



NAMDEB
ON DIAMONDS WE BUILD

PURCHASE ORDERS

INDEX	PAGE	
1.0	DEFINITIONS	3
2.0	INTERPRETATION	4
3.0	NON-EXCLUSIVE RELATIONSHIP	4
4.0	NOTICES	4
5.0	DOCUMENTS MUTUALLY EXPLANATORY	5
6.0	VARIATIONS AND MODIFICATIONS	5
7.0	LAWS AND REGULATIONS	5 - 6
8.0	INTELLECTUAL PROPERTY RIGHTS	6 - 7
9.0	SECRECY	7
10.0	FORCE MAJEURE	8
11.0	PACKING AND MARKING OF THE GOODS	8 - 9
12.0	IMPORTS	9
13.0	INSURANCE AND INDEMNITY	10
14.0	DELIVERIES AND COLLECTIONS	10 - 12
15.0	OWNERSHIP AND RISK	12
16.0	TESTS AND INSPECTIONS	12
17.0	GUARANTEE OF THE GOODS	12 - 13
18.0	DEFAULT	13 - 14
19.0	CANCELLATION	14 - 16
20.0	TERMS OF PAYMENT	16 - 17
21.0	SETTLEMENT OF DISAGREEMENTS AND DISPUTES	17
22.0	LIABILITY	17 - 18
23.0	EXTENDED ENVIRONMENTAL RESPONSIBILITIES	18
24.0	HIV/AIDS PROGRAM	18
25.0	ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM	18 - 19
26.0	DIAMOND BEST PRACTICE PRINCIPLES	19
27.0	BLACK ECONOMIC EMPOWERMENT, LOCALISATION AND FIRST NATION INITIATIVES	19
28.0	TAXES, DUTIES AND PERMITS	19 - 20
29.0	CESSION AND ASSIGNMENT	20
30.0	VALIDITY	20
31.0	RIGHT TO AUDIT	20
32.0	SALE OF SUPPLIER'S BUSINESS	20 - 21
33.0	SUB-CONTRACTS	21
34.0	VARIATION, CANCELLATION AND WAIVER	21
35.0	INDULGENCES	21
36.0	ENTIRE AGREEMENT	21

1. DEFINITIONS

Words and expressions which are printed in bold italics in the text of the *contract* shall bear the meaning assigned to them in this clause unless inconsistent with or expressly indicated by the context.

- 1.1 '*Company*' means the *company* issuing the *purchase order*, acting on behalf of the *owner*.
- 1.2 '*Contract*' means the terms and conditions agreed to by the *parties* in *writing* in this *contract*.
- 1.3 '*Delivery date*' means the date stipulated in the *purchase order* for the completion of delivery of the *goods* to the *company*.
- 1.4 '*Documentation*' means and shall comprise but not be limited to any test certificates, reports, records, training materials, spare parts information, parts data, parts manuals, operating and maintenance manuals, schedules, as-built drawings and documentation (in sufficient detail to enable the *company* to maintain, dismantle, reassemble and adjust all parts of the *goods*), diagrams and other documents which are pertinent to the *goods*, together with any modifications to such *documentation*, to be supplied by the *supplier* in terms of the *purchase order* or as required by the *company*, at or before the *delivery date*. The *documentation* must be forwarded to the *company* separately and not be packed with the *goods*.
The *documentation* shall be presented to the *company* in the form and manner specified in the *purchase order* and if not specified shall be of a quality similar in all respects to that of the engineering industry.
All *documentation* supplied by the *supplier* shall be certified as the final "as built" *documentation*, which includes all alterations thereto made during the course of the *contract*. The *supplier* shall ensure that a complete and final list of drawings with titles and latest revisions has been supplied.
- 1.5 '*Goods*' means all items to be supplied and/or services to be rendered to the *company* in terms of the *purchase order*.
- 1.6 '*Owner*' means the corporate body defined as the invoice party in the *purchase order*.
- 1.7 '*Party*' means either the *company* or the *supplier* and collectively referred to as the *parties*.
- 1.8 '*Premises*' means any place owned and/or controlled by the *company* and / or the *owner* and/or a third party as maybe applicable.
- 1.9 '*Purchase order*' means the terms and conditions contained in this *contract* and include the contents of the *purchase order* and all other documents that the *parties* agreed forms part of the *contract*.
- 1.10 '*Purchase price*' means the sum specified in the *purchase order* as the price to be paid by the *owner*, subject to such additions thereto or deductions therefrom as may be made under the provisions of the *contract*.
- 1.11 '*Supplier*' means any corporate body or person with which the *company* contracted for the execution of the *purchase order* and shall include the *supplier's* legal, personal representatives, successors in title, and permitted assigns.
- 1.12 '*Specification*' means the commercial and technical requirements defining the *goods* including any amendments thereto under the *contract*.
- 1.13 '*Tax invoice*' means a document to be provided as required by Section 20 of the Value Added Tax Act, Act No. 89 of 1991 as amended.
- 1.14 '*Value added tax*' means the tax applicable in terms of the Value Added Tax Act, Act No. 89 of 1991 as amended.
- 1.15 '*Writing*' means any manuscript, typewritten or printed document, signed by an authorised representative of either the *owner*, the *company* or the *supplier* as the case may be, and write and written shall have the corresponding meaning.

All instructions, notices, variations, approvals, revocations, directions, permissions, and the like communicated from one party to the other shall be in *writing*. Any instructions, notices, variations, approvals, revocations, directions, permissions and the like not given in *writing* shall not be binding in terms of the *contract*.

2. INTERPRETATION

- 2.1 Words referring to persons shall mean and include not only natural persons, but also any corporate body or partnership and vice versa. Unless inconsistent with the context, or otherwise specified, all terms and expressions referring to the singular shall include the plural and vice versa, and all terms and expressions referring to the male gender, shall include the female gender and vice versa.
- 2.2 Clause headings are for reference purposes only and shall not be taken into consideration in the interpretation or construction of the *contract*.
- 2.3 Where figures are referred to in numbers and in words, the words shall prevail.
- 2.4 If any provision in a definition is a substantive provision, effect shall be given to it as if it were a substantive provision in the body of the *contract*.
- 2.5 Expressions defined in the *contract* shall bear the same meanings in any documentation annexed to the *contract*, which do not have their own definitions.
- 2.6 All references to days will be deemed as calendar days. All references to months will be deemed as calendar months. Where a required act falls on a non-business day, then the act will be performed on the next succeeding business day. Where a number of days are prescribed, it shall be calendar days and shall be considered exclusive of the first and inclusive of the last day.
- 2.7 The *purchase order* and all annexures hereto shall be deemed to be a part of the *contract* and therefore form an integral part hereof.
- 2.8 The terms and conditions as set out in this *contract* shall succeed those of the *supplier* unless otherwise agreed to in *writing* by the *company*.
- 2.10 Performance of delivery as specified on the *purchase order* and/or *written* confirmation of the *purchase order* by the *supplier*, shall be deemed to be an absolute acceptance of the terms and conditions as contained in this *contract*, unless otherwise agreed to in *writing* by the *company*.
- 2.7 The expiration or termination of this *contract* shall not affect such of the provisions of this *contract* which are expressly provided to operate after 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.

3. NON-EXCLUSIVE RELATIONSHIP

The *supplier* agrees and acknowledges that the *company* may engage any other party to supply goods of a similar nature to the *goods* during the terms of this *contract*.

4. NOTICES

- 4.1 Any notices to be given in terms of the *contract* may be sent and shall have been duly given when:-
 - 4.1.1 Delivered by hand – on the date of delivery.
 - 4.1.2 Sent by pre-paid registered post – 5 calendar days after posting.
 - 4.1.3 Sent by facsimile – on the receipt of a report by the transmitting facsimile machine confirming successful transmission of all pages of the relevant document.
 - 4.1.4 Sent by e-mail – on the receipt of a report by the transmitting computer confirming successful transmission of all pages of the relevant document.
- 4.2 Each *party* chooses domicilium citandi et executandi at its respective registered office. The nominated *domicilia citandi et executandi* of the *parties* are included in the *special conditions*.
- 4.3 All communication regarding this *contract* shall bear the *purchase order* number and shall be addressed and delivered to the buyer specified on the *purchase order* and copied to the Purchasing Manager of the *company*.

5. DOCUMENTS MUTUALLY EXPLANATORY

The precedence of the documents forming part of the *contract* is as follows:

1. Purchase Order
2. General Conditions of Purchasing
3. Annexures

6. VARIATIONS AND MODIFICATIONS

- 6.1 The *supplier* has satisfied itself as to all conditions and circumstances of whatsoever nature and howsoever arising including the examination of the various *contract* provisions as it affects this *contract* and which may have affected the *purchase price*. It is hereby understood and agreed that the *supplier* shall not be entitled to claim any increase in the *purchase price* caused by circumstances not taken into account by the *supplier*.
- 6.2 The *purchase price* shall not be exceeded without the prior *written* consent of the *company*. The *purchase price* is the *company's* total liability to the *supplier* in terms of the *contract*.
- 6.3 Only the *company* will modify and issue *written* modifications to the *purchase order*.
- 6.4 Unless otherwise stipulated in the *purchase order*, the *purchase price* shall be deemed to be firm and inclusive of the cost of delivery to the *company*, except:
 - 6.4.1 where the *purchase price* in the *purchase order* is stated to be subject to adjustment;
 - or
 - 6.4.2 where the *goods* covered by the *purchase order* are to be imported and an adjustment to the *purchase price* is necessitated by variations in the applicable rates of exchange, ocean / air freight and insurances, customs clearing charges and / or customs duties;

Subject to sub-clauses 6.2 and 6.3, any claim as per the provisions of sub-clauses 6.4.1 and 6.4.2 shall be submitted to the *company* prior to the delivery of the *goods* and shall be supported by such documentary evidence as may be required by the *company*. The *company* shall in all instances have the right to reject any proposed *purchase price* variation and may at its sole discretion cancel the *purchase order* forthwith in *writing* without payment of any compensation to the *supplier* for any damages whatsoever including loss of business and / or profits resulting from such cancellation.

- 6.5 Should legislation preclude road delivery, the alternative methods of delivery and any consequent price adjustments shall be the subject of discussion between the *parties*. Should the *parties* be unable to reach agreement regarding the alternative methods of delivery and any consequent price adjustments the *company* shall have the right to cancel the *purchase order* forthwith in *writing* without payment of any compensation to the *supplier* for any damages whatsoever including loss of business and / or profits resulting from such cancellation.

7. LAWS AND REGULATIONS

- 7.1 The *supplier* hereby undertakes and agrees to comply with all laws, by-laws, ordinances, rules and regulations, statutory or domestic, and legislation applicable on the *premises* and in the country in which the *company* and *owner* is situated as well as any other applicable legislation which may from time to time be promulgated, all as may be amended, to the extent that these affect the *goods* to be provided by the *supplier* in terms of the *contract*. The *supplier* will provide the *company* with proof of its compliance when required.
- 7.2 The *supplier* guarantees that, as far as reasonably practicable, the *goods* hereby purchased are safe and without risk to health, environmental and safety when properly used.
- 7.3 The *supplier* hereby indemnifies and holds the *owner*, the *company*, its agents, representatives and employees harmless in respect of any claims which may arise out of the *supplier's* and/or the *supplier's* sub-contractor's activities in terms of the *contract* as it relates to the contravention of any aspect covered by the requirements of the relevant legislation as envisaged in clause 7.1 hereof.
- 7.4 The *contract* shall be governed, construed, and interpreted in accordance with the laws of the country in which the *company* is situated.
- 7.5 The *supplier* shall be an equal opportunity *company*, shall comply with the requirements of the Labour Relations Act 1995, Employment Equity Act 1998 and Basic Conditions of Employment Act 1997 and shall maintain a personnel policy congruent with that of the *company*.

Remuneration packages of its employees shall be market related and no unfair labour practices are to be used. Should the *company* so require, the *supplier* shall permit the *company* to inspect such records as may be necessary to verify the *supplier's* compliance with the above Acts.

- The *supplier* shall achieve a high professional standard of services about his staff and to maintain such it shall, at its cost, provide its staff with on-going training and development.
- The *supplier* shall subscribe to the principle of free association and the legal right of employees to organise.
- The *supplier* shall employ South African citizens or immigrants of legal standing.

The *supplier* undertakes to prove to the *company* in *writing* compliance with the above on request. The *supplier* will ensure that all its sub-contractors comply with this clause. This sub-clause will only apply where the *company* and / or the *owner* and/or the *supplier* is located in South Africa.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 In the event of the *supplier* having to design *goods* or components thereof for the *company*, and where the *supplier* will be paid for such design work by the *owner*, any intellectual property that comes into existence as a result thereof shall vest exclusively in the *owner*. The *owner* shall be entitled to licence, assign or otherwise exploit such intellectual property right.
- 8.2 All *documentation* shall become and remain the property of the *owner*. Unless otherwise specified herein, title to all information, intellectual property rights inventions and improvements disclosed in *writing* by the *supplier* prior to the *commencement date* will remain vested in the *supplier*.
- 8.3 The *supplier* shall indemnify and shall keep indemnified, the *owner*, the *company*, its agents, representatives and employees against all liabilities, damages, claims, losses, costs and all other expenses (including legal costs) whatsoever that they may incur as a result of any infringement of any letters patent, registered design, trade mark, copyright or other industrial property right protected by law, occurring or alleged to have occurred with regards to the *goods* and / or *documentation*.
- 8.4 This indemnity shall extend also to all losses, costs and expenses as aforesaid incurred by the *company* and / or the *owner* in the event that the *goods*, or any part thereof, or any process, or any design, trademark, copyright, or *documentation* appertaining to or in any way whatsoever associated with the *goods* or any part thereof, or the process, become the subject of an interdict or other process of law depriving the *company* and / or the *owner* of the rights of possession, use, reproduction, or adaptation, or of any right to benefit therefrom.
- 8.5 This indemnity shall not apply to any infringement which is due to the *supplier* having followed in its entirety a design as stipulated by the *company* and which design was not at the time of delivery of *goods* by the *supplier* known by the *supplier* to be an unauthorised infringement of patent or other protected rights as aforesaid, nor shall this indemnity apply to the possession, use, reproduction or adaptation of the *goods* and / or any process, and of any rights to benefit therefrom, in a foreign country not specified by the *purchaser* or not disclosed to the *supplier*.
- 8.6 In connection with and for the purposes of the *purchase order*, the *supplier* is deemed to have authorised the *company* to reproduce, directly or indirectly, in any manner or form, and / or make adaptations of, all drawings or three-dimensional or other reproductions thereof (which shall be furnished on demand), *specifications*, manuals and instruction books or sheets, and all other documents in which copyright subsists, which are furnished by the *supplier* to the *company*, and to authorise others so to do.
- 8.7 The *supplier* shall immediately inform the *company* and the *owner* of any claims or threats made against the *supplier* in respect of the infringement of patents or other rights arising from the supply or manufacture of the *goods* by the *supplier*.
- 8.8 The manufacturer / *supplier* hereby grants to the *company* and the *owner* the right to incorporate the part numbers relating to the products and parts therefore, in the *company's* and *owner's* catalogue systems, and to reproduce the part numbers, in whole or in part, for any purpose and, in particular, for procuring such products or parts.
- 8.9 It is a condition of this indemnity that the *owner* and/or the *company* will give the *supplier* notice of any action, proceeding, claim or threat instituted or made against it. Immediately after giving such notice the *parties* shall consult together about the subject of the notice and the *owner* and/or the *company* may at their option either:

- 8.9.1 Permit the *supplier* at the *supplier's* expense to conduct any litigation that may ensue and all negotiations for a settlement of such litigation or claim with the proviso that the *supplier* shall keep the *owner* and the *company* informed of all the steps taken and of the outcome; or
- 8.9.2 Conduct any litigation that may ensue and all negotiations for a settlement in consultation with and on behalf of the *supplier* with the proviso that the *supplier* shall not be liable for costs incurred outside the normal course of litigation.
- 8.10 The rights and obligations in this clause 8 hereof shall survive the completion, termination and/or cancellation of the *contract* and shall continue in full force and effect in perpetuity.
9. **SECRECY**
- 9.1 The *supplier* shall, during the currency of this *contract* and at all time thereafter, keep the contents of the *contract* confidential and keep confidential any information of or relating to the *owner* and / or the *company* or its operations or affairs or the *goods* which may be acquired in terms of this *contract*, save for information:
- 9.1.1 which is publicly available or becomes publicly available through no act or default of the *supplier*; or
- 9.1.2 which was in the possession of the *supplier* prior to its disclosure otherwise than as a result of any breach by the *supplier* of any obligation of confidentiality owed to any other person whether pursuant to the *contract* or otherwise; or
- 9.1.3 which is disclosed to the *supplier* by a person which person did not acquire the information under an obligation of confidentiality,
- and the *supplier* shall not use or disclose such information except with the prior *written* consent of the *company* or in accordance with an order of a court of competent jurisdiction or an order to comply with any law or governmental regulations by which the *supplier* is bound or as may be lawfully requested in writing by any governmental authority.
- 9.2 The *supplier* shall not, without the prior *written* approval of the *company*:
- 9.2.1 Take or permit to be taken any photograph of the *premises* or property or of the *goods* or any portion thereof.
- 9.2.2 Publish, cause or permit to publish any article, story, or other material having any reference whatsoever to the *goods*.
- 9.2.3 Display any advertisements in connection with the *goods* on the *premises* or elsewhere.
- 9.3 The rights and obligations contained in this clause 9 shall survive the completion, termination and / or cancellation of the *contract*, and shall remain binding on the *supplier* and the *company* in perpetuity. Failure to comply with this clause 9 will result in the appropriate legal action by either *party*.
10. **FORCE MAJEURE**
- 10.1 'Force majeure' shall mean any circumstances beyond the reasonable control of the *party* concerned and shall include but not be limited to any of the following matters:
- 10.1.1 War, revolution, invasion, insurrection, riot, civil commotion, mob violence, sabotage, military or unsurbed condition, epidemic, quarantine, accident, breakdown of machinery or facilities where such are not under the *supplier's* control.
- 10.1.2 Strike or lockout or other industrial action by workers or employees.
- 10.1.3 Earthquake, flood, fire or other natural physical disaster.
- The mere shortage of labour, materials of the *supplier's* or sub-contractor's, manufacturing equipment or utilities at the *supplier's* or sub-contractor's, premises shall not constitute force majeure unless caused by circumstances which are themselves force majeure.

- 10.2 If either *party* to the *contract* is prevented or delayed from performing any of its obligations under the *contract* by force majeure, then such *party* shall notify the other *party* of the circumstances constituting the force majeure in *writing* within a period not exceeding 24 (twenty four) hours from the time of a force majeure situation manifesting itself and of the obligation, performance of which is thereby delayed or prevented, and the *party* giving notice shall thereupon in terms of this clause be excused of performance or punctual performance, as the case may be, of such obligation from the date of such notification for so long as the circumstances of prevention or delay may continue.
- 10.3 If the concerned *party* is unable to perform any material obligation for a continuous period of one calendar month, then either *party* may, at any time thereafter and provided such performance is still excused by notice in *writing* one to the other to cancel the *contract*.
- 10.4 If the *contract* is cancelled under the provisions of this clause, the *supplier* will be paid by the *company* for all *goods* delivered prior to the date of cancellation at the rates and prices prevailing in the *contract*, so far as such may be applicable, and where the said rates and prices are not a fair valuation an amount will be agreed between the *company* and the *supplier* and in addition:
- 10.4.1 The amounts payable in respect of any preliminary items, so far as the *goods* comprised therein has been carried out or performed, and a proper proportion of any such items which has been partially carried out or performed.
- 10.4.2 The cost of materials or *goods* reasonably purchase ordered by the *supplier* for use in connection with the *contract* and which shall have been delivered to the *supplier* for which the *supplier* is legally liable to accept delivery. (Such materials or *goods* shall be delivered to and shall become the property of the *owner*), following which payment shall be made by the *company*.
- 10.5 Provided always that, against any payments due from the *owner* under this clause, the *owner* will be entitled to be credited with any outstanding balances due from the *supplier* for advances in respect of the *contract*.
- 10.6 Neither *party* shall have any claim of any nature whatsoever against the other for any delayed performance or failure to carry out any of its obligations under the *contract* as a result of a force majeure event.

11. PACKING AND MARKING OF THE GOODS

- 11.1 The *supplier* shall ensure that all packing and covering shall be adequate for the safe loading, transportation, off-loading and storage of the *goods*. All packing cases and packing materials shall become the property of the *owner*, and the costs thereof are included in the *purchase price*, unless otherwise agreed to in *writing* by the *company*.
- 11.2 The *supplier* shall identify each and every package, bundle, bag, carton, container or article, by means of either suitable labels securely attached thereto or indelible paint thereon, showing the description of the *goods*, name of the *supplier*, *company* name, *purchase order* number, the *company's* stock code where specified in the *purchase order*, nett mass of the *goods* and the country of origin of the *goods*.
- 11.3 The *supplier* shall, at the *supplier's* cost, replace any *goods* lost or damaged in transit, however caused.
- 11.4 Imported equipment and materials shall be appropriately packed for shipment so that they are protected against all climatic conditions. Parts liable to rust shall receive adequate anti-rust treatment and shall be suitably protected. Special precautions shall be taken to protect items where they rest on wooden or other supports likely to contain moisture, by wrapping the items in wrapping treated with anti-rusting composition of sufficient strength to resist chafing through when subjected to the pressure and movement likely to occur in transit.
- 11.5 All *goods* that are a hazardous substance shall be distributed, identified, classified, handled and stored in accordance with the provisions of the provisions of the Hazardous Substances Act 15 of 1993, as amended and in accordance with the provisions of sub-clause 14.13.
- 11.6 The *contractor* shall comply with the labelling requirements of the South African Bureau of Standards (SABS) 0265 and 0228/9 regulations.

- 11.7 Any **goods** destined for a marine environment should be packed and preserved in accordance with the following requirements:

- 11.7.1 Crating and preservation must be suitable for sea going transport which means that the **goods** must be protected against corrosion and water/moisture ingress and that all apertures should be closed and sealed.
- 11.7.2 **Goods** placed in plastic wrappers must display the part number or item information without it being necessary to open the packaging. If more than one item is packed in a crate a packing list must be placed on the inside and outside of the container.
- 11.7.3 **Goods** must be packed in such a manner to avoid contact damage.

It is the responsibility of the **contractor** to ensure that the packaging and preservation are adequate.

Should the **company** supply the containers, the onus will rest on the **contractor** to ensure that the packing and preservation of the **goods** is done correctly and the **contractor** will be held responsible for damages incurred to the containers as well as the **goods** due to water ingress and corrosion. The **contractor** shall immediately inform the **Contract Manager** in the event of unsuitable containers being provided by the **company** and the **company** shall rectify the matter at its discretion.

- 11.8 The **contractor** shall comply with the requirements of the Agricultural Pests Act 36, 1983, as amended, when using wood packaging when importing or exporting **goods** to and from South Africa. The Act states, but not limited to:

- 11.8.1 All wood packaging material used for the packing of **goods** when importing or exporting to and from South Africa should be marked to international ISPM no 15 standards.
- 11.8.2 Any wood packaging material used for the packing of **goods** when exporting from South Africa must be stamped by a fumigator that is registered with the National Plant Protection Organisation of South Africa and a fumigation certificate needs to accompany delivery.

12. IMPORTS

Without limiting the responsibilities of the **supplier** under the **contract**, the **supplier** shall, in respect of any freight requirements, appoint a recognised import agent and reputable freight forwarder for any **goods** to be imported from overseas.

Copies of all correspondence, shipping documents, air waybills etc, relating to the activities of the import will immediately be forwarded to the **company** on request.

In the event that this **contract** is subjected to an import permit being granted by the relevant authority, the **company** will not be liable for any commitments made by the **supplier** in the execution of this **contract** before the import permit has been issued.

13. INSURANCE AND INDEMNITY

- 13.1 The **supplier** shall be liable for and indemnifies and holds the **company**, its employees, officers and/or agents harmless against all claims, damages, losses or costs whatsoever relating to or as a result of:

- 13.1.1 the injury or death of any person; and/or
- 13.1.2 all damages to property whatsoever; and/or
- 13.1.3 any economic loss sustained by any person

which results from or is due to any act or omission of the **supplier**, its sub-contractors, employees and/or representatives.

- 13.2 The **supplier** indemnifies and holds the **company**, its employees, officers and/or agents harmless against any loss, claims, damage or costs, whether direct, indirect, consequential or otherwise, caused to or incurred by the **company** as a result of any breach by the **supplier** of any provision of this **contract** or of any **purchase order**, including but not limited to a breach of any warranties.

- 13.3 The *company* shall for the duration of the *contract*, take out and maintain insurance at its own expense to cover the normal and usual risks associated with the supply of the *goods*.

MARINE TRANSIT INSURANCE in the form of a declaration policy covering all shipments by sea, road and rail, on "All Risks" conditions subject to Institute Cargo Clauses (A) and war and strikes risks as per the appropriate Institute Clauses.

The terms of purchase shall be on an Ex Works basis with risk attaching from the time the *goods* have been placed at the *company's* disposal by the *supplier*. Risk shall terminate upon delivery to the *company's premises* and/or the *premises* of a third party who has been duly appointed by the *company*, whichever delivery occurs first. In the event that delivery is made to the *premises* of a third party, the *company* shall notify the *supplier* of the details of said *premises*.

- 13.4 The *supplier* shall maintain at its own expense cover for the usual risk associated with its potential liabilities given above.

14. DELIVERIES AND COLLECTIONS

- 14.1 The *supplier* shall deliver the *goods* and the *documentation* and/or collect empty containers in accordance with the dates and to the point of delivery and/or collection reflected in the *purchase order*.
- 14.2 The *supplier* shall be responsible for the loading and off-loading of all *goods* delivered to the buyer nominated in the *purchase order*. The *supplier* shall, at its own cost and risk offload the *goods* and/or load the empty containers and at its own expense provide all things necessary including but not limited to labour, freight, insurance, landing, clearing, import and customs duties, railage, forwarding and other transportation charges.
- 14.3 The *supplier* shall confirm the *delivery date* and/or collection date with the buyer nominated in the *purchase order*. The *supplier* shall at the same time establish the hours during which the *company* accepts *goods* being delivered and/or releases empty containers. Should the *supplier* fail to make the necessary arrangements for delivery and/or collection with the *company's* buyer nominated in the *purchase order* in *writing*, then any resultant demurrage, re transport costs, waiting time and/or other associated costs incurred shall be for the *supplier's* account.
- 14.4 The *supplier* shall furnish the *company* with a delivery note and *tax Invoice* detailing the *goods*, the delivery address with correct *owner* details as well as reflecting the *purchase order* number in respect of the delivery being made before entry will be allowed to the *premises*.
- 14.5 When making deliveries to and/or collections from the *company* by road transport the *supplier* shall ensure that the necessary precautions are taken for the prevention of harm to life and damage to property when entering the *premises*. The *supplier* shall be liable for and indemnifies and keeps the *company* and the *owner* harmless against injury to any person or damage to any property belonging to the *company*, the *owner* or third parties, as a result of the negligence or default of the *supplier*. The *company* has a zero tolerance policy with regards to safety.
- 14.6 The *supplier* shall inform the *company* timeously and in *writing* of any expected delays in the delivery of the *goods* and the *company* reserves the right to accept or reject an extension in the *delivery date*.
- 14.7 In the event of the *company* requiring delivery and/or collection by a method other than that which may be stipulated in the *purchase order*, any additional costs so incurred shall be for the account of the *owner*. If, however, such alternative method of delivery and/or collection is necessitated by failure on the part of the *supplier* to effect delivery and/or collection within the period stated in the *purchase order* due to any circumstances other than those set out herein, the provisions of sub-clause 18.9 shall apply.
- 14.8 A failure by the *supplier* to deliver *goods* which are fully functional, and/or fit for purpose and/or the failure by the *supplier* to deliver the *goods* or any component of the *goods* and/or *documentation* or any other thing required in terms of the *contract* shall be deemed a total failure by the *supplier* to deliver. This sub-clause 14.8 is also subject to the provisions of sub-clause 18.9.

- 14.9 The *company* shall not accept any delivery of items in excess of the quantity specified in the *purchase order*. Should these items be delivered to the *premises*, the *supplier* shall remove these items within 5 (five) days of the delivery thereof at the *supplier's* own expense and the *company* will not be liable for any costs whatsoever relating to the over delivery. Ownership and risk of loss or damage of the over delivered items will remain with the *supplier*.
- 14.10 In terms of the provisions of, inter alia, the Criminal Procedure Act, 51 of 1977, the Hazardous Chemical Act, 15 of 1973, the Mine Health and Safety Act, 29 of 1996, any person and his belongings may be searched and any person may be tested for being under the influence of drugs or alcohol by the *company's* and / or *owner's* security officials upon entering, whilst on and upon leaving the *premises*.
- 14.11 (a) The *supplier's* employees and/or sub-contractors who breach any security, safety, health and environmental rules and regulations on the *premises* shall be permanently banned from entering the *premises*. (b) Should different employees of the *supplier* or its sub-contractors continuously be found to breach any security, safety, health and environmental rules and regulations on the *premises* the *supplier* and its sub-contractor shall be permanently banned from entering the *premises*.
- The *contractor* will replace all employees removed and banned from the *company's* *premises* under the provision of this sub-clause at its own cost and within 24 (twenty four) hours of the event.
- The *company* reserves the right to cancel the *contract* with immediate effect in the event of either (a) or (b) above materialising at which point the provisions of clause 27 will apply.
- 14.12 The *owner* shall have the right to use the drawings and / or issue all the drawings supplied by the *supplier* in terms of the *contract* to third parties for the purpose of maintenance of the *goods*, including repairs, replacements, modernization and renewals, obtaining competitive tenders for and purchase ordering of spare parts and to manufacture or have manufactured spares for the *goods*. The *owner* shall also be entitled to issue general arrangement drawings supplied by the *supplier* to third parties where an interface is required between existing and/ or new plant and the *goods* supplied by the *supplier*.
- 14.13 If the *goods* are a hazardous substance as defined in the Hazardous Substances Act 15 of 1993, as amended, then:
- 14.13.1 The *supplier* warrants that as far as reasonable practicable the *goods* are safe and without risk to health and safety when used, handled, processed, stored or transported at the *premises*.
- 14.13.2 This *purchase order* is subject to the required information specified in the abovementioned Act being submitted by the *supplier* and agreed to by the *company* by way of incorporation into the *purchase order*. The required information shall comply with the abovementioned Act and shall contain but not be limited to:
- 14.13.2.1 the use of the substance;
- 14.13.2.2 the risks to health and safety associated with the substance;
- 14.13.2.3 any restriction or control on the use, transport and storage of the substance including but not limited to exposure limits;
- 14.13.2.4 any safety precautions
- 14.13.2.5 the disposal of used containers in which the substance has been stored and any waste involving the substance subject to clause 23 hereof.
- 14.14 In the event that the *supplier* delivers the *goods* by road transport and such *goods* are determined by the National Road Traffic Act 93 of 1996, as amended, as dangerous goods, the *supplier* shall comply with the requirements of the said Act, and shall ensure that the required documentation are in the possession of the driver of the delivery vehicle and handed to the *company* on delivery.
- 14.15 Should the *owner* elect to return any *goods* for reasons not attributable to the *supplier*, the *supplier* will credit the *owner* for and to the full value of the *goods* returned. Should there be any associated costs properly incurred by the *supplier* i.e. transport, labour etc the *supplier* will make a *written* request to the *owner* in this regard and the *owner* will reimburse the *supplier* at its discretion. Should any returned *goods* be damaged, the *owner* will have the

right to investigate the cause of the damage and the *owner* will determine the *party* to which the damage is attributable. The *party* at fault will be liable to reimburse the affected *party* limited to the then market value of the *goods*. Under no circumstances will the *company* be held liable for any costs mentioned in this sub-clause 14.15.

15. OWNERSHIP AND RISK

- 15.1 Notwithstanding the date on which payment is made by the *owner* to the *supplier*, ownership of the *goods* shall remain with the *supplier* until such time as the *goods* are delivered to the *site* stated in the *contract* and are accepted by the *company* in terms of the *contract* and the *supplier's* delivery note and *tax invoice* (it being understood and agreed that *goods* so signed for shall be deemed to have been accepted only as regards the number and outward condition of packages / bundles / bags / cartons / containers / articles, and shall nevertheless remain liable to subsequent rejection) has been duly signed by the *company*.
- 15.2 Notwithstanding the date on which ownership passes to the *owner*, the risk in the *goods* shall remain with the *supplier* until such time as the *company* is satisfied that the *goods* are undamaged and in good working order.
- 15.3 The *supplier* hereby waives and abandons the *supplier's* lien or any claim to a lien of any nature whatsoever in relation to and in respect of the *goods* and/or any repair and maintenance services in relation to the *goods*.
- 15.4 *Goods* delivered in bulk shall be and remain at the sole risk of the *supplier* until such time as the *goods* have been discharged from the *supplier's* bulk road tanker into the bulk storage equipment at the *premises*. The *supplier* shall be responsible for connecting up the delivery hoses to the bulk storage equipment and for discharging the *goods* into the bulk storage equipment. The *supplier* is reminded of the *company* and *owner's* environmental policies and procedures, which are obtainable from the *company's* buyer nominated on the *purchase order*.

16. TESTS AND INSPECTIONS

The *company* shall have the right to conduct tests and / or inspections of the *goods* after delivery and / or after any payments have been made, as the *company* may deem necessary. Such tests and / or inspections shall be undertaken by a suitably qualified body selected by the *company*. The costs of such tests and / or inspections shall initially be borne by the *owner* but in the event of the tests and / or inspections proving that the *goods* do not comply with the *specification*, the *owner* shall without prejudice to any of the *owner's* other rights under the *purchase order* and irrespective of any other remedy which might be available to the *owner* under any of the provisions of the *contract* or at law, be entitled to recover such costs from the *supplier*, by a means deemed appropriate by the *owner*. The *supplier* will not be entitled to dispute the results of the test and / or inspections.

17. GUARANTEE OF THE GOODS

- 17.1 The *supplier* warrants and represents that the *goods* will:
- 17.1.1 be free from all defects, whether latent or patent, including defects in design, material, workmanship and ownership;
 - 17.1.2 be fit in every respect for the purpose for which they are purchased;
 - 17.1.3 conform in all respects with the *specifications*; and
 - 17.1.4 conform with all relevant requirements of any statute, law, regulation or legal requirement which may be in force in the country in which the *company* is situated.
- 17.2 The *supplier* shall guarantee the *goods* for a period of no less than one year from the *delivery date* unless otherwise specified on the *purchase order*. The guarantee shall exclude fair wear and tear on the *goods*. If the *goods* fail for any reason other than fair wear and tear within the guarantee period, the *supplier* shall at its own cost remove such *goods* and issue the *owner* with a credit note. The credit note will be returned to the *supplier* once the *goods* have been replaced free of charge. If the *supplier* is not able to remove the defective *goods*, the *company* shall arrange removal of the *goods* and the costs shall be for the *supplier's* account. The *supplier* shall be liable for all risk of loss or damage to the *goods* while left on the *premises* until removal.

18. DEFAULT

- 18.1 Should the *supplier* deliver any *goods* which do not comply with the *specification*, the *company* shall have the right to refuse to take delivery of, or after having taken delivery to

reject the *goods*. In the event of such refusal or rejection, the *goods* shall be held by the *company* at the sole risk of the *supplier*, and the *company* shall be entitled to at its sole discretion:

- 18.1.1 retain the *goods* if located in a security area as defined by the *company* and the *supplier* alone shall be liable for and pay all costs of and incidental to the *goods*;
- 18.1.2 require the *supplier* to remove which the *supplier* shall do and the *supplier* alone shall be liable for and shall pay all costs of and incidental to such removal, including demurrage; and, in the sole discretion of the *company*;
- 18.1.3 require the *supplier* to replace the *goods* which the *supplier* shall do, with *goods* complying with the *specification* and the *supplier* alone shall be liable for and shall pay all costs of and incidental to such replacement;
- 18.1.4 purchase *goods* from another source which comply with the *specification* to replace the *goods* so refused or rejected, in which event the *owner* shall be entitled to recover from the *supplier* any amount by which the price so paid exceeds the *purchase price*, and all delivery costs shall be taken into account in assessing such excess. The *supplier* shall in addition refund to the *owner* the *purchase price* if paid and all other costs incurred by the *owner* in respect of the *goods* so refused or rejected.
- 18.2 Should any dispute arise as to whether or not *goods* refused or rejected by the *company* comply with the *specification*, the *supplier* may within seven days of such refusal or rejection arrange for tests and / or inspections to be undertaken by a suitably qualified body to be nominated by the *company* and the results of such tests and / or analyses shall be final and binding. The costs of such tests and / or inspections shall initially be borne by the *supplier* but in the event of the tests and / or analyses proving that the *goods* do comply with the *specification*, the *owner* shall refund to the *supplier* all costs incurred by the *supplier* in respect of such tests and / or inspections. In the event of the *supplier* failing to within seven days of such refusal or rejection arrange for such tests and / or inspections to be undertaken, the *supplier* shall be bound by the provisions of sub-clause 18.1.
- 18.3 Where *goods* are of a perishable nature or where *goods* are patently of a specification other than the *purchase order specification* the *company's* decision in terms of sub-clause 18.1 shall be final and binding.
- 18.4 Acceptance by the *company* of any *goods* not complying with the *specification* shall not prejudice or affect the *company's* rights to refuse or reject any subsequent deliveries of *goods* not complying with a *specification*.
- 18.5 The *supplier* acknowledges that time is of the essence of the *purchase order* and that should the delivery of the *goods* be delayed beyond the period stated in the *purchase order* the *company* shall in its sole discretion, be entitled:
 - 18.5.1 to extend the delivery period stated in the *purchase order* to such extent as the *company* may deem fit, any such extension to the delivery period being authorised by means of an *written purchase order* modification; and / or
 - 18.5.2 to require the *supplier* to effect, and the *supplier* shall effect, delivery by a method other than that stipulated in the *purchase order*; any costs so incurred shall be for the account of the *supplier*, provided that failure to deliver is not attributable to any of the circumstances set out in clause 18; or alternatively;
 - 18.5.3 to purchase the required quantity of *goods* from another source and provided that failure to deliver is not attributable to any other circumstances set out in clause 19, to recover from the *supplier* any amount by which the price so paid exceeds the price stated in the *purchase order* and all delivery costs shall be taken into account in assessing such excess.
- 18.6 Acceptance by the *company* of any *goods* in respect of which delivery has been delayed beyond the period stated in the *purchase order* shall not prejudice or affect the *company's* rights to implement the provisions of sub-clause 18.5 in the event of any subsequent deliveries of *goods* being delayed beyond the period stated in the *purchase order*.
- 18.7 Any action by the *company* in terms of this clause 18 shall be without prejudice to any claims for damages which the *company* might have against the *supplier*.

18.8 The provisions of this clause 17 and any action by the *company* in terms thereof shall not derogate from, or diminish, the rights of the *company* to implement the provisions of clauses 17 or 19.

18.9 Should the *supplier* fail to deliver the *goods* by the *delivery date* as stipulated in the *purchase order* forming part of the *contract*, or such other date as may be included in the *purchase order* by means of a *written* amendment to the *purchase order* issued by the *company*. The *supplier* shall pay the *owner* the penalty amount per day or part thereof that the *supplier* is late of 1% (one percent) of the total *purchase price* for each day that the *delivery date* is delayed, including the day of delivery.

This penalty shall not apply to other forms of default. The *owner* and / or the *company* reserve the right to invoke this penalty or claim damages for breach.

19. CANCELLATION

If the *supplier* (including any director / employee of the *supplier* and, where applicable, including the *supplier's* agents or distributors and any director / employee of such agents or distributors):

19.1 fails to deliver the required quantity of the *goods*, provided that such failure is not attributable to any of the circumstances set out in clause 18; or

19.2 delivers, implies or endeavours to deliver any *goods* which do not comply with the *specification*; or

19.3 delivers or attempts to deliver short mass and / or measure or gives false mass and / or measure in the waybills and / or *tax invoices* rendered in terms of the *purchase order*; or

19.4 commits any breach of any of the other terms and conditions of the *purchase order*, the *company* shall at its sole discretion, without prejudice to any of the *company's* other rights under the *purchase order*, and irrespective of any other remedy which might be available to the *company* under any of the provisions of the *purchase order* or at law, be entitled to:

19.4.1 forthwith cancel the *purchase order* and any other *contract(s)* and / or undertaking/s in force between the *parties*, without any payment for compensation to the *supplier* for any damages whatsoever including loss of business and / or profits resulting from such cancellation; or alternatively,

19.4.2 give *written* notice to the *supplier* that the *company* requires such breach to be remedied. In the event of the *supplier*, within seven days of the date of receipt of such notice, failing to remedy such breach and failing to furnish assurances acceptable to the *company* that such breach will not occur again, the *company* shall at the expiry of such period of seven days have the right to cancel the *purchase order* and any other *contract(s)* and / or undertaking/s in force between the *parties*, without any payment for compensation to the *supplier* for any damages whatsoever including loss of business and / or profits resulting from such cancellation.

19.5 In the event of:

19.5.1 the *supplier* or the manufacturer of the *goods* being placed under liquidation, either provisionally or finally, whether voluntarily or compulsorily; or

19.5.2 the *supplier* or the manufacturer of the *goods* being placed under judicial management, either provisionally or finally; or

19.5.3 the estate of the *supplier* or the manufacturer of the *goods* being sequestered, either provisionally or finally; or

19.5.4 the estate of the *supplier* or the manufacturer of the *goods* being surrendered; or

19.5.5 the death of the *supplier* or the manufacturer of the *goods*, whether the *supplier* or the said manufacturer be an individual or a member of a partnership or syndicate; or

19.5.6 a judgement in any competent court being given against the *supplier* or the manufacturer of the *goods* which judgement is not satisfied within a period of fourteen days; or

- 19.5.7 the major portion of the assets of the *supplier* or the manufacturer of the *goods* being disposed of, or the majority shareholding of the *supplier* or the said manufacturer being transferred; or
- 19.5.8 the *supplier* or any director, partner or any member of the *supplier*, as the case may be, is formally charged with an offence in which dishonesty is an element or any offence relating to the possession and/or sale or illegal purchase of precious stones; or
- 19.5.9 the *supplier* or any director, partner or member of the *supplier* is convicted of any offence in which dishonesty is an element notwithstanding that the said conviction may be subject to appeal; or
- 19.5.10 the *supplier* or any one in the *supplier's* employ paying or offering to pay, giving or offering to give any money or other present whatsoever by way of commission, credit or offering to lend any money or giving or offering to give or any other valuable consideration to any persons in the employ of the *company* and / or the *owner*;

the *company* shall, without prejudice to any of its other rights under the *purchase order*, and irrespective of any other remedy which might be available to the *company* under any of the provisions of the *purchase order* or in law, be entitled forthwith to cancel the *purchase order* and any other *contract(s)* and / or undertaking/s in force between the *parties*, without any liability for compensation to the *supplier* for any damages whatsoever including loss of business and / or profits resulting from such cancellation.

- 19.6 Any action by the *company* in terms of this clause 19 shall be without prejudice to any claims for damages which the *company* might have against the *supplier*.
- 19.7 Cancellation in terms of this clause 19 shall be confirmed by means of a *written purchase order* modification.
- 19.8 If, during the currency of the *contract*, operations at the *company* and / or the *owner* cease or are curtailed, the *company* will have the right to cancel the *contract* without payment of any compensation to the *contractor* for any damages whatsoever, including loss of business and/or profits resulting from such cancellation.

Any cancellation, for any reason, from the *company*, *owner* or *supplier* will only be considered if made and confirmed in *writing* on the email address: jhbacc-cancelledorders@debeersgroup.com. (This is only applicable to orders issued via the De Beers Group Services - Johannesburg Supply Chain Centre)

20. TERMS OF PAYMENT

- 20.1 In the event of the *goods* or a portion thereof being imported, payment will be made by the *owner* to the *supplier* for those imported portions of the *purchase price* as specified in the *purchase order*.
- 20.2 The *owner* prefers to make payments of those portions of the *purchase price* payable in foreign currency directly to the *supplier's* nominated offshore account or to the account of its principal, in the currency of the country of origin. The *company* shall prescribe the responsibility for obtaining the foreign exchange forward cover prior to the issue of the *purchase order*. The *owner* shall bear the risk of foreign exchange fluctuations where it has agreed that it shall make direct foreign currency payments as stipulated in the *purchase order*. Should actual offshore payments in foreign currency be delayed beyond the dates agreed in the *purchase order* due to reasons attributable to the *supplier*, then the *supplier* shall be responsible for any additional foreign exchange forward cover costs incurred by the *owner* in making these delayed payments.
- 20.3 Where the *supplier* requires payment from the *owner* in the relevant local currency of those offshore portions of the *purchase price*, payable in foreign currency by the *supplier* or by other, the *supplier* shall submit detailed information thereof for the *company's* consideration. Before purchasing any foreign exchange forward cover the *supplier* shall first obtain *written* approval from the *company*. The *supplier* shall immediately upon having taken out such foreign exchange forward cover advise the *company* of the rate at which it was obtained and submit documentary proof thereof. If the *supplier* acted in accordance with this clause, any variation between this foreign exchange cover rate and the *purchase price* shall be for the *owner's* account.
- 20.4 Unless otherwise stated in the *purchase order* and subject to any additions thereto or deductions therefrom as provided for in the *contract*, payment of locally manufactured *goods* will be made by the *owner* to the *supplier* of 100% of the *purchase price* if the *company* is

satisfied that the *supplier's* obligations in terms of the *contract* have been completed in all respects.

- 20.5 All payments will be conditional upon receipt by the *company* of the *supplier's* correct and acceptable *tax invoice* made out in the name of the *owner*, reflecting the *purchase order* number, the *company's* stock code, where specified on the *purchase order*, nett and gross mass of the *goods* as well as the number of containers if applicable. *Tax invoices* shall be made up monthly as at the close of business on the 25th day of each month and monthly statements recording the total.
- 20.6 Payment will be made as per the payment terms agreed to between the *company* and the *supplier*. If no terms were agreed between the *parties* at the date of placement of the *purchase order* the *owner* will pay the *supplier* 30 (thirty) days after receipt of a correct and acceptable statement.
- 20.7 Without derogating from the *owner's* right at law for the collecting of outstanding debts, any monies which may become due and payable to the *supplier* in accordance with the provisions of the *contract* will be set off by the *owner*, against the *owner's* liability to the *supplier*.
- 20.8 No payment made to the *supplier* by the *owner* will affect or prejudice the rights of the *company* against the *supplier*, or relieve the *supplier* of its obligations for the due fulfilment of the *contract*, or be interpreted as approval of the *goods*. No payment shall place an obligation on the *owner* to pay for alterations to the *purchase order* not requested by the *company* in *writing* or discharge the liability of the *supplier* for the payment of penalties or damages, whether due, ascertained or liquidated or not, or of any sum against the payment of which it is bound to indemnify the *company*.
- 20.9 All advance payments of foreign currency, with the exception of Freight on Board (F.O.B) payments shall be limited to an amount agreed to by the *company* in *writing*. FOB payments can be up to 100% against a surety bond lodged in terms of sub-clause 20.9.1 hereof and a clean on board bill of lading.
- 20.9.1 No upfront payment will be made to the *supplier* by the *owner* unless agreed to in *writing* by the *company* and then only after the receipt by the *company* of a demand guarantee in respect of suretyship being received by the *company* for the total amount (including *value added tax*) to be paid, issued by an acceptable banking or insurance institution registered in the country in which the *company* is situated. The said guarantee shall be in conformity with the template obtainable from the *company*. The cost of preparing, completing and maintaining the said guarantee shall be for the account of the *supplier*. Upon application by the *supplier* following the fulfilment of the *supplier's* obligations in full as specified in the *purchase order*, as amended, the guarantee will be returned to the *supplier* provided the *company* is satisfied that the *supplier's* obligations have been fulfilled in all respects.
- 20.10 All payments will be made by electronic funds transfer only. The *supplier* agrees to furnish the *company* with all required information and documentation to enable the required payment.
- 20.11 The *supplier* indemnifies the *company*, the *owner*, its employees and agents against any claims of any nature which may be brought against any of them by any person or entity alleging non-payment of any amounts due to the *supplier*, the delivery, collection or transfer of which has been effected in terms of this clause 20.
- 20.12 The *owner* may refuse payment of any *tax invoice*, which it may contest.

21. SETTLEMENT OF DISAGREEMENTS AND DISPUTES

- 21.1 Should any disagreement between the *supplier* on the one hand and the *company* on the other arise out of the *contract*, the *company's* nominated responsible person will determine such disagreement by a *written* decision given to the *company* and the *supplier* within 14 (fourteen) calendar days of a *written* request to do so.

Such decision shall be final and binding on the *parties*, unless either *party* within 14 (fourteen) calendar days of receipt thereof disputes the same by *written* notice to the other *party* and the *company's* nominated responsible person, in which case the disagreement shall be deemed a dispute. Should the *company's* nominated responsible person fail to give a *written* decision within the said period of 14 (fourteen) calendar days, then either *party* may give notice to the other *party* that such disagreement be declared a dispute.

Where the dispute is submitted to arbitration, the arbitration shall be held in terms of the

relevant Arbitration Act of the country in which the *company* is situated and shall be conducted in accordance with the relevant current Rules of Conduct of Arbitrators published by the Association of Arbitrators and shall be heard by a sole arbitrator unless otherwise agreed by the *parties*.

- 21.2 The arbitrator will be nominated by the *company*. Should the person named be unwilling or unable to act then the arbitrator shall be chosen by the *supplier* from a panel of 3 (three) persons nominated by the *company* at the *written* request of either *party* within 7 (seven) calendar days of receipt of notice advising the names of the said panel. The arbitrator shall have the power to open up, review and revise any certificate, opinion, decision, requisition or notice relating to all matters in dispute submitted to the arbitrator and to determine all such matters in dispute submitted to the arbitrator in the same manner as if no such certificate, opinion, decision, requisition or notice had been issued. The arbitrator's opinion shall be given to both parties in *writing*. Reference to arbitration shall not relieve either *party* from any liability for the due and timeous performance of their obligations in terms of the *contract*.

22. LIABILITY

None of the *parties* to the *contract* shall be liable for consequential damages which any one of the *parties* may suffer as a result of a breach by the other *party* of any of the obligations imposed upon it by this *contract*. For the purposes of this *contract* consequential damages shall mean indirect damages which shall be any loss of profit, loss of business or trade, or loss of business reputation or business opportunities suffered by any of the *parties* as a result of any breach of either aforesaid obligations.

Should any third party be successful in any claim against the *company* and / or the *owner* then the *supplier*, by entering into this *contract* indemnify the *company* and / or the *owner* and shall reimburse the *company* and / or the *owner* on demand for all payment, damages and costs including, but not limited to legal fees on an attorney-client basis suffered by the *company* and / or the *owner* as a result of any negligent act, criminal conduct, wilful misconduct or omission of the *supplier* or its representatives.

23. EXTENDED ENVIRONMENTAL RESPONSIBILITIES

The De Beers Family of Companies ("De Beers") has an international spread of operations active in prospecting, mining and marketing of diamonds and recognises the need to strike a balance between its economic, social and environmental responsibilities. In pursuance of the highest standards of environmental care and protection, De Beers is committed to the Extended Producer Responsibility strategy which promotes the integration of environmental costs associated with the *goods* throughout their life cycle into the market price of the products and requires that the *supplier* be liable for the cost of managing its products at end of life.

The *supplier*, regardless of being a producer, importer or seller, will therefore adopt a 'cradle to cradle' recycling system designed, financed and managed by the *supplier* in terms of the *goods* supplied in this *contract*, be it a stand alone supply or as part of a service. The sustainable and safe handling of the remains of the *goods* will require ongoing commitment and active management by the *supplier* and the *supplier* will submit a formal bi-annual report to the *owner* in this regard.

The *supplier* will also demonstrate to the *company* on an annual basis what auditable contributions it has made to reducing its environmental footprint.

24. HIV/AIDS PROGRAM (Only applicable if the *company* and / or *owner* are based in Southern Africa)

De Beers acknowledges the high incidence of HIV/AIDS in Southern Africa and the threat that this poses to the well being of the region.

De Beers is committed to preventing the spread of the disease. In keeping with the De Beers Corporate Policy on HIV/AIDS, we are educating our employees and their families about the virus. We do not discriminate against employees who may have contracted HIV/AIDS.

De Beers has established a network of AIDS Coordinators, AIDS Counselors and Peer Group leaders to advise and counsel employees about the virus. De Beers also funds 90% of the cost of anti-retroviral drugs to employees and their spouses (one legally married spouse).

In addition to these measures, De Beers also announced a new policy to bolster its fight against HIV/AIDS. All companies wishing to do business with De Beers are required to actively support its policies and efforts in the promotion of health and safety.

Companies wanting to do business with De Beers are required to demonstrate that they have a work place policy and program on HIV/AIDS. These policies must include clauses ensuring that there is no

discrimination on the basis of HIV status, that the confidentiality and privacy of employees is respected and that the criteria for ill-health retirement are clear. Companies are also expected to have an education program in place which must give employees current and accurate information about HIV-related issues in the work place and in their personal lives.

Non-compliance with this clause will be considered a material breach of the *contract*. The *supplier* will after receiving a *written* notice from the *company* to rectify any default in terms of this clause to do so within 30 days of receipt of the notice and failing to remedy such default will result in immediate termination of the *contract* by the *company* without the *company* and / or the *owner* having to pay any compensation to the *supplier* for such cancellation.

25. ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

De Beers is committed to compliance with all relevant legislation in the jurisdictions in which it operates, including legislation and guidelines related to the prevention of money laundering and the combating of the financing of terrorism. Accordingly, De Beers will cooperate with all the relevant authorities and bodies, and expects that those that it does business with, directly or indirectly, do the same.

It is a De Beers corporate policy to rely on the diligence and compliance of financial institutions together with the relevant financial intelligence legislation as regards traceability of funds. Due diligence will therefore be applied in the selection of suppliers and/or suppliers with which De Beers transacts and De Beers expects their suppliers and/or suppliers to apply the same caution. De Beers reserves the right in this regard to do whatever is necessary to perform due diligence, including verification of banking details, sources of funds, etc.

Should any suppliers and/or suppliers have cause to suspect De Beers might be or has been exposed to funds for which the source is doubtful, the circumstances must immediately be advised to the General Manager Supply Chain Services of De Beers Group Services (Pty) Ltd. De Beers further reserves the right to investigate and/or report any doubtful/suspicious transactions to whichever authorities may need to be so advised.

Non-compliance with this clause will be considered a material breach of the *contract* and will result in immediate termination of the *contract* by the *company* without the *company* and / or the *owner* having to pay any compensation to the *supplier* for such cancellation.

26. DIAMOND BEST PRACTICE PRINCIPLES

De Beers is committed to sustainable development as an integral part of the way we do business. To this end we have developed a set of best practice principles describing elements such as economics and business ethics, social and environment to which all entities within De Beers and our shareholders subscribe. De Beers are in the process of socialising these principles with all stakeholders and these defined principles will be forwarded to you shortly. We will expect all our suppliers to apply Best Endeavours in terms of aligning with these principles.

Non-compliance with this clause will be considered a material breach of the *contract*. The *supplier* will after receiving a *written* notice from the *company* to rectify any default in terms of this clause to do so within 30 days of receipt of the notice and failing to remedy such default will result in immediate termination of the *contract* by the *company* without the *company* and / or the *owner* having to pay any compensation to the *supplier* for such cancellation. In the event that the *supplier* does rectify the first default but defaults a second time on the same type of incident on a separate occasion then the *contract* will immediately be terminated by the *company* without the *company* and / or the *owner* having to pay any compensation to the *supplier* for such cancellation.

27. BLACK ECONOMIC EMPOWERMENT, LOCALISATION AND FIRST NATION INITIATIVES

De Beers is committed to furthering Broad Based Black Economic Empowerment (BBBEE) in South Africa, localisation in Botswana, Angola and Namibia as well as first nation initiatives in Canada. De Beers expects the same from its suppliers.

The *supplier* will always where possible support BBBEE, local and/or local BBBEE and first nation initiative companies in the provision of the *services*.

Non-compliance with this clause will be considered a material breach of the *contract*. The *supplier* will after receiving a *written* notice from the *company* to rectify any default in terms of this clause to do so within 30 (thirty) days of receipt of the notice and failing to remedy such default will result in immediate termination of the *contract* by the *company* without the *company* and / or the *owner* having to pay any compensation to the *supplier* for such cancellation.

In the event that the *supplier* does rectify the first default but defaults a second time on the same type of incident on a separate occasion then the *contract* will immediately be terminated by the *company*

without the *company* and / or the *owner* having to pay any compensation to the *supplier* for such cancellation.

The *supplier* shall supply the *company* with an annual certification of its BBBEE accreditation.

28. TAXES, DUTIES AND PERMITS

- 28.1 The *purchase price* shall include all *value added tax* applicable to the *goods*.
- 28.2 The *supplier* shall be responsible for the payment to the relevant authorities of any and all customs and excise duties, levies and other costs incurred by the *supplier* in respect of the importation of *goods* into the country of the delivery destination.
- 28.3 The *company* and / or the *owner* will not be responsible for any income tax or other taxes levied on the *supplier* and/or the *supplier's* employees representatives in respect of the *supplier's* obligations in terms of the *contract*.
- 28.4 The *supplier* shall obtain from the relevant authorities and administer all permits and licences which are necessary to enable the *supplier* to fulfil the *supplier's* obligations in terms of the *contract*, but not limited to permits for importation and transportation of *goods*. Import permits obtained by the *supplier* in terms of the foregoing shall be in the joint names of the *supplier* and the *company*. Copies thereof shall be supplied to the *company*.

29. CESSION AND ASSIGNMENT

- 29.1 The *supplier* shall not assign, cede or transfer to any person the *supplier's* rights, title or interest or obligations (or any part thereof) at any time during the existence of the *contract* except with the *written* consent of the *company*.
- 29.2 The *supplier* shall notify the *company* at the time of tender, of the existence of any cession of book debts and whether such cession is in respect of existing book debts or future book debts or both.
- 29.3 Failure to comply by the *supplier* with the provision of this clause 29 will be a material breach of *contract*.

30. VALIDITY

Any provision in this *contract* which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this *contract* shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. *pro non scripto*) and severed from the balance of this *contract*, without invalidating the remaining provisions of this *contract* or affecting the validity or enforceability of such provision in any other jurisdiction.

31. RIGHT TO AUDIT

The *contractor* must permit the *company* or its designated internal / external audit representatives reasonable access to the *contractor's* premises / facilities for the purposes of conducting audits of the *contractor's* records and/or processes to the extent necessary to verify the *contractor's* compliance with this *contract*. The *contractor* must provide the *company* and its nominated representatives with such cooperation and access to premises, information and personnel relevant to the *contract* as is necessary and permit the *company* and its representatives to take copies of such records relevant to the *contract* as are to be considered relevant by the *company*. The *company* will conduct audits at its discretion.

32. SALE OF SUPPLIER'S BUSINESS

- 32.1 If the *supplier* desires to sell all or any part of its business relating to the production of the *goods* and receives a *bona fide* offer which it is willing to accept for the purchase of such business ("the *Offer*") from any person ("the *Offeror*"), the *supplier* shall within 10 (ten) business days of receipt of the *Offer* give *written* notice to the *company* of:
- 32.1.1 the offered price ("*Sale Price*") and payment terms;
- 32.1.2 the subject matter of the *Offer*;
- 32.1.3 the terms of the *Offer* (including a copy of the *Offer*); and
- 32.1.4 the name and address of the *Offeror*.

- 32.2 The giving of a notice under clause 32.1 shall constitute an offer by the *supplier* ("*supplier's Offer*") to sell all or part of its business (as the case may be) to the *company* at the *Sale Price* and on the same terms and conditions as those contained in the *Offer*, provided that the *supplier* shall ensure that all licenses and authorisations that may be necessary for the business to produce and sell the *goods* are also properly and fully transferable with the business, and such transfer will be deemed to be included in the *supplier's Offer*.
- 32.3 The *supplier's Offer* shall be irrevocable for a period of 60 (sixty) days (or any other period agreed in *writing* between the *supplier* and the *company*) from the date of receipt by the *company* of the notice issued by the *supplier* pursuant to clause 32.1 ("*the Offer Period*").
- 32.4 If the *company* accepts the *supplier's Offer* (by written notice to the *supplier* sent within the *Offer Period*) it shall purchase the business offered from the *supplier* on the terms and conditions as set forth in the *supplier's Offer*.
- 32.5 If the *company* does not accept the *supplier's Offer* then the *supplier's Offer* shall lapse at the end of the *Offer Period* and the *supplier* may sell or transfer the business to the *Offeror* on the terms and conditions stated in the *supplier's Offer*, within 60 (sixty) days of the end of the *Offer Period*. To the extent that the *supplier* does not sell the business in terms of this clause, all the provisions of this clause 32 shall again apply to any subsequent sale of such business.
- 32.6 Nothing in this clause 32 shall be interpreted as, and no sale of the business or part thereof of the *supplier* to a third party in accordance with the provisions of this clause 32 will in any way relieve the *supplier* of any of its obligations under this *contract*, unless the *company* agrees in *writing* (at its sole and absolute discretion) to the cession of the *supplier's* rights and the delegation of the *supplier's* obligations under this *contract* in accordance with the provisions of clause 32.

33. SUB-CONTRACTS

- 33.1 The *supplier* shall not sub-contract the whole or portions of the *contract*, except where otherwise provided for in the *contract* without the prior *written* consent of the *Contract Manager*. Such consent shall not relieve the *supplier* from any liability or obligation under the *contract* and the *contractor* shall be responsible for the acts, defaults and neglects in terms of the *contract* or at law, occurring as a result of such sub-contracting.
- 33.2 Notwithstanding such consent, the *supplier* shall be held totally responsible to ensure that the *sub-contractor(s)* meet the following requirements:
- 33.2.1 *Sub-contractor(s)* shall be fully experienced in the specific *goods* to be supplied and have the necessary management and other resources to comply with the requirements of the *contract*.
 - 33.2.2 *Sub-contractor(s)* shall be able to comply fully, without qualification, with quality assurance requirements included in the *contract*.
 - 33.2.3 *Sub-contractor(s)* shall be able to satisfy any quality assurance audit that may be carried out by the *Contract Manager* in terms of the *contract* of any *sub-contract* awarded.

34. VARIATION, CANCELLATION AND WAIVER

Any contract varying, adding to, deleting from, novating or cancelling this *contract*, and any waiver of any right under this *contract*, shall not be effective unless reduced to *writing* and signed by or on behalf of the *parties*.

35. INDULGENCES

An indulgence granted by a *party* to the other *party* shall not constitute a waiver of the indulging *party's* rights under this *contract*; and, accordingly, the indulging *party* shall not be precluded from exercising any past or future rights against the indulged *party* as a consequence of having granted such indulgence.

36. ENTIRE AGREEMENT

The *contract* constitutes the exclusive and entire agreement relating to the subject matter thereof, and supersedes any previous agreements or understandings and no other terms or provisions shall form part thereof. This *contract* may be amended or varied only by an amendment to the *contract* issued by the *company* and signed by the *parties* to the *contract*.

