

RAND URANIUM (PTY) LIMITED
GENERAL TERMS AND CONDITIONS OF CONTRACT FOR WORK
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SECTION A

The terms and conditions in this Section A may not be varied in the Special Conditions section of the Contract unless agreed to in writing by the Purchaser.

1. DEFINITIONS

- 1.1 The headings to the clauses of these conditions are inserted for reference purposes only and will in no way govern or affect their interpretation.
- 1.2 Unless inconsistent with the context, the words and expressions set forth below will bear the following meanings:
- 1.2.1 "**Associated Entity**" means any entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a party and for the purpose of this definition "control" means:
- (a) control of the composition of the board of directors or the board of management of the entity by having the power to remove all or a majority of the directors or the board of management members, as the case may be; or
 - (b) control of at least half of the voting power of the entity; or
 - (c) holding at least half of the issued share of legal capital of the entity; or
 - (d) the right to receive at least half of the profits of the entity
- 1.2.2 "**Business Day**" means any day which is not a Saturday, Sunday or public holiday in the Republic of South Africa.
- 1.2.3 "**COID Act**" means the Compensation for Occupational Injuries and Diseases Act, 130 of 1993 as amended.
- 1.2.4 "**Contract**" means the agreement between the Contractor and the Purchaser as reflected in the Contract document to which these General Terms and Conditions of Contract is annexed, as amplified by these General Terms and Conditions of Contract, all other documents attached thereto, any Purchase Order(s) and any subsequent agreed modification(s) of the Contract.
- 1.2.5 "**Contract Price**" means the price and or rate as set out in the Contract or Purchase Order, as the case may be, payable by the Purchaser to the Contractor for the Services, provided that if the Contract Price is varied by subsequent agreed modification, the

Contract Price will mean the price or rate ruling at the date of issue of the relevant Purchase Order.

- 1.2.6 "**Contract Specifications**" means the specification and description of the Services contained in the Contract or annexed thereto.
- 1.2.7 "**Contractor**" means the company or other entity or person named in the Contract with which or whom the Purchaser (or any Associated Entity as agent on behalf of the Purchaser) has negotiated the Contract and includes the Contractor's heirs, executors, administrators, trustees, judicial managers or liquidators, as the case may be, but not, except with the written consent of the Purchaser, any assignee of the Contractor.
- 1.2.8 "**Dangerous Substances**" means substances referred to in the regulations promulgated under the Dangerous Substances Act, 1973, or any Act taking its place.
- 1.2.9 "**General Conditions**" means these General Terms and Conditions of Contract and "Conditions" shall have a corresponding meaning.
- 1.2.10 "**Goods**" means the Goods supplied by or on behalf of the Contractor, forming part of the Services to be rendered in terms of the Contract.
- 1.2.11 "**Lead Time**" means the period of time expressed in calendar days (which will include Saturdays, Sundays and recognised Public Holidays), within which the Services must be completed by the Contractor, calculated from the day on which the Contractor receives a Purchase Order against the Contract.
- 1.2.12 "**MHS Act**" means the Mine Health and Safety Act, 29 of 1996, or any Act taking its place.
- 1.2.13 "**Month**" means a calendar month, being one of the twelve months from January to December in any year.
- 1.2.14 "**OHS Act**" means the Occupational Health and Safety Act, 85 of 1993 or any Act taking its place.
- 1.2.15 "**Personnel**" means a party's directors, officers, employees, advisers, consultants, agents, distributors and sub-contractors.
- 1.2.16 "**Purchase Order**" means an order placed against the Contract without which Purchaser will not accept any responsibility for payment of work done by Contractor against the Contract.

- 1.2.17 "**Purchaser's Representative**" means the person appointed by the Purchaser to liaise with the Contractor, and whose name and contact details are set out in the Contract or Purchase Order, as the case may be, or are subsequently communicated to the Contractor in writing.
- 1.2.18 "**Rand Uranium**" means Rand Uranium (Pty) Limited a private company duly constituted and registered under the laws of the Republic of South Africa with registration number 2007/007531/07 and registered address Ground Floor, Fulham House, Hampton Office Park, 20 Georgian Crescent, 2021, and Purchaser shall have a corresponding meaning.
- 1.2.19 "**Services**" means the services to be rendered and or the Goods to be supplied by or on behalf of the Contractor in terms of the Contract.
- 1.2.20 "**Site**" means the place on, under, over, or through which the Services are to be executed by the Contractor in terms of the Contract together with so much of the area surrounding such place as the Contractor will, with the consent of the Purchaser, actually use in connection with the Services other than merely for the purposes of access to such Site.
- 1.2.21 "**Special Conditions**" means any addition to, departure from or amendment to these Conditions as set out in the Contract.
- 1.2.22 "**Stores Department**" means the area or building so designated by the Purchaser.
- 1.3 Unless inconsistent with the context, an expression which denotes:
- 1.3.1 Any gender includes the other genders;
- 1.3.2 A natural person includes an artificial person and vice versa; and
- 1.3.3 The singular includes the plural and vice versa.
- 1.4 Where appropriate, meanings ascribed to defined words in 1.2 will impose substantive obligations on the Contractor and the Purchaser.
- 1.5 When any number of days is prescribed in the Contract, same will be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which case the last day will be the immediately following Business Day.
- 1.6 If the day for payment of any amount due in terms of the Contract falls on a day which is not a Business Day, the relevant date will be the immediately following Business Day.

- 1.7 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words will prevail.
- 1.8 Where any term is defined within the context of any particular clause in the Contract, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, will bear the same meaning ascribed to it for all purposes in terms of the Contract, notwithstanding that that term has not been defined in this interpretation clause.
- 1.9 Any reference to an enactment is to that enactment as at the date of signature of the Contract and as amended, re-enacted or replaced from time to time.
- 1.10 The rule of construction that the Contract will be interpreted against the Party responsible for the drafting or preparation of the Contract will not apply.
- 1.11 The expiry or termination of the Contract will not affect such of the provisions of the Contract as expressly provide that they will operate after any such expiry or termination or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.12 Any provision of this Contract imposing a restraint, prohibition or restriction on the Contractor will be so construed that the Contractor is not only bound to comply therewith but is also obliged to procure that the same restraint, prohibition or restriction is observed by everybody occupying or entering the Purchaser's premises through, under, by arrangement with, at the invitation or with the express, implied or tacit consent of, the Contractor, including (without limiting the generality of this provision) the invitees and Personnel of the Contractor and invitees of all such persons.

2. PURCHASE ORDER

- 2.1 The Purchaser may from time to time issue and serve on the Contractor Purchase Orders which will contain, amongst others, the following information:-
 - 2.1.1 A Purchase Order number;
 - 2.1.2 The description and quantity of work required;
 - 2.1.3 The delivery date;
 - 2.1.4 The delivery address; and

2.1.5 The payment terms.

- 2.2 Notwithstanding any provision to the contrary, the Contractor is not entitled to perform work for, or be paid for any work for, the Purchaser, unless the Contractor has acted strictly in accordance with the provisions of a Purchase Order issued by the Purchaser. For the avoidance of doubt, no payment whatsoever will be made for work undertaken or goods delivered without the prior issue of a Purchase Order and strict compliance with the provisions of such a Purchase Order.
- 2.3 Any ambiguity or uncertainty in a Purchase Order or the Contract must be referred by the Contractor to the Purchaser for rectification before the Contractor proceeds to execute any Purchase Order. Any anticipated or actual delay or any circumstances which may result in a delay in the execution of the Contract will immediately be communicated in writing by the Contractor to the Purchaser's Representative.

3. ACCEPTANCE

- 3.1 Commencement with the execution of the Contract or any Purchase Order or any modification of either will constitute acceptance by the Contractor of the Contract or Purchase Order or modification without any qualification.
- 3.2 If the Contract or Purchase Order or modification(s) is not acceptable to the Contractor, the Contractor will not commence with its execution and will, within seven (7) days of receipt, advise the Purchaser's Representative to such effect by letter or facsimile (confirmed by dispatch of the original facsimile by post), or by returning same to the Purchaser.

4. PAYMENT

- 4.1 On or after completion of the work, the Contractor must provide the Purchaser with an original tax invoice for work done, ("the Invoice") which must include or be supported by the following details:-
- 4.1.1 The Purchaser's contract number (if applicable);
 - 4.1.2 The material master number;
 - 4.1.3 The Purchase Order number;
 - 4.1.4 The total price in respect of work done;
 - 4.1.5 The amount due in respect of VAT;
 - 4.1.6 The Contractor's VAT registration number; and

- 4.1.7 Such additional information and or documentation as the Purchaser may reasonably require.
- 4.2 Only one Purchase Order may be referenced to an Invoice and the Invoice must precisely correspond to the Purchase Order, failing which the Purchaser will not be obliged to pay for any Goods and or Services which do not so correspond.
- 4.3 Subject to compliance with all the provisions of the Contract and the Purchase Order and provided that the Purchaser received an Invoice by the 10th of the current month, which Invoice must cover the previous month from the 1st day of the month to the last day of the month, the Purchaser will make payment to the Contractor by the last day of the Month within which the Purchaser receives the Invoice.
- 4.4 Payment will be made in South African Rands, at such place and in such manner reasonably stipulated by the Contractor, provided always that where payment is effected by cheque, electronic transfer or the postal system, the risk of any loss will rest with the Contractor.
- 4.5 The Parties undertake to negotiate any increase due under the Contract in good faith, however in the event that no agreement can be reached, Purchaser may cancel the Contract by giving Thirty (30) days written notice.

5. PERFORMANCE

- 5.1 The work must be done at the cost and risk of the Contractor at the location as specified in the Purchase Order.
- 5.2 All work done by the Contractor must be strictly in accordance with the requirements set out in the Purchase Order. Work done will not be deemed to be accepted unless actually approved and accepted by the Purchaser.
- 5.3 The Contractor will exercise all reasonable skill, diligence and prudence in the performance and rendering of the Services. If any of the Services are rendered incorrectly, negligently or in an improper manner the Contractor will at his own cost correct, revise, re-do or otherwise rectify the defective Services.
- 5.4 Time is of the essence and any failure to do the work on time or properly will constitute a material breach of contract, which will entitle the Purchaser in its entire discretion and without prejudice to its other rights, to cancel the Purchase Order or the Contract, in whole or in part and to recover damages, or to enforce the Purchase Order and to recover damages, or in place of the recovery of damages, the Purchaser may elect to recover penalties for delay at the rate specified in the Special

Conditions or the Purchase Order per week or part thereof that the delay persists.

- 5.5 Without detracting from the generality of 5.4, any failure to perform on time or properly will in addition entitle the Purchaser to have the work done by an alternative, capable contractor and entitle the Purchaser to recover damages from the Contractor, or to require the Contractor at its cost to have the work done to the Purchaser's satisfaction by a third party.
- 5.6 If the Purchaser for any reason whatsoever cancels the Contract in terms of 5.4, it is entitled to enter upon the premises of the Contractor and to take over from the Contractor such completed or uncompleted work, raw materials, tools or other items necessary to enable the Purchaser to complete and take delivery of the work.

6. OWNERSHIP AND RISK

Ownership of all the material that forms part of the scope of work passes to the Purchaser on delivery. The risk in respect of such material will remain with the Contractor until the Services have been completed and accepted by the Purchaser.

7. INSPECTION

- 7.1 The Purchaser is entitled, at its cost, either itself through its agent, at any time prior to completion of the work, to carry out, or to require the Contractor to carry out, such tests and inspections of the work as the Purchaser may deem appropriate, and will have full power to reject all or any portion of the Services and or Goods that may be considered to be defective or inferior in quality, material, workmanship or design to that required in the Contract, without prejudice to its rights in terms of this clause 7 or any other provision of the contract or in law. Any portion of the Services and or Goods so rejected will be replaced immediately by the Contractor at his own risk and expense unless, in the opinion of the Purchaser, the Services and or Goods rejected can be so treated and rectified as to render it acceptable in terms of the Contract, in which case the Contractor at his own risk and expense will cause the said Services and or Goods to be dealt with in a manner approved by the Purchaser. Any such Services and or Goods will be re-submitted for inspection and test and will immediately be replaced by the Contractor if not to the satisfaction of the Purchaser. The Contractor will at his own risk and expense carry out such tests as are required by the Purchaser to determine that the Contract is being complied with. Failure by the Purchaser to avail itself of its rights in terms of this clause in regard to any Services rendered and or Goods supplied, will not be construed as an

approval by the Purchaser of such Services rendered and or Goods supplied.

- 7.2 No such testing or inspection, or failure of the Purchaser to identify any defects during such testing or inspection, will relieve the Contractor of any of his obligations to the Purchaser or be deemed to constitute final approval of the work.
- 7.3 The Contractor will pay all expenses incurred by the Purchaser in respect of any Services and or Goods rejected by reason of their being found to be defective, of inferior quality or otherwise unacceptable.
- 7.4 The Contractor will, if required by the Purchaser in writing, search for the cause of any defect, imperfection or fault, under the direction of the Purchaser. Unless such defect, imperfection or fault is one for which the Contractor is liable under the Contract, the cost of any work carried out by the Contractor in searching will be borne by the Purchaser, but if such defect, imperfection or fault is one for which the Contractor is liable, the cost of any work carried out in searching for imperfections or faults will be borne by the Contractor and he will in such case repair, rectify and make good such defect, imperfection or fault at his own expense as provided for in this clause 7.
- 7.5 The Contractor will, in the event of agreeing on the increase mechanism that will be applied to future increases or in the event of a dispute on any increase that is due under the Contract, provide the Purchaser with a full disclosure of the elements contained in its pricing including, but not limited to: base price, labour, transport, overheads and margin.
- 7.6 The Purchaser reserves the right to request from Contractor a complete asset list, which asset list will be supplied to Purchaser within 10 days after receiving the request and which asset list will thereafter be updated at least every quarter.

8. PENALTY

- 8.1 If the Contractor fails to perform the Services or any part thereof and or fails to supply the Goods or any part thereof to the standard required by the Contract within the time prescribed therefore or any extended time granted by the Purchaser, the Contractor will pay to the Purchaser the sum stated in the Contract as penalty for time which will elapse between the date prescribed for completion or extended time as the case may be and the actual date of completion of the Services and or supply of the Goods. The Purchaser may without prejudice to any other method of recovery deduct the amount of such penalty from any monies in its hands which are due or which may become due to the Contractor. The payment or deduction of such penalty will not relieve the Contractor from his

obligations to complete the Services and or supply the Goods or from any of his obligations and liabilities under the Contract or at law.

- 8.2 Notwithstanding the foregoing it is expressly agreed by the Contractor that if the damages which the Purchaser may sustain as a result of delayed or defective performance are likely, in the opinion of the Purchaser, to exceed the stipulated penalty, the Purchaser may, as provided for in the Conventional Penalties Act, No. 15 of 1962, claim the amount of damages actually sustained instead of enforcing the penalty stipulation. In such event the Purchaser will be entitled, pending the establishment of damages, to withhold payment to the Contractor of any monies due to the Contractor up to an amount equal to the Purchaser's estimate of its damages.

9. WARRANTIES, REPRESENTATIONS AND LIABILITY

The Contractor warrants that:-

- 9.1 it has the capacity to perform the work on time as required by the Purchaser from time to time;
- 9.2 the equipment used to perform the work will be free from defects in design and was or will be made using first class new materials only and comply with the highest standards of workmanship and will be maintained in proper and safe working condition at all times;
- 9.3 in performing the Services and or supplying the Goods the Contractor will employ only persons who are careful, competent and efficient in their several trades and callings, who are properly qualified and skilled to render the Services and or supply the Goods and (in the case of drivers and operators) who hold the required licences;
- 9.4 the completed Services and or the Goods delivered will be suitable for the purposes for which they have been manufactured and for the purposes for which they are intended to be used by the Purchaser;
- 9.5 the completed Services and or supplied Goods will comply with the Purchaser's specifications, standards and such other requirements as may reasonably be inferred from the scope of work. Any departure from such specifications or standards is a breach of the Contract unless such departure has been authorised in advance by the Purchaser in writing.

10. GUARANTEE

- 10.1 The Contractor guarantees the Services and or Goods and each part thereof against defective materials, poor workmanship or faulty design other than design produced by the Purchaser, fair wear and tear as

determined by the Purchaser excluded, for the period stated in the Contract after the date of completion of the Services and or supply of Goods during which period the Contractor will be required to replace and or repair or make good at his own expense to the satisfaction of the Purchaser any defects or damage due to such defective materials, poor workmanship and or faulty design and or any damage to any portion of the Services and or Goods.

- 10.2 In addition, the Contractor undertakes to extend to the Purchaser all guarantees and warranties given to the Contractor on all Goods supplied in terms of the Contract.
- 10.3 For the same guarantee period referred to in 10.1, the Contractor warrants that the Services will be fit for the purpose for which they are intended in respect of state, condition and quality.
- 10.4 In order to avail itself of its rights under this clause, the Purchaser will notify the Contractor in writing without unreasonable delay of any defects or non-compliance envisaged in terms of 10.1 which have appeared and will give the Contractor every reasonable opportunity of inspecting and remedying same.
- 10.5 If the Contractor fails to fulfil his obligations under this clause or fails to proceed with due diligence after being required to do so, or after a reasonable time fails to render the Services and or supply the Goods to perform as warranted, the Purchaser may proceed to do or have done by outside contractors the necessary work at the Contractor's risk and expense but without prejudice to any other rights which the Purchaser may have against the Contractor in respect of any such failure.
- 10.6 A fresh guarantee period equal to and upon the same terms applicable to that stated in the Contract will apply to that portion of the Services rendered and or Goods supplied in replacement of any defective or damaged portion or portions renewed in pursuance of this clause. This period will commence from written acceptance by the Purchaser of the remedial work concerned.
- 10.7 Nothing in this clause will be construed as a limitation of any rights to which the Purchaser may be entitled by virtue of any common law warranty against latent defects or otherwise.

11. INSURANCE AND INDEMNITY

- 11.1 For the duration of the Contract the Contractor will indemnify the Purchaser and keep the Purchaser indemnified against the following risks to be covered by insurance taken out and maintained for the duration of the Contract by the Contractor at his own cost:

- 11.1.1 liability for damages and or compensation payable at law for injury to any workman and or any other person in the employ of the Contractor or his sub-contractors;
 - 11.1.2 liability in respect of any vehicles, plant, equipment or item owned, borrowed, hired or used by or on behalf of the Contractor or his sub-contractors for the purposes of executing the Contract, which, without limiting the generality of the foregoing, includes any temporary site accommodation and the contents thereof;
 - 11.1.3 the balance of Third Party risks in respect of vehicles used by or on behalf of the Contractor or his sub-contractors for the performance of any of the Contractor's obligations in terms of the Contract.
 - 11.1.4 public liability insurance (including products liability and defective workmanship liability); and
 - 11.1.5 where the Services include the provision of any service of a professional nature (including without limitation the creation of designs and or the provision of advice), professional indemnity insurance.
- 11.2 Nothing contained in this clause 13 will be construed as :
- 11.2.1 a limitation of the Contractor's liability or of any rights which the Purchaser may have in terms of any other provision of this Contract or at law; or
 - 11.2.2 a waiver of any rights of subrogation which the insurers of the Purchaser may have at any time arising from any claim in connection with the Contract or the Services or the supplied Goods.
- 11.3 The Contractor will, and will ensure that his sub-contractors will, during the continuance of the Contract, comply with the provisions of the Unemployment Insurance Act, 1966.
- 11.4 The Contractor warrants that he and his sub-contractors are duly registered in terms of the COID Act.
- 11.5 The Contractor must ensure compliance with the COID Act, including the on time payment of all assessments payable in terms of the COID Act and must, on request, provide the Purchaser with written proof of Compensation Fund registration for the Contractor and with a certificate of good standing issued by the Compensation Commissioner and any information which the Purchaser may require to verify the warranty referred to in 13.4 and or to enable the Purchaser to respond to any claim, demand or query arising out of or connected to the COID Act.

- 11.6 The Contractor will be liable for, and indemnifies the Purchaser against, all claims, damages, losses or costs whatsoever (including without limitation costs on an attorney and own client scale) relating to or as a result of:
- 11.6.1 the injury or death of any person; and or
 - 11.6.2 all damages to any property whatsoever; and or
 - 11.6.3 any economic loss sustained by any person,
- which directly or indirectly results from or is due to any act or omission of the Contractor and or his Personnel.
- 11.7 The Purchaser will not be liable for and the Contractor hereby indemnifies and holds the Purchaser harmless against any loss or damage, whether direct, indirect, consequential or otherwise, suffered by the Purchaser arising from any cause in connection with the Contract whether such loss or damage results from breach (whether total, fundamental or otherwise) of the Contract, delict, negligence or any other cause whatsoever without limitation and whether or not the Contract is still in force.
- 11.8 The Contractor will have no claim against Purchaser or any of its employees, or contractors in the event of any loss or damage to property or bodily or personal injury, whether fatal or otherwise, being sustained by the Contractor or any of his employees, sub-contractors or agents and which results directly or indirectly from this Contract.

12. PROTECTION OF RIGHTS

- 12.1 If the Contractor fails to comply with any obligation imposed upon it by the Contract, the Purchaser is entitled but not obliged, without prejudice to any other rights it may have, to effect such compliance at the expense of the Contractor and to recover the costs and expenses of doing so from the Contractor.
- 12.2 The Contractor will have no claim against the Purchaser nor defence to any claim by the Purchaser arising out of any act or omission on the part of the Purchaser arising from or connected with effecting or attempting to effect such compliance in terms of 12.1, even if the Purchaser has undertaken to effect such compliance and then fails to do so properly or at all.

13. LIMITATION OF LIABILITY

Save as may be specifically provided to the contrary in this Contract, neither party will be liable to the other for any indirect, consequential, incidental or

contingent damages, including, but not limited to, a loss of profits arising out of a breach of the Contract or negligence on its part or any cause whatsoever.

14. INTELLECTUAL PROPERTY RIGHTS

14.1 The Contractor warrants that the work and the execution thereof to the Purchaser or other disposal of the work by the Purchaser does not and will not infringe any patent, copyright, design right, trademark or other intellectual property rights (collectively "the intellectual property rights") of any other person; and accordingly:-

14.1.1 indemnifies the Purchaser and holds it harmless against all damages, losses, claims and costs (including costs on an attorney and own client scale) which may be incurred or suffered by the Purchaser as a result of the infringement of any intellectual property rights; and

14.1.2 is responsible for the payment of all royalties or other charges arising out of the incorporation into the work of any items protected by any intellectual property right.

14.2 The Contractor further warrants that:

14.2.1 the Purchaser or any person appointed by the Purchaser will have the free and unrestricted right to maintain, or replace any broken or worn part of any Goods supplied in terms of the Contract, notwithstanding that such Goods are subject to any patent, trade mark, design or copyright; and

14.2.2 the Contractor has the authority to grant this unrestricted right to the Purchaser or any person appointed by the Purchaser for that purpose.

15. COMPLIANCE WITH LAWS AND POLICIES

15.1 The Contractor and his Personnel will in the execution of the Contract comply with all legislation and with any regulations promulgated there under in force from time to time in respect of any Services to be rendered and or Goods to be supplied and any vehicles, machinery, plant, equipment, apparatus or materials used in the rendering of the Services and or supply of the Goods.

15.2 The Contractor and his Personnel will also familiarise themselves and strictly comply with all rules, regulations, standards and instructions of whatever nature of the Purchaser applicable to the Purchaser's premises where the Services are to be rendered and or the Goods to be supplied.

The Purchaser will on request furnish the Contractor with copies of such rules, regulations, standards and instructions.

- 15.3 The Contractor and his Personnel will, for the duration of the Contract, be in possession of such permits and or authorisations as required by any law or regulation thereunder in respect of the Services to be rendered and or the Goods to be supplied and the Contractor will indemnify and hold the Purchaser harmless against any loss or damage whatsoever sustained due to or as a result of the failure to comply with the provisions of this clause. If such permits or authorisations are revoked or cancelled, this Contract will ipso facto terminate without payment to the Contractor of any damages whatsoever including, without limitation, consequential damages, loss of business and or profits resulting from such termination.
- 15.4 Any Dangerous Substances which are transported will be properly and safely packed in accordance with any applicable laws or other regulations relating to the packaging and transporting of such substances. Dangerous goods in respect of which there are no such regulations will be packed in such a manner as to ensure that they can cause no loss or damage.
- 15.5 The Contractor will indemnify and hold the Purchaser harmless against all claims, losses, damage and costs whatsoever and howsoever sustained or incurred due to or resulting from the non-compliance with any laws or regulations by the Contractor and or his Personnel in the execution of the Contract.
- 15.6 The Contractor and his Personnel will observe sound employment and industrial relations policies at all times during the course of the Contract.
- 15.7 The Contractor warrants that he is familiar with all the relevant sections of the Labour Relations Act, the Basic Conditions of Employment Act and the Employment Equity Act and further warrants that it has taken and will continue to take all the steps necessary to comply with the above legislation and any of the following which may be applicable:-
- 15.7.1 Any collective agreement concluded in a Bargaining Council that regulates terms and conditions of employment ; and
- 15.7.2 A binding arbitration award that regulates terms and conditions of employment; and
- 15.7.3 A determination under the Wage Act or by the Bargaining Council or any other legally constituted body governing the Contractor's industry.
- 15.8 Any failure by the Contractor to comply with any basic condition of employment in respect of any of its employees working on the Purchaser's premises during the course of the Contract will constitute a material breach of contract which will entitle the Purchaser, in its entire

discretion and without prejudice to its other rights, to cancel the Purchase Order or the Contract, in whole or in part.

- 15.9 The Contractor agrees to be bound by all legislation, rules and regulations pertaining to the calculation and payment of wages, salaries, benefits and allowances to its contractors and employees including, without limitation, sections 35 and 51 of the Basic Conditions of Employment Act No. 75 of 1997 as amended. The Contractor further agrees that in the event that it is found that the Contractor did not comply with the above such non-compliance will constitute a material breach of contract which will entitle the Purchaser, in its entire discretion and without prejudice to its other rights, to cancel the Purchase Order or the Contract, in whole or in part.
- 15.10 The Purchaser will not be responsible for any labour disputes involving the Contractor and any of its employees.
- 15.11 The Purchaser will be entitled to expel from its premises any member of the Contractor's Personnel who the Purchaser believes is incapable of performing his duties, is incompetent, has breached any provision of the Contract, is guilty of a misconduct or is guilty of any act or omission which is prejudicial to the Purchaser's interests; provided that the Purchaser will as soon as possible thereafter notify the Contractor in writing of such expulsion and the Contractor will, if so required by the Purchaser, replace such expelled Contractor's Personnel within 24 hours.
- 15.12 The Contractor will re-deploy the expelled Personnel elsewhere and will ensure that such expelled Personnel is not utilised for the purpose of performing any Services and or supply of Goods, whether under the Contract or otherwise, for the Purchaser or any of the Purchaser's Associated Entities, without the prior written consent of the Purchaser or the Associated Entity in question.

16. OCCUPATIONAL HEALTH AND SAFETY

- 16.1 Notwithstanding anything else contained in the Contract, the prevention of accidents, safety performance and adherence to sound and safe work standards and practices are essential requirements of this Contract and the Contractor will co-operate with the Purchaser in all respects in the Purchaser's quest to prevent accidents and improve its safety performance. In this respect the Contractor and his Personnel will, while on the Purchaser's premises and or in the rendering of the Services, strictly adhere to all applicable safety and health requirements of statutes, ordinances, by-laws and regulations as well as the Purchaser's codes of practice, policies, procedures or instructions relating to safety and health applicable to the Purchaser's premises or the execution of the Contract.

- 16.2 In complying with this clause 16 the Contractor will take specific note of:
- 16.2.1 The Minerals Act and Regulations; and
 - 16.2.2 The Mine Health and Safety Act and Regulations; and
 - 16.2.3 The Occupational Health and Safety Act and Regulations; and
 - 16.2.4 The National Environmental Management Act; and
 - 16.2.5 The National Water Act;
 - 16.2.6 as well as all other relevant legislation.
- 16.3 Without limiting his duties or liabilities in any way, whether such duties arise *ex lege*, *ex contractu* or by operation of any law, the Contractor will comply with the duties set out herein.
- 16.4 In terms of the MHS Act, any Contractor who:
- 16.4.1 designs, manufacturers, repairs, imports or supplies any articles for use at a mine, is required to ensure, as far as is reasonably practical -
 - (i) that the articles are safe and without risk to health and safety when used properly; and
 - (ii) that any article complies with all of the requirements in terms of the MHS Act.
 - 16.4.2 erects or installs any article for use at a mine must ensure, as far as is 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.
 - 16.4.3 designs, manufactures, erects or installs any article for use at a mine must ensure, as far as is reasonably practicable, that ergonomic principles are considered and implemented during design, manufacture, erection or installation.
 - 16.4.4 designs, or constructs a building or structure, including a temporary structure for use at the mine, must ensure, as far as is reasonably practicable, that the design or as per MHS Act and the construction process is safe and without risk to health and safety when used properly.
 - 16.4.5 manufactures, imports or supplies any hazardous substance for use at a mine must:

- 16.4.5.1 ensure, as far as is reasonably practicable that the substance is safe and without risk to health and safety when used, handled, processed, stored or transported at a mine in accordance with the information provided by the Contractor;
- 16.4.5.2 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) 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 that substance;
- 16.4.5.3 ensure that the information provided by the Contractor complies with the provisions of the Hazardous Substances Act, 15 of 1973.
- 16.5 In terms of the OHS Act, any Contractor who :
- 16.5.1 designs, manufacturers, imports, sells or supplies any article for use at work will ensure, as far as is reasonably practicable, that the article is safe and without risk to health and properly used and that it complies with all prescribed requirements;
 - 16.5.2 erects or installs any article for use at work or on any premises will ensure, as far as is reasonably practical, that nothing about the manner in which it is erected or installed makes it unsafe or creates a risk to health when properly used;
 - 16.5.3 manufactures, imports, sells or supplies any substance for use at work will:

- 16.5.3.1 ensure, as far as is reasonably practical, that the substance is safe and without risk to health when properly used ; and
 - 16.5.3.2 take such steps as may be necessary to ensure that information is available with regard to the use of the substance at work, the risk to health and safety associated with that substance, the conditions necessary to ensure that the substance will be safe and without risks to health when properly used and the procedures to be followed in the case of an accident involving such substance.
- 16.6 The Contractor acknowledges that it knows and understands the duties set out above. No term or terms of the Contract will be construed as an assumption by the Purchaser of any of the Contractor's duties.
- 16.7 In terms of Section 37(2) of the OHS Act (if applicable), the Contractor hereby agrees that the Purchaser is relieved of any and all of its liabilities in terms of Section 37(1) of the OHS Act in respect of any acts or omissions of the Contractor and or the Contractor's Personnel to the extent permitted by the OHS Act.
- 16.8 The Contractor will comply with all of the provisions of the MHS Act or the OHS Act (whichever is applicable) in relation to persons employed by the Purchaser, and any other persons (third parties).
- 16.9 The Contractor will comply with all of the provisions of the MHS Act or the OHS Act (whichever is applicable) in respect of his own Personnel.
- 16.10 Without detracting from the generality of the above, and without limiting his liability in any way, the Contractor will ensure that he and his Personnel will at all times comply with any conditions, codes of practice or any other provisions of a like nature which may be specified by the Purchaser from time to time, or any instructions, orders, prohibition, exemption certificate etc, issued in terms of the MHS Act or the OHS Act.
- 16.11 All work performed and or articles and or substances supplied for and on behalf of the Purchaser or on or at the Purchaser's premises, must be performed under close supervision and to ensure compliance with the Contract, and the MHS Act or the OHS Act (whichever is applicable). The Contractor warrants that the person so appointed is suitably qualified and trained to understand the risks and hazards associated with any work performed or articles and or substances supplied by the Contractor, and to ensure compliance with the Contract, and the MHS Act or the OHS Act (whichever is applicable).

- 16.12 The Contractor undertakes that he and his Personnel will comply with all reasonable instructions regarding health and safety which the Purchaser or its nominee may from time to time stipulate.
- 16.13 The Contractor will ensure that all the provisions in terms of the MHS Act or the OHS Act relating to personal protective equipment will be complied with.
- 16.14 The Contractor will ensure that the provisions of Section 21 of the MHS Act or Section 10 of the OHS Act (whichever is applicable) are complied with at all times. The Contractor warrants that no unsafe equipment, machinery articles or substances will be used by the Contractor or his Personnel whilst performing work and or supplying articles and or substances in terms of the Contract.
- 16.15 Notwithstanding the provisions of the Contract, the Purchaser retains an interest in any investigation and or enquiry conducted in terms of the MHS Act or the OHS Act or any other investigations which may be conducted in terms of the MHS Act or the OHS Act or any other investigations which may be conducted into any incident.
- 16.16 Where the Contractor or any of its Personnel is found to be incompetent, or behaves in a manner which endangers, or potentially endangers the health or safety of any employees or other person, such person will not be allowed to perform any work, and or render Services in terms of the Contract.
- 16.17 The Contractor is deemed to have knowledge of the Purchaser's health and safety structures, and agrees to elect a health and safety representative to participate in such health and safety structures, if requested to do so by the Purchaser.
- 16.18 The Contractor will ensure that any sub-contractors employed by it comply with the provisions set out in this clause.
- 16.19 The Contractor will be deemed to have full knowledge of the work and or articles and or substances supplied in terms of the Contract, and the implications or potential implications on the health and or safety of employees and other persons. The Contractor will, before conducting any work and or supplying any articles and or substance in terms of the Contract, conduct a risk assessment to the satisfaction of the Purchaser. The results of such risk assessment will be provided, in writing, to the Purchaser not less than 7 (seven) days before the work and or supply of articles and or substances in terms of the Contract.

17. SECURITY

- 17.1 The Contractor and his Personnel will take cognisance of the security measures of the Purchaser, and will at all times comply with all the Purchaser's security rules and instructions whilst on the Purchaser's premises, including, but not limited to the submission to a personal examination and a search by persons authorised by the Purchaser.
- 17.2 The Purchaser may require the Contractor to arrange for the Contractor's Personnel undertaking work on the Purchaser's premises to be investigated by the Purchaser's security department prior to their entering such premises. All costs in this regard will be for the account of the Contractor.
- 17.3 The Purchaser will be entitled to object to any of the Contractor's Personnel who, in the Purchaser's entire discretion, is unacceptable and the Contractor will in such event remove such individual(s) from the Purchaser's premises.

18. SUB-CONTRACTING, CESSION AND DELEGATION

18.1 Sub-Contracting:

- 18.1.1 The Contractor must not, without the prior written consent of the Purchaser in each instance, sub-contract any of its obligations in terms of this Contract. Such consent does not relieve the Contractor of any of its obligations and it is responsible to the Purchaser for the acts and omissions of its sub-contractor as if such acts have been acts and omissions of the Contractor.
- 18.1.2 The Contractor must ensure that any guarantees or other undertakings given by the sub-contractor are transferable to the Purchaser and warrants that such guarantees will, at the request of the Purchaser, be transferred to the Purchaser. The Contractor must ensure that all sub-contractors abide by the health, safety and security requirements of this Contract and all other terms and conditions of this Contract as if they were the Contractor.
- 18.1.3 If the Purchaser consents to the Contractor entering into a sub-contract in terms of 18.1.1, the provisions of the Contract will be applicable mutatis mutandis to the contract between the Contractor and such sub-contractor. The Contractor hereby warrants and undertakes that its sub-contractors will comply with and will not breach any obligations of the Contractor in terms of the Contract and that all the provisions of the Contract relating to any sub-contractors will be expressly reflected in his sub-contracts.
- 18.1.4 The consent of the Purchaser to the engagement of any sub-contractor will not relieve the Contractor of his obligations under

the Contract or in any way affect the Contractor's direct responsibility to the Purchaser nor will it render the Purchaser in any way responsible or liable to such sub-contractor.

18.1.5 On termination of the Contract for any reason whatsoever, and without prejudice to any of its other rights, the Purchaser is entitled to take cession of any such sub-contracts from the Contractor and enforce any such sub-contracts.

18.2 Cession and delegation

18.2.1 The Contractor must not, without the prior written consent of the Purchaser, cede any of its rights or delegate any of its obligations in terms of the Contract to any other party. The Purchaser will not be obliged to give such consent and may withhold it without giving any reasons therefore or grant such consent subject to such terms and conditions as the Purchaser in its absolute discretion may impose. If such consent is given to the Contractor, the Contractor is deemed to have bound itself as surety and co-principal debtor with the third party for the due performance by the third party of all its obligations in terms of the Contract.

18.2.2 The Purchaser may cede its rights or delegate its obligations to any other party.

19. CO-OPERATION

While at the Purchaser's premises, the Contractor will co-operate fully with the Purchaser's personnel and not to do anything that may disrupt the Purchaser's operations without the Purchaser's prior written consent.

20. LIENS

The Contractor hereby waives any lien or right of retention he may have over the work or any equipment, tools or other articles owned or supplied by the Purchaser.

21. CONFIDENTIALITY

- 21.1 The Contractor must keep confidential and must not use for any purpose other than performance of its obligations in terms of the Contract, the price, all plans, specifications, drawings, know-how or other information which he has obtained from the Purchaser in connection with the Contract or in any way relating to any of the Purchaser's operations and indemnifies the Purchaser against any loss suffered by the Purchaser as a result of a breach of this undertaking.
- 21.2 All documents or other records of confidential information referred to in 21.1 will at all times remain the property of the Purchaser and must on demand by the Purchaser, but in any event on termination or completion of the Contract, be returned to the Purchaser.
- 21.3 The provisions of this clause 21 survive the cancellation or termination of the Contract for any reason whatsoever and remain binding on the Contractor in perpetuity.
- 21.4 24.4. For purposes of this clause 21, "**confidential information**" will exclude:
- 21.4.1 information already in the possession of the Contractor at the date of disclosure;
 - 21.4.2 information which was generally known to the public or which had entered the public domain at the time of disclosure, or which after disclosure became generally known to the public or which entered the public domain;
 - 21.4.3 information which was independently received by the Contractor from a third party having the right to disclose same;
 - 21.4.4 information which the Contractor becomes obliged to disclose by operation of law or under an order of court or under the rules of any stock exchange or other applicable regulatory authority.
- 21.5 For avoidance of doubt, all information relating to the Purchaser and or the Services and or the terms of the Contract (including the Contract Price) will be deemed to be confidential information.
- 21.6 The Contractor will be entitled, to the extent necessary, to disclose confidential information to his Personnel who require to know the same for purposes of the performance of the Contract provided that the Contractor will ensure that the Personnel in question have been duly notified of and are bound to respect the confidentiality and secrecy of the confidential information disclosed to them.

- 21.7 The Contractor acknowledges that the confidential information is a valuable, special and unique asset proprietary to the Purchaser which, if certain parts of the confidential information is disclosed, would be likely to cause harm to the commercial or financial interests of the Purchaser and or could reasonably be expected to put the Purchaser at a disadvantage in contractual or other negotiations and or prejudice the Purchaser in commercial competition.
- 21.8 The Contractor agrees:
- 21.8.1 that if he is uncertain whether any information is confidential, he will treat it as such until he has obtained the Purchaser's written permission to use or disclose it;
- 21.8.2 that the unauthorised use of or disclosure of the confidential information to a third party may cause irreparable loss, harm and damage to the Purchaser.
- 21.9 Accordingly, the Contractor indemnifies and holds the Purchaser harmless against any loss, action, claim, harm, damage, or other liability of whatever nature, suffered by the Purchaser pursuant to a breach by the Contractor of the provisions of this clause.
- 21.10 For the avoidance of doubt, no provision of the Contract should be construed in such a way that the Purchaser is deemed to have granted its consent to the Contractor to disclose the whole or any part of the confidential information if the Contractor receives a request for the whole or any part of the confidential information in terms of the provisions of the Promotion of Access to Information Act, No. 2 of 2000, as amended ("the Act").
- 21.11 The disclosure of confidential information by the Contractor contrary to the provisions of the Contract will entitle the Purchaser to institute action for breach of confidence against the Contractor as envisaged by section 65 of the Act.
- 21.12 The Contractor acknowledges that the provisions of 21.11 will not be construed in such a manner as to exclude the applicability of any other ground of refusal contained in the Act which may be applicable if the Contractor receives a request for the whole or any part of the confidential information in terms of the Act.

22. BREACH

- 22.1 Breach by the Contractor:
- 22.1.1 If the Contractor or any of his Personnel:

- 22.1.1.1 renders, purports or endeavours to render any Services which do not comply with the Contract Specifications; or
- 22.1.1.2 provides or attempts to provide short masses and or measures or gives false masses and or measures in the waybills or invoices issued in terms of the Contract; or
- 22.1.1.3 commits a breach of any provision of the Contract; or
- 22.1.1.4 commits a breach of any provision of the Contract in circumstances where the Purchaser has given notice on two or more occasions in the previous twelve (12) Months to remedy a breach; or
- 22.1.1.5 pays or offers to pay, gives or offers to give any money or makes any gift of whatsoever nature, whether by way of commission, gratuity or otherwise or lends or offers to lend any money, or gives or offers to give any other valuable consideration to any person in the employ of the Purchaser; or
- 22.1.1.6 is involved in illegal actions or commits any crime whatsoever on or at the Purchaser's premises or in connection with the performance or the execution of the Contract; or
- 22.1.1.7 contravenes any of the Purchaser's rules or instructions regarding security or safety and health or Laws, Regulations and Ordinances applicable to the Purchaser's premises where the Services are to be rendered,

the Purchaser will be entitled but not obliged:

- (i) in its sole and absolute discretion, to give the Contractor fourteen (14) days written notice to remedy such breach. If the Contractor fails to comply with such notice and fails to furnish assurances acceptable to the Purchaser that such breach will not occur again, the Purchaser may terminate the Contract and any other contract in force between the Contractor and the Purchaser, without payment to the Contractor of any damages whatsoever resulting from such termination, and without prejudice to any of the Purchaser's other rights under the Contract and irrespective of any other remedy which might be available to the Purchaser under any of the provisions of the Contract or in law;; or

- (ii) in the event of a breach of 22.1.1.4, 22.1.1.5, 22.1.1.6, or 22.1.1.7:
 - (a) to direct the Contractor forthwith to remove from the Purchaser's premises any of his employees, representatives, his sub-contractors and or their employees or representatives who, in the sole and exclusive discretion of the Purchaser, were involved in any such actions and such person(s) will not be permitted to re-enter the Purchaser's premises without the prior written consent of the Purchaser; and or
 - (b) to forthwith terminate the Contract and (at the Purchaser's option) any other contract in force between the Contractor and the Purchaser, without payment to the Contractor of any damages whatsoever resulting from such termination, and without prejudice to any of the Purchaser's other rights under the Contract and irrespective of any other remedy which might be available to the Purchaser under any of the provisions of the Contract or in law.

22.1.2 If:

- 22.1.2.1 the Contractor is placed in liquidation, either provisionally or finally, whether voluntarily or compulsory; or
- 22.1.2.2 the Contractor is placed under judicial management, either provisionally or finally; or
- 22.1.2.3 the estate of the Contractor is sequestered, either provisionally or finally; or
- 22.1.2.4 the estate of the Contractor is surrendered; or
- 22.1.2.5 the Contractor commits an act of insolvency; or:
- 22.1.2.6 the Contractor dies, whether the Contractor is an individual or a member of a partnership or syndicate; or
- 22.1.2.7 a judgement in any competent court is given against the Contractor, and is not satisfied within a period of fourteen (14) days, or

22.1.2.8 before completion of the Contract the major portion of the assets of the Contractor is disposed of or the majority shareholding of the Contractor is transferred or there is a change of management control of the Contractor.

the Purchaser will be entitled, but not obliged, to terminate the Contract forthwith without payment to the Contractor of any damages whatsoever resulting from such termination.

22.1.3 If the Contract and any other contract in force between the Contractor and the Purchaser are terminated in terms of this clause 31, then, notwithstanding any other rights which may accrue to the Purchaser under any of the terms and conditions of the Contract or any such other contract or in law, such cancellation will be without prejudice to any claims for damages which the Purchaser may have against the Contractor arising from the breach giving rise to such termination.

22.2 Breach by the Purchaser:

If the Purchaser commits a breach of any provision of the Contract, the Contractor will be entitled but not obliged in his sole and absolute discretion, to give the Purchaser fourteen (14) days written notice to remedy such breach. If the Purchaser fails to comply with such notice, the Contractor may terminate the Contract without prejudice to any of his other rights under the Contract and irrespective of any other remedy which might be available to him under any of the provisions of the Contract or in law.

23. APPLICABLE LAW

The Contract will be governed by and construed in accordance with the laws of the Republic of South Africa and in respect of any difference or dispute arising there from between the Purchaser and the Contractor both the Purchaser and the Contractor will, subject to the provisions of 32, submit to the jurisdiction of the High Court of South Africa (South Gauteng) in addition to any other South African Court which may have jurisdiction by operation of law.

24. NOTICES

24.1 Any notice or correspondence addressed by either Party to the other pursuant to the Contract will be sent by post, telefax, or hand delivery (or, if agreed, by e-mail) to a responsible employee of the other party at that party's address set out in the Contract.

24.2 Any notice which:

- 24.2.1 is delivered by hand at the addressee's address set out in the Special Conditions will be deemed to have been received by the addressee at the time of delivery; or
- 24.2.2 is posted by post from an address within the Republic of South Africa to the addressee at his address set out in the Special Conditions will be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the seventh (7th) Business Day after the date of posting; or
- 24.2.3 is sent by telefax or e-mail to the addressee's telefax number or e-mail address set out in the Special Conditions will be deemed to have been received on the Business Day following the date on which it was transmitted.
- 24.3 Either party may change its address for the purposes of this clause on giving the other party fourteen (14) days' written notice.

25. *DOMICILIUM CITANDI ET EXECUTANDI*

- 25.1 The parties choose the following physical addresses at which documents in legal proceedings in connection with the Contract may be served (i.e. their *domicilia citandi et executandi*):
- 25.1.1 The Purchaser:
- Legal Department
Ground Floor, Fulham House,
Hampton Office Park,
20 Georgian Crescent,
Bryanston,
2021
- 25.1.2 The Contractor:
- The Contractor's physical address set out in the Special Conditions.
- 25.2 Either party may change its *domicilium citandi et executandi* to another physical address in the Republic of South Africa at which legal process can be served on giving the other party fourteen (14) days' written notice.

26. MISCELLANEOUS PROVISIONS

- 26.1 The Contract constitutes the whole contract between the parties as to the subject matter hereof and no contracts, representations or warranties, other than those set out herein, are binding on the parties.

- 26.2 No modification, variation or waiver of any provision of the Contract, or consent to any departure there from, will in any way be of any force or effect unless confirmed in writing by the Purchaser and then such modification, variation, waiver and consent will be effective only in the specific instance and for the purpose and to the extent for which it is made or given.
- 26.3 No relaxation by a party of any of its rights in terms of the Contract at any time will prejudice or be a waiver of its rights (unless it is a written waiver) and that party is entitled to exercise its rights thereafter as if such relaxation had not taken place.
- 26.4 These Conditions will prevail over, cancel and supersede all terms and conditions, whether written, oral or implied, not contained in the Contract which the Contractor may seek to incorporate in the Contract in whatsoever manner, including any claim for rectification of the Contract.
- 26.5 The Special Conditions will prevail in the event of any conflict between the Special Conditions and any other document forming part of the Contract (including these Conditions).
- 26.6 If any provision contained in the Contract is inconsistent with any Delivery Instruction or any other document relevant to the Contract issued by the Purchaser, the Contract will prevail unless such Delivery Instruction or other document specifically provides that it will prevail over the Contract.
- 26.7 If any provision contained in these Conditions or the Special Conditions is inconsistent with –
- 26.7.1 the Health Safety Environment and Community Conditions of Contract; and or
 - 26.7.2 the Purchaser's Fatal Risk Control Protocols; and or
 - 26.7.3 the Purchaser's HSEC Standards
- the most stringent requirement (and, where applicable, the most effective remedy) will prevail to the extent permitted by law.
- 26.8 Notwithstanding anything to the contrary contained herein (but subject to 26.5), if any of the documents described in 26.7.1, 26.7.2 or 26.7.3 is amended by Purchaser, the amended version thereof will apply to this Contract seven (7) days after notice of such amendment is given by the Purchaser to the Contractor.

SECTION B

The terms and conditions in this Section B may be varied upon mutual consent in the Special Conditions section of the in the Special Conditions section as set out in the Contract.

27. TERMINATION

Either Party will be entitled to terminate the Contract at any time by giving the other not less than Thrity (30) days written notice of such termination.

28. LOADING AND DELIVERY

28.1 Unless otherwise agreed between the Purchaser and the Contractor, direct deliveries to Site will be routed via the Stores Department of the Purchaser before off-loading.

28.2 The Purchaser may, in its entire discretion, assist the Contractor by making unskilled labour available for loading and unloading operations, but the Purchaser will not thereby assume any responsibility whatsoever for any injury, loss or damage caused during such loading and unloading operations.

29. MONTHLY STATEMENTS

The Contractor must prepare and submit to the Purchaser, for review and reconciliation, Monthly statements of all work done by the Contractor in terms of the Contract.

30. FORCE MAJEURE

30.1 Save to the extent that such liability is covered in terms of appropriate insurance cover, neither party is responsible to the other for its failure to perform, for defective performance or for any delay in performing any obligation under the Contract, if and to the extent that such failure or delay is caused by force majeure.

30.2 For the purpose of this contract force majeure means any circumstance which is beyond the reasonable control of the party giving notice of force majeure ("the affected party"), including but not limited to war (whether declared or not), revolution, invasion, insurrection, riot, civil commotion, sabotage, blockade, boycott, strikes, lockouts or other industrial action, the exercise of military or usurped power, fire, explosion, storm, flood, rain, drought, wind lightning or any other adverse weather condition,

epidemic, quarantine, accident, acts or restraints of government imposition, or restrictions of or embargoes on imports or exports.

- 30.3 The affected party must give notice thereof to the other immediately upon the occurrence of an event of force majeure and again immediately on the cessation thereof.
- 30.4 If force majeure is of such nature that it will result in impossibility of performance of an obligation going to the root of the contract, the party not so affected ("the other party") is entitled, on receipt of notice of the force majeure event, to terminate the Contract upon notice to the affected party but will not be entitled to recover any damages which it may suffer as a result of such premature termination.
- 30.5 If the force majeure is of such a nature that it will not result in impossibility of performance of the obligation in question but will delay the performance thereof, the affected party is entitled to such extension of time in which to perform that obligation as may be reasonable in the circumstances, taking into account the interests of both parties, provided that if such force majeure situation persists for a period in excess of 30 days the other party will be entitled to terminate the Contract but is not entitled to recover any damages which it may suffer as a result of such premature termination.
- 30.6 Nothing contained in this clause 0 will oblige a party to resolve any strike or other labour dispute on terms contrary to its wishes; notwithstanding anything to the contrary contained herein, such party will be entitled to invoke force majeure if such labour dispute prevents it from complying with its obligations.

31. ARTICLES OR SUBSTANCES SUPPLIED BY THE PURCHASER

- 31.1 No article or substance belonging to the Purchaser may be used without the Purchaser's prior written consent unless otherwise provided for in the Contract.
- 31.2 Where any article or substance is made available or supplied to the Contractor, including but not limited to tools and material, the Contractor must, before it is used, take all steps necessary to ensure, as far is reasonably practical, that the article or substance complies with all the requirements prescribed by the OHS Act and Regulations and will be safe and without risks to health when properly used.
- 31.3 The Contractor indemnifies and holds the Purchaser harmless against and for any claims, loss, damage or costs (including costs on an attorney and own client scale) arising out of or in connection with the use by the Contractor of any article or substance supplied by the Purchaser.

- 31.4 Risk of loss of, damage to or arising out of any article or substance supplied by the Purchaser including tools will be with the Contractor from the date of delivery of such article or substance to the Contractor until returned to the Purchaser.

32. DISPUTES

All disputes between the parties will be determined in accordance with the provisions of this clause 32.

32.1 Informal resolution

32.1.1 Within a period of seven (7) days after the dispute date the parties will meet to discuss the dispute and will endeavour to resolve the dispute amicably and each party undertakes at such meeting to make full disclosure to the other of all information and documentation relating to the dispute.

32.1.2 If the parties are unable to resolve the dispute in terms of clause 32.1 within twenty one (21) days from the dispute date the dispute will be referred to the general manager of the Purchaser and the Chief Executive of the Contractor or their duly appointed representatives, who will use their best endeavours to resolve the dispute. Their determination will be final and binding and will be carried into effect by the parties.

32.2 Arbitration:

If the individuals described in 32.1.2 are unable to resolve the dispute within a period of fourteen (14) days after it has been referred to them, either party may refer the dispute for arbitration in accordance with the provisions of this clause. Save in the circumstances described in 32.3 or 32.4, any dispute arising out of the Contract or its interpretation, both while in force and after its termination, will be finally resolved in accordance with the Rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation. Such arbitration will be held in Johannesburg unless otherwise agreed.

32.3 Interim Relief:

Nothing in this clause 32 will preclude any Party from seeking interim relief from any competent court having jurisdiction pending the institution of any arbitration proceedings in terms of this clause 32.

32.4 Determination by expert:

If the parties are unable to agree solely on the amount payable by either Party to the other in terms of any provision of this Contract, the matter

will be submitted for determination by an independent adjudicator agreed on by the Parties or, failing agreement, a chartered accountant appointed for the purpose at the instance of either Party by the President for the time being of the Public Accountants' and Auditors Board (Gauteng). The independent adjudicator will act as an expert and not as an arbitrator, and, absent manifest error, his determination will be binding on the parties.

32.5 General:

32.5.1 The successful party will, in each of the methods of dispute resolution provided for above, be entitled to be awarded a full indemnity for all the costs reasonably incurred by that party, including attorney and own client costs.

32.5.2 The provisions of this clause 32 will survive the termination of the Contract.