 The Supplier agrees to notify the Company of any fraudulent or corrupt activity that may come to its notice or the notice of its Personnel in relation to this Agreement herein. The Supplier agrees to cooperate with the Company on the investigation of every fraudulent activity in relation to this Agreement and to implement corrective measures as the Company may direct to address any fraudulent or corrupt activity in terms of applicable Laws and AGA Policies.
- 24.8 The Company shall have the right to audit and review records and documents, upon giving the Supplier at least seven (7) days' prior notice; and to interview such persons as it may deem necessary to confirm compliance by the Supplier with the above provisions.
- 24.9 The Supplier agrees that, if requested by the Company, that it will at its own cost ensure that its Personnel undertake training (including online and refresher courses) provided by the Company related to any Laws or AGA Policies.
- 24.10 The Supplier acknowledges that it, and any of its Personnel, may be required by the Company to sign an affirmation confirming, *inter alia*, its compliance with the provisions of this clause 24.
- 24.11 The terms of every sub-contract must require compliance by the subcontractor with the requirements of this clause 24.

## 25. **Subcontracting**

- 25.1 The Supplier shall not sub-contract any part of this Agreement to a third party other than to subcontractors approved by the Company in writing.
- 25.2 No agreement entered into with a subcontractor shall release the Supplier from any of its obligations in terms of this Agreement.
- 25.3 The terms of every sub-contract must be no less stringent than the terms of this Agreement, provided that the Supplier may include in any sub-contract all terms that the Supplier considers necessary to maintain control over the work to be performed by the subcontractor and to allow the Supplier to comply with all obligations under this Agreement.
- 25.4 The Supplier shall be responsible for the acts, omissions, of its subcontractors and the agents, employees and workmen of such subcontractors as fully as if they were the acts, omissions, of the Supplier. Each subcontractor will be considered as the agent and representative of the Supplier, as between the Supplier and the Company.
- 25.5 The Supplier must ensure that the work performed by the subcontractor meets the

requirements of this Agreement.

## 26. Supplier warranties

- 26.1 In addition to the warranties contained elsewhere in this Agreement, the Supplier warrants to the Company that:
- 26.1.1 it is duly constituted, organised and validly existing under the Laws;
  - 26.1.2 it has the full right, power and authority to enter into and perform its obligations under this Agreement;
  - 26.1.3 the supply of the Products to the Company does not and will not infringe the rights of any third party or cause a third party to suffer losses;
  - 26.1.4 all authorisations required to have been obtained by or under any Law in order to enable the Supplier lawfully to enter into and perform the obligations assumed by it in this Agreement have been obtained and will be maintained by the Supplier for the Agreement Term;
  - 26.1.5 it shall use the Intellectual Property supplied to it by the Company, if any, strictly in accordance with the provisions of this Agreement, the directions and know-how supplied in terms of this Agreement or as provided or stipulated by the Company in writing from time to time.
  - 26.1.6 it complies and will continue to comply with:
    - 26.1.6.1 the Amendment of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry issued under section 100(2)(b) Minerals and Petroleum Resources Development Act, 28 of 2002 ("Mining Charter");
    - 26.1.6.2 the Broad-Based Black Economic Empowerment Act, 2003 ("BBBEE Act"); and
    - 26.1.6.3 the Broad-Based Black Economic Empowerment Codes of Good Practice, issued by the Department of Trade Industry ("DTI Code").
- 26.2 Each of the warranties set out above:
- 26.2.1 is without prejudice to any other warranty;
  - 26.2.2 shall not be limited by any other clause of this Agreement;
  - 26.2.3 shall be deemed to be material and to be a material representation inducing the Company to enter into this Agreement; and
  - 26.2.4 shall be given as at the Signature Date and constitutes a continuing representation and warranty for the Agreement Term and shall survive the termination of this Agreement for any reason whatsoever.
- 26.3 The fact that the Supplier has given the express warranties listed above shall not in any way be construed as relieving the Supplier from any liability which it may have at common law arising out of a failure to disclose any fact to the Company affecting

this Agreement or the Products supplied thereunder.

## **27. Defective Products**

- 27.1 Should the Supplier Deliver any Products which do not comply with the Product Specifications or the provisions of this Agreement, the Company shall have the right to refuse to take Delivery, or after having taken Delivery, to reject the said Products and promptly notify the Supplier in writing. In the event of such refusal or rejection the said Products, the Company may choose to hold the Products at the sole risk of the Supplier.
- 27.2 In the event that the Company rejects Products in accordance with clause 27.1 above, the Supplier shall remove the said Products and shall pay all costs of and incidental to such removal and the Supplier shall further be liable for all costs incurred by the Company in respect of defective Products including but not limited to transport, off-loading and loading costs.
- 27.3 At the sole discretion of the Company, the Supplier shall replace any Products rejected or refused at the cost of the Supplier.
- 27.4 Should any dispute arise as to whether Products refused or rejected by the Company comply with the Product Specifications, the Supplier may within thirty (30) days of such refusal or rejection arrange for tests and/or analyses to be undertaken by a suitably qualified expert to be nominated by the Parties and the result of such tests and/ analyses shall be final and binding. The costs of such tests and/or analyses shall initially be borne by the Supplier, however, in the event of the tests and/or analyses proving that such Products do comply with the Product Specifications, the Company shall refund to the Supplier all reasonable and documented costs incurred by the Supplier in respect of such tests and/or analyses. If the Supplier, within thirty (30) days of such refusal or rejection, fails to arrange for such tests and/or analyses, the Supplier shall be bound by the provisions of clauses 27.1, 27.2 and 27.3.
- 27.5 A failure to inspect by the Company prior to despatch of Product or acceptance by the Company of Products not complying with the Product Specifications, shall not prejudice or affect the rights of the Company to reject subsequent Deliveries of Products not complying with the Product Specifications.
- 27.6 The Supplier must promptly repair any defects, or as necessary replace any Product, when such Product does not comply with the requirements of this Agreement or is defective in design, material, or workmanship, and such noncompliance or defects appear in the Product under proper use within one (1) year of the Company putting the Product into service or within eighteen (18) months of Delivery, whichever is later.
- 27.7 The Supplier agrees that, upon receipt of a notice issued by the Company of any latent or patent defect in any Product, the Product shall be redesigned, repaired or replaced as appropriate by the Supplier at its expense, failing which the Company may without prejudice to its other rights perform or cause to be performed such redesign, repair or replacement at the Supplier's risk and expense, which expense



shall be recoverable from the Supplier as debt due and payable to the Company.

- 27.8 Should any dispute arise as to whether defects are present in the goods, the Supplier shall within thirty (30) days of the date of receipt of such notice arrange for tests and/or analyses to be undertaken by a suitably qualified expert to be nominated by both Parties and the results of such tests and/or analyses shall be final and binding. The costs of such tests and/or analyses shall initially be borne by the Supplier, however, in the event of the tests and/or analyses proving that defects are not present in the Products, the Company shall refund to the Supplier all reasonable and documented costs incurred by the Supplier in respect of such tests and/or analyses. In the event of the Supplier, within thirty (30) days of the date of receipt of such notice, failing to arrange for such tests and/or analyses to be undertaken, the Supplier shall be bound to replace the Products or repair the defects in accordance with the provisions of clauses 27.3 and 27.6.
- 27.9 Failure on the part of the Company to implement the provisions of this clause in respect of any Products in which latent or patent defects are present shall not prejudice or affect the rights of the Company to invoke the said provisions in the event of latent or patent defects being present in any subsequent Delivery of Products.
- 27.10 In addition to the rights of the Company set out in this clause, the Company shall have all other common law rights which it would otherwise have for latent or patent defects in the Products, both with regard to the remedies available to it and with regard to the length of time the Supplier remains liable for the latent defects.
- 27.11 Any action by the Company in terms of this clause shall be without prejudice to any claims for damages which the Company might have against the Supplier. The Company's remedies in terms of this clause are without prejudice to any other remedy to which the Company may be entitled in law, or elsewhere in this Agreement.

## 28. **Delay in Delivery**

- 28.1 The Supplier acknowledges that time is of the essence in this Agreement. In the event of the Supplier becoming aware of any possible or actual delay in the Delivery of the Products by the Delivery Date, the Supplier shall immediately notify the Company in writing thereof and provide details of the expected length of the delay and the steps to be taken to reduce the delay.
- 28.2 If delay in Delivery is caused by any of the circumstances specified in clause 37, the Delivery Date shall be extended by a period which is reasonable, taking into account all the circumstances related to the delay, subject to the requirements of clause 37.
- 28.3 Without limiting any other right or remedy that the Company may have, if the Products are required to be Delivered and are not Delivered to the Delivery Point by the Delivery Date:

- 28.3.1 the Supplier must pay, as pre-estimated and liquidated damages, a sum calculated as the rate specified in the Schedule for every calendar day after the Delivery Date to and including:
- 28.3.1.1 the date the Product reaches the Delivery Point; and
- 28.3.1.2 the date this Agreement is terminated.
- 29.3.2 The Company shall be entitled to require the Supplier to Deliver by methods other than those stipulated in this Agreement and any costs so incurred shall be for the account of the Supplier.
- 29.3.3 The Company shall also have the right to, at the risk and expense of the Supplier, obtain the Product from another source and refuse late Delivery when eventually Delivered.
- 28.4 Acceptance by the Company of any Products in respect of which Delivery has been delayed beyond the Delivery Date shall not prejudice or affect the rights of the Company to implement the provisions of this clause 28 in the event of any subsequent Deliveries of Products being delayed beyond the Delivery Date.
- 28.5 The Supplier acknowledges that the sums payable to the Company under clause 28.3 represent the Company's genuine pre-estimate of damages likely to be suffered by the Company if the Product (or parts thereof) are not Delivered by the Delivery Date and those sums ought not to be construed as nor they are intended to be, a penalty.

## 29. Intellectual Property

- 29.1 The Supplier:
- 29.1.1 warrants that no third party will have a valid claim against the Company for infringement and/or unauthorised use of any patent, copyright, registered design, trade secret, trade mark, software or of any other Intellectual Property arising from the sale and/or use of the Products; and
- 29.1.2 shall indemnify the Company against any such claim and against all costs and/or damages whatsoever which the Company may incur, sustain or be liable for arising from any such claim.
- 29.2 Should any such claim succeed, then the Supplier shall at its cost either acquire the right for the Company to continue using the Intellectual Property concerned or modify or substitute the item concerned in a manner approved by the Company so that it no longer infringes such right, or refund the Company all payments and costs incurred by the Company in respect of the infringing item.

## 30. Indemnity

- 30.1 The Supplier hereby indemnifies and holds the Company, its Affiliates and the Personnel of the Company and its Affiliates ("**Indemnified Parties**" or "**Indemnified Party**" as applicable) harmless against any and all Liabilities of whatsoever nature (including indirect or consequential loss, as permitted under applicable Laws) and

howsoever arising out of:

- 30.1.1 the performance, non-performance or breach of any representation, warranty, undertaking or obligation under or provision of this Agreement by the Supplier;
  - 30.1.2 the negligence or wilful misconduct of the Supplier or its Personnel;
  - 30.1.3 any act or omission by the Supplier or its Personnel arising out of the performance or non-performance of this Agreement;
  - 30.1.4 the operation of the Supplier's facilities;
  - 30.1.5 any infringement or alleged infringement of any Intellectual Property of any third party as a result of the supply of Products by the Supplier; and/or
  - 30.1.6 any defects in the Products.
- 30.2 For the purpose of this clause 30, indirect or consequential loss means loss or delayed receipt of revenue or profit, loss of contract, loss of production, loss of business opportunity, punitive, special, exemplary, indirect or consequential damages, however caused.
- 30.3 It is not necessary for an Indemnified Party to incur an expense or make a payment before enforcing a right of indemnity conferred by this Agreement.
- 30.4 The provisions of this clause 30 constitute a stipulation in favour of each of the Indemnified Parties capable of acceptance by any of them at any time, either expressly, tacitly or by conduct.

### 31. Insurance

- 31.1 For the Agreement Term, the Supplier shall maintain in force (and ensure that its subcontractors maintain in force) any insurance required by Law and the following insurance set out below ("**Required Insurance**"):
- 31.1.1 professional indemnity insurance in the cases where the Supplier assumes a design or other professional responsibility including cover for claims arising from defective negligent or incorrect designs carried out by or on behalf of the Supplier in carrying out its obligations in terms of this Agreement;
  - 31.1.2 Product liability insurance, in respect of the Products supplied by the Supplier, covering legal liability for claims arising from, among other things, defective or negligent or incorrect design or manufacture of the Products supplied by the Supplier to the Company;
  - 31.1.3 public liability insurance to provide indemnity against legal liability of the Supplier for the death or illness of, or bodily injury to, any Person and/or the loss of, or damage to, property arising from or in connection with the Supplier's performance pursuant to this Agreement; and
  - 23.1.4 any additional insurance as may be provided for in the Schedule.

- 31.2 The Supplier shall maintain in force the Required Insurance, for a period of one (1) year after the Termination Date.
- 31.3 Whenever requested in writing by the Company, the Supplier shall furnish the Company with certificates and/or adequate proof of the Required Insurance. The Supplier's obligation to maintain such insurance cover must not be interpreted as limiting any claim which the Company may have against the Supplier in any way.
- 31.4 The Supplier shall give notice to the Company should any of the Required Insurance or risk covered by the Required Insurance cease to be maintained or insured by it. The Supplier shall also give the Company thirty (30) days' written notice of any cancellation, non-renewal or material modification of any such insurance.
- 31.5 If the Supplier fails upon request to produce in accordance with clause 31.3 to the Company's satisfaction evidence that there is in force any of the Required Insurance, the Company may effect and keep in force any such insurance and the Supplier shall pay to the Company all reasonable sums expended by the Company for such purpose. If the Company is not able to effect and keep in force any such insurance, then the Supplier's failure to produce in accordance with clause 31.3 to the Company's satisfaction evidence that there is in force any of the Required Insurance shall constitute a material breach of this Agreement.
- 31.6 Notwithstanding that the Company may effect such insurance if the Supplier fails to do so, the Supplier will be deemed to have indemnified the Company for all liabilities which may arise from the Company's failure to do so.

## **32. Termination by giving a periods notice**

- 32.1 The Company may elect to terminate this Agreement for its convenience by providing the Supplier with thirty (30) days prior written notice stating the Company's election to terminate for its convenience and the effective date of such termination.
- 32.2 In the event that this Agreement is terminated pursuant to clause 32.1, then subject to the Company's rights under this Agreement to deduct and withhold amounts due to the Supplier, the Company shall pay to the Supplier, as the Supplier's sole remedy in relation to such termination:
- 32.2.1 all amounts due and unpaid for the Products Delivered to the Company as at the date of termination in terms of this clause 32; or
- 32.2.2 in the event that the date of termination occurs prior to the Delivery Date and the Products which have been ordered have not yet been Delivered, an amount equal to the Product Price for such Products not Delivered, as and when such Products are Delivered to the Company in accordance with clause 13.
- 32.2.3 For the avoidance of doubt, no early termination fee of any kind shall be payable by the Company to the Supplier for the early termination of this Agreement for any reason whatsoever.

### 33. Termination on Cessation and Curtailment of Operations

If during the currency of the Agreement, operations at the Company's Site are ceased or are curtailed the Company shall have the right to terminate the Agreement or any portion thereof with thirty 30 (thirty) days written notice to the Supplier without payment of any compensation to the Supplier for any damages whatsoever including any loss of business and/or overhead recovery costs and/or loss of profit resulting from such termination.

### 34. Termination for default

#### 34.1 Supplier default

##### 34.1.1 If the Supplier:

- 34.1.1.1 breaches any material provision of this Agreement and fails to remedy the breach within fourteen (14) days of written notice to do so, or such longer time period as agreed to by the Company;
- 34.1.1.2 takes steps to place itself, or is placed, in liquidation, whether voluntary or compulsory, or in judicial management, in either case whether provisionally or finally;
- 34.1.1.3 takes steps to deregister itself or is deregistered;
- 34.1.1.4 commits an act of insolvency as defined in the applicable Laws pertaining to insolvency as at the date of this Agreement, or, being a corporate body, commits an act which would be such an act of insolvency if committed by a natural Person;
- 34.1.1.5 undergoes a change of control without the prior written consent of the Company;
- 34.1.1.6 is unable to meet its day-to-day liabilities and/or its liabilities exceed its assets;
- 34.1.1.7 falsifies any documents or records or commits any act of fraud or dishonesty in respect of its dealings with the Company or matters arising from the terms of this Agreement;
- 34.1.1.8 cedes, delegates, assigns or transfers (or purports to do so) its rights, benefits or obligations under this Agreement without the prior written consent of the Company;
- 34.1.1.9 sells the whole or any material part of its business, assets and/or its facilities to any third party without the prior written consent of the Company; and/or
- 34.1.1.10 commits, in the opinion of the Company Representative, a breach of any of the provisions of this Agreement,

the Supplier shall be in default.

- 34.1.2 If the Supplier is in default, the Company will be entitled, in addition to all other remedies in terms of this Agreement or at law or equity:
- 34.1.2.1 to demand specific performance of this Agreement and to take such action as may be necessary in order to implement and fulfil its rights herein and to recover any damage which it may suffer as a result of the Supplier's default; or
- 34.1.2.2 to terminate forthwith this Agreement and claim such damages as the Company may have suffered as a result of the Supplier's default.
- 34.1.3 Further, the Company is entitled (but not obliged) to request copies of all subcontracts and other agreements between the Supplier and third parties which relate to the Products. The Company is also entitled to direct the Supplier to:
- 34.1.3.1 procure, the assignment to the Company, or to another Person or entity designated by the Company, of the Supplier's rights and obligations under such of those subcontracts and agreements as the Company may delegate; and/or
- 34.1.3.2 take such other action relating to such subcontracts and agreements as the Company may reasonably specify.
- 34.2 For the purpose of clause 34.1.1 the Supplier shall be deemed to be controlled by any Person or entity whether directly or indirectly and whether in law or effect, if such Person or entity:
- 34.2.1 beneficially owns the majority in number of the shares in the Supplier's issued share capital; or
- 34.2.2 has the right or obligation to direct the manner in which the majority of the votes attaching to any class of shares in the issued share capital of the Supplier are exercised at meetings of shareholders of the Supplier; or
- 34.2.3 has the right or obligation to appoint or remove directors holding a majority of the voting rights at meetings of the Supplier's board.
- 34.3 **Company default**
- 34.3.1 If the Company fails to make a payment of any amount due to the Supplier under this Agreement in accordance with clause 15 that is not the subject of a dispute between the Parties or the exercise of the Company's rights under clause 15 ("**Company Default**"), the Supplier may serve a written notice on the Company requiring the Company to remedy the Company Default within a specified period of not less than thirty (30) days ("**Company Default Notice**").
- 34.3.2 If the Company fails to remedy the Company Default within the time specified therefor in the Company Default Notice, the Supplier may either:
- 34.3.2.1 cease performance of all or any part of its obligations under this

- Agreement until such time as the Company Default is remedied; or
- 34.3.2.2 terminate this Agreement by fourteen (14) days' written notice to the Company.
- 34.3.3 Following termination of this Agreement by the Supplier pursuant to clause 34.3.2.2, the Supplier is only entitled to recover from the Company all amounts due and unpaid in relation to Products Delivered as at the date of termination.
- 34.3.4 In respect of any breach by the Company other than a breach referred to in clause 34.3.1, the Supplier may only terminate this Agreement by written notice to the Company if the breach is material and the Company fails to remedy such breach within 14 days of written notice calling on the Company to do so, or such longer time period as agreed to by the Supplier.

### 35. Consequences of termination

- 35.1 Upon termination or expiry of this Agreement in whole or in part for any reason whatsoever:
- 35.1.1 unless otherwise specified by the Company in writing, the Supplier shall fulfil any valid Purchase Order in accordance with the provisions of this Agreement;
- 35.1.2 the Supplier shall immediately take all possible action to mitigate any losses that may arise from termination of this Agreement;
- 35.1.3 subject to clauses 15.3 and 15.4 of this Agreement the Company shall settle any outstanding Invoices rendered by the Supplier;
- 35.1.4 each Party shall immediately cease any and all use of any Confidential Information supplied to it by the other Party for any purpose whatsoever, and shall return to the other Party all Confidential Information of that Party in its possession or under its control, except that the Company may retain any Confidential Information it deems necessary in order to effect or make use of the Products supplied;
- 35.1.5 the Supplier shall immediately discontinue all use of the Company's Intellectual Property and return to the Company all materials and documentation in its possession and/or under its control relating to the Company's Intellectual Property.
- 35.2 Following termination, the Supplier agrees that it shall not at any time in the future use the Company's Intellectual Property or assist any third party to use the Company's Intellectual Property .

### 36. Security

- 36.1 **Security**
- 36.1.1 The Supplier will within five (5) days of the Signature Date provide the

Company with the Security.

### 36.2 **Conversion of the Security**

36.2.1 The Company may:

36.2.1.1 call on a Security where the Company has become entitled to exercise a right under this Agreement in relation to the Security;

36.2.1.2 call on a Security where the Supplier has breached this Agreement and the breach has not been remedied within 14 days after notice of it has been given to the Supplier by the Company, or such longer time period as agreed to by the Company; or

36.2.1.3 at any time, convert a Security (other than cash) into cash provided that the Company may only have access to the cash funds when it is entitled to exercise a right under this Agreement in relation to the Security.

### 36.3 **Company's security obligations on completion**

36.3.1 Within 28 (twenty eight) days of the date of the expiry of the Supplier's warranty obligations under this Agreement and/or Purchase Order, the Company must return:

36.3.1.1 the Security provided under clause 36.1 of this Agreement, unless it has been called on; and

36.3.1.2 any funds obtained by the Company by calling on any Security to the extent that the Company has not had, nor is it entitled to have, recourse to those funds.

## 37. **Force Majeure**

37.1 For the purposes of this Agreement, the expression "**Force Majeure Event**" means in respect of a Party, any event or circumstance or combination of events or circumstances occurring after the Commencement Date, the occurrence of which is beyond the reasonable control (direct or indirect) of, and could have not been avoided by steps which might reasonably be expected to have been taken by, such Party acting as a reasonable and prudent Party, provided that an economic downturn or hardship suffered by a Party will not be deemed hereunder to be a Force Majeure Event.

37.2 A Force Majeure Event will include but not necessarily be limited to any of the following matters:

37.2.1 war, invasion, acts of government, acts of a foreign enemy, acts of terrorism, hostilities or warlike operations (whether that be declared or not), civil war, mutiny, rebellion, revolution, insurrection, military or usurped power, blockade, confiscation or destruction or requisition by order of any Authority, including prevention or denial of trade, sanctions or closure of borders;

37.2.2 earthquake, flood, fire, drought or other physical disaster; or



- 37.2.3 strike or lockout or other industrial action by employees.
- 37.3 If either Party to this Agreement is prevented from or delayed in performing any of its obligations under this Agreement by a Force Majeure Event , then it will notify the other Party in writing of the nature and expected duration of such Force Majeure Event and of the obligation, the performance of which is delayed or prevented and both Parties will thereupon be excused from the performance or punctual performance, as the case may be, of their respective obligations from the date of such notification, for so long as the circumstances or prevention or delay may continue, except as otherwise provided herein.
- 37.4 A Party claiming Force Majeure must use its best endeavours to remove or overcome the effects of that Force Majeure as quickly as possible.
- 37.5 If by virtue of the foregoing, the Parties are excused from the performance or punctual performance of any obligation for a continuous period of ninety (90) days and provided that such performance is still excused, then either Party may at any time thereafter, by written notice to the other Party, terminate this Agreement forthwith. Notwithstanding any other terms of this Agreement, in the event of a termination pursuant to this clause, the Parties will each absorb its own costs and losses occasioned by termination and neither of them shall have the right to claim damages or any other amount from the other of them, provided, however, to the extent either Party has an obligation arising from any activity prior to the Force Majeure Event which can be performed despite a declaration of such Force Majeure Event, such Party shall be required to perform said obligations.

### **38. Confidentiality**

- 38.1 The Supplier will keep confidential and will not disclose to any third party any Confidential Information, without the prior written consent of the Company. The Supplier agrees to keep all Confidential Information confidential and to disclose it only to its officers, directors, employees, consultants and professional advisors who:
- 38.1.1 have a need to know (and then only to the extent that each such Person has a need to know);
  - 38.1.2 are aware that the Confidential Information should be kept confidential;
  - 38.1.3 are aware of the Supplier's undertaking in relation to the Confidential Information in terms of this Agreement; and
  - 38.1.4 have been directed by the Supplier to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential.
- 38.2 The obligations of the Supplier in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to Confidential Information that:

- 38.2.1 is disclosed to the Supplier in terms of this Agreement but at the time of such disclosure such Confidential Information is known by the Company to be in the lawful possession or control of the Supplier and not subject to an obligation of confidentiality;
- 38.2.2 is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Supplier; or
- 38.2.3 is required by the provisions of any Laws or during any court or other legal proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed and the Party required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure of and to limit, as far as reasonably possible, the extent of such disclosure and has consulted with the other Party prior to making such disclosure.
- 38.3 The Supplier undertakes to co-operate with the Company in relation to any announcements concerning this Agreement, and in particular undertake not to make any announcements, statements or disclosures or issue any documentation relating to this Agreement without the prior written approval of the Company.

## 39. **Responsible Sourcing and Local Content**

### 39.1 **Local Content Development**

#### 39.1.1 ***Overview***

A core value of the Company includes that the communities and societies in which it operates benefits from the Company's presence in the applicable jurisdiction/s. The Company strives to promote the fundamental human rights in all in the areas where it operates. And therefore the Supplier shall:-

- 39.1.1.1 Endeavour to procure goods and services with a South African content to the maximum extent possible;
- 39.1.1.2 As far as practicable commit to social development, and localisation of skills.
- 39.1.1.3 Procure and Purchase commodities locally (in South Africa) from local suppliers and identify as far as practicable goods and services within the country.
- 39.1.1.4 Ensure all Sub-Contractors (if any) used by the Supplier in the supply of the Services in terms of this Agreement complies with the provisions of this clause.

#### 39.1.2 ***Training and Skill Development***

Establish a training based approach towards the management of this Agreement to ensure progressive and planned skills development and worker capability and skills (professional, trades and non-professional roles).

#### 39.1.3 ***Constructive relationships with external stakeholders***

The Supplier shall as far as practicable for in terms of the Services supplied in terms of this Agreement, establish its own Sustainability Plan that delivers develops or improves facilities and resources in support of initiatives that benefit different sectors of the local economy, the interest of the community and the local community environment

### 40. **Dispute resolution**

#### 40.1 **Separate, divisible agreement**

This clause 40 is a separate, divisible agreement from the rest of this Agreement and shall:

40.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of this Agreement and not to this clause 40. The Parties intend that any such issue shall at all times be and remain subject to arbitration in terms of this clause 40; and

40.1.2 remain in effect even if this Agreement terminates or is terminated.

#### 40.2 **Dispute**

In the event of any other dispute arising out of or in connection with this Agreement or the subject matter of this Agreement, including without limitation, any dispute concerning:

40.2.1 the existence of this Agreement apart from this clause 40;

40.2.2 the interpretation and effect of this Agreement;

40.2.3 the Parties' respective rights or obligations under this Agreement;

40.2.4 the rectification of this Agreement;

40.2.5 the breach, termination or cancellation of this Agreement or any matter arising out of the breach, termination or cancellation; and

40.2.6 damages arising in delict, compensation for unjust enrichment or any other claim, whether or not the rest of this Agreement apart from this clause 40 is valid and enforceable,

a Party may give the other Party written notice of the dispute, setting out the nature and full particulars of the dispute and requiring its resolution under this clause 40 ("**Dispute Notice**").

#### 40.3 **Meeting of Representatives**

40.3.1 On service of the Dispute Notice the Representatives shall meet at least once and attempt in good faith to resolve the Dispute.

40.3.2 If the Representatives are for any reason unable to resolve the dispute within ten (10) days of service of the Dispute Notice, the Dispute shall be referred to the **nominated senior management** of the Parties (or their respective nominees) who shall attempt in good faith to resolve the Dispute.

#### 40.4 **Nominated senior management**

If the **nominated senior management** of the Parties (or their respective nominees) are for any reason unable to resolve the Dispute within twenty (20) days of it being referred to them, then the dispute shall be submitted to and decided by arbitration as set out in this clause 40.

#### 40.5 **Arbitration**

40.5.1 Subject to the provisions of this clause 40, all disputes settled arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the United Nations Commission on International Trade Law ("**UNCITRAL**") by one or more arbitrators appointed in accordance with the said Rules.

40.5.2 The seat or legal place of arbitration of arbitration shall be as provided for in the Schedule, and shall be administered by the Parties.

40.5.3 The language to be used in the arbitral proceedings shall be English.

40.5.4 The governing law of this Agreement and the arbitration shall be as provided for in the Schedule.

#### 40.6 **Application to court for urgent interim relief**

Nothing contained in this clause 40 shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending determination of the dispute by arbitration.

### 41. **Addresses**

41.1 The Parties choose the addresses as specified in the Schedule, at which notices may be given, and at which documents in legal proceedings may be served (ie their *domicilia citandi et executandi*), in connection with this Agreement.

41.2 Notices delivered to the above addresses shall be deemed to have been duly given:

41.2.1 on delivery, if delivered to the Party's physical address; and

41.2.2 on despatch, if sent to the Party's fax number or email address.

41.3 A Party may change its address for this purpose, on seven (7) days' prior written notice to the other Party, provided that the new address includes a physical address in jurisdiction in which the Party is domiciled .

### 42. **Surviving provisions**

42.1 On termination of this Agreement, the following clauses shall survive and continue in full force and effect:

42.1.1 1 (*Definitions and interpretation*);

42.1.2 29 (*Intellectual Property*);

42.1.3 30 (*Indemnity*);

42.1.4 31 (*Insurance*);

42.1.5 35 (*Consequences of termination*);

42.1.6 38 (*Confidentiality*);

42.1.7 40 (*Dispute Resolution*).

### 43. **Miscellaneous matters**

43.1 This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of this Agreement and supersedes and novates in its entirety any previous understandings or agreements, oral or written, between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

43.2 Without limiting clause 43.1:

43.2.1 tender documentation (if any) does not, except to the extent that it is reproduced in this Agreement itself, form part of this Agreement; and

43.2.2 if the Supplier's terms and conditions are supplied in connection with the Delivery of the Product [or the performance of any Incidental Services] (including when accepting or acknowledging a Purchaser Order) such terms and conditions will be of no legal effect and will not form part of this Agreement (notwithstanding the endorsement, acceptance or signing of any such document by a representative of the Company).

43.3 Save as is expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third Person (ie a *stipulatio alteri*) which, if accepted by the Person, would bind any Party in favour of that Person.

43.4 A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

43.5 No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of the Parties.

43.6 The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future

right of the grantor.

- 43.7 The Supplier may not cede any or all of its rights or delegate any or all of its obligations under this Agreement without the prior written consent of the Company, which consent may be withheld for any reason whatsoever, however the Company shall be entitled to cede and assign its rights and delegate its obligations under this Agreement without the prior consent of the Supplier provided that any cessionary or assignee shall be obliged to be bound by this Agreement and shall be capable of fulfilling and shall fulfil all the obligations of the Company in terms of this Agreement.
- 43.8 Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.
- 43.9 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

Signed at \_\_\_\_\_ on \_\_\_\_\_ 201\_

**Witness** \_\_\_\_\_ **for the Supplier**

1. ....  
 .....  
 duly authorised and warranting such  
 authority

2. ....

Signed at \_\_\_\_\_ on \_\_\_\_\_ 201\_

**Witness** \_\_\_\_\_ **for the Company**

1. ....  
 .....  
 duly authorised and warranting such  
 authority

2. ....

## THE SCHEDULE

<b>Annexes to the Schedule</b>	<p>1) <b>Annexe "A"</b> – Products and Product Specifications</p> <p>2) <b>Annexe "B"</b> – Product Prices</p>
<b>Company Representative</b>	<p><b>Name:</b></p> <p><b>Position:</b></p> <p><b>Address:</b></p> <p><b>Phone:</b></p> <p><b>Fax:</b></p> <p><b>E-mail:</b></p>
<b>Supplier Representative</b>	<p><b>Name:</b></p> <p><b>Position:</b></p> <p><b>Address:</b></p> <p><b>Phone:</b></p> <p><b>Fax:</b></p> <p><b>E-mail:</b></p>
<b>Products and Product Specifications</b>	The specifications of the Products as Provided for in Annexe "A"
<b>Incidental Services</b>	<b>[*Insert*]</b>
<b>Delivery Point</b>	<b>[*Insert*]</b>
<b>Method of Transport</b>	<b>[*Insert*]</b>
<b>Product Price</b>	The price for the Products and adjustment thereof as set out in Annexe "B"
<b>Payment terms</b>	The Company shall pay the Supplier the Product Price no later than <b>[*Insert*]</b> days following the date of receipt of a correct Invoice and the relevant supporting documentation (if any) by the Company.
<b>Stock to be maintained (if applicable)</b>	<b>[*Insert minimum stocks to be maintained by the Supplier*]</b>
<b>Rate of Liquidated Damages</b>	Liquidated damages shall be payable at the rate of <b>[*Insert*]</b> percent of the Product Price for each completed day of delay. The liquidated damages shall not exceed <b>[*Insert*]</b> percent of the Product Price.
<b>Agreement Term</b>	Notwithstanding the date of signature hereof, this Agreement shall be deemed to have commenced on <b>[*Insert date*]</b> (the " <b>Commencement Date</b> ") and shall continue until <b>[*Insert date*]</b> 20____, unless terminated earlier in accordance with the provisions of this Agreement (" <b>Termination Date</b> ").

<b>Site</b>	<b>[*Insert site/s where the Products are to be delivered*]</b>
<b>Delivery</b> ( <i>incl. incoterm if applicable</i> )	<b>[*Insert*]</b>
<b>Delivery Date</b>	<b>[*Insert*]</b>
<b>Additional Insurance</b> ( <i>if any</i> )	<b>[*Insert additional insurance if applicable*]</b>
<b>Currency</b>	A reference to <Insert currency symbol> is to <insert currency description>
<b>Security</b>	<b>[*Required Security to be inserted*]</b>
<b>Supplier's Banking details</b>	Account holder: Bank: Account No: Brach Code:
<b>Addresses for Notices and Legal Proceedings</b>	The Supplier's address shall be: <u>Physical Address:</u> <b>[*Insert*]</b>  Company's address shall be: <u>Physical address:</u> <b>[*Insert*]</b>
<b>Place of arbitration</b>	<b>[*To only be completed by Legal*]</b>
<b>Governing law</b>	<b>[*To only be completed by Legal*]</b>



**Annexe "A"**

**Products (including Product Specifications)**

**[\*Insert Products to be supplied and Product Specifications\*]**

**Annexe "B"**

**Product Price**

**[\*Insert Product Prices and provision for adjustment thereof (if applicable)\*]**