

## SUPPLY CHAIN MANAGEMENT OFFICE

## SECTION C

## GENERAL CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

THE CLAUSE HEADINGS ARE FOR CONVENIENCE OF REFERENCE ONLY AND SHALL NOT AFFECT THE CONSTRUCTION OF ANY TERMS OF THE CONTRACT.

**1.0 DEFINITIONS**

Unless inconsistent with the context or otherwise specified all terms and expressions importing the singular shall include the plural and vice versa. For the purposes of the order the meaning of the following terms and expressions shall be as stated: -

- 1.1 "purchaser" means Debswana Diamond Company (Pty) Ltd.
- 1.2 "purchaser's representative" means the person stipulated as such in the Special Conditions of Contract who shall be the only person authorised by the purchaser to accept any price increases, or agree to amend any term of the contract.
- 1.3 "commencement date" means the date stipulated as such in the Special Conditions.
- 1.4 "order" means a written instrument of order, signed by the order agent, and the contents thereof and all documents attached thereto, the specification and all schedules, drawings and documents attached thereto, approved by the purchaser.
- 1.5 "order agent" means the person stipulated as such in the Special Conditions, who alone shall be entitled on behalf of the purchaser to issue any order, or to agree to

approve and issue any order modification, who, in the absence of other stipulation in this regard in the Special Conditions, shall be the purchaser's representative.

- 1.6 "delivery agent" means the person stipulated as such in the Special Conditions who alone shall be entitled on behalf of the purchaser to receipt delivery and acknowledge receipt of the goods.
- 1.7 "Form of Agreement" means the Form of Agreement completed, executed and delivered by the purchaser in acceptance of the supplier's tender, and then executed by the supplier.
- 1.8 "contract" means the contract brought about between the purchaser and the supplier on execution by the purchaser and the supplier of a Form of Agreement, the Special Conditions of Contract Section B with annexed Schedules and supporting documentation thereto, and the General Conditions of Contract Section C thereto.
- 1.9 "supplier" means the party to which the purchaser has awarded the contract to supply the goods, as set forth in the Special Conditions, its successors in title and permitted assigns.
- 1.10 "month" means a calendar month.
- 1.11 "days" means calendar days.
- 1.12 "goods" mean the equipment or material defined in the Special Conditions.
- 1.13 "services" means the services as set forth in the Special Conditions.
- 1.14 "acceptance" means in respect of goods which are to comply with a specification or fitness for purpose, or quality, or standard, or capability or functionality written acceptance by the acceptance agent of compliance, and/or in respect of goods to be commissioned and/or installed and/or acceptance tested, written

acknowledgement by the acceptance agent of satisfactory result of the acceptance tests.

- 1.15 “acceptance agent” means the person stipulated as such in the Special Conditions who alone shall be entitled on behalf of the purchaser to issue written acceptance of the goods, as envisaged in 1.13;
- 1.16 “Special Conditions” means the Special Conditions of Contract Section B in the Enquiry to Tender, as amended and executed by the purchaser and issued out pursuant to acceptance by the purchaser of the supplier’s tender and executed by the supplier as Section A to the Form of Agreement.
- 1.17 “specification” shall mean that defined as such in the Special Conditions and means the quantity, quality, fitness for purpose, standard, capability or functionality, description of the goods and services and in respect of goods, where stated the brand name of the goods, (which brand name shall be indelibly and legibly stamped / embossed on the goods and / or the containers in which the goods are packed by the manufacturer).
- 1.18 “rail delivery” means the delivery of goods by rail transport to the receiving depot/s of the purchaser.
- 1.19 “road delivery” means the delivery of goods by road transport to the receiving depot/s of the purchaser.
- 1.20 “courier delivery” means the handing of the goods to a courier for delivery by road or air or a combination of both, to the receiving depot(s) of the purchaser.
- 1.21 “postal delivery”, means the handing of goods to the post office for despatch by surface parcel post except where despatch by airmail is stipulated in the order.

- 1.22 “air delivery” means the handing of goods to a registered carrier for despatch by airfreight.
- 1.23 “writing” means any typewritten, printed or hand-written document, signed by the purchaser’s representative on behalf of the purchaser in the case of the purchaser, and signed by an authorised representative of the supplier in the case of the supplier.
- 1.24 “payee” means the party to which payment for goods supplied in terms of the order shall be made, which party shall, unless otherwise stipulated in the Special Conditions, be the supplier.
- 1.25 “site” means the land and other places on, under, in or through which the goods are to be delivered and any other lands or places, including ways of access, provided by the purchaser for the purposes of the contract, together with such other places as may be specifically designated in the Special Conditions as forming part of the site, but shall exclude the supplier’s usual premises and the supplier’s permanent manufacturing and fabrication facilities.
- 1.26 “sub-contractor” means any corporate body or person (other than the contractor) to whom any part of the contract has been sub-contracted by the contractor with the consent of the engineer.
- 1.27 “EFT” means electronic funds transfer.

## **2.0 WARRANTIES**

- 2.1 The supplier warrants in respect of all goods supplied in terms of the contract:-
- 2.2 unless otherwise stipulated, the goods shall be new and not second-hand;
- 2.3 the finish shall be of a standard commensurate with the quality of the goods;

- 2.4 the goods shall comply with the specifications.
- 2.5 The supplier warrants in respect of all services supplied in terms of the contract
- 2.6 The supplier warrants to the purchaser that throughout the duration of the contract it itself has or shall procure for itself specialist expertise and experience in rendering the services and knowledge of best modern practices pertaining to the services.
- 2.7 The supplier undertakes to the purchaser that at all times during the currency of the contract it will, in rendering the services, apply such degree of due care, diligence, skill, expertise, experience and knowledge expected of an experienced professional in the field of the services and provide the services in accordance with best modern practice, in the best interest of the purchaser, as if the contractor were the consumer of the services.
- 2.8 The supplier undertakes to optimise the economic interests of the purchaser having regard to intended purpose life and operation of the services.
- 2.9 The supplier in rendering the services has and shall utilise equipment that is best suited for the services and capable of delivering the same in accordance with best modern practice.
- 2.10 The supplier in causing the services to be rendered will utilise only personnel who have the training, qualification, skill, expertise and experience to perform the services in accordance with best modern practice.
- 2.11 The supplier acknowledges that the purchaser is induced to enter into the contract and in relying the services will be acting on the strength of the warranties and undertakings set forth in this clause.

### **3.0 PRICE**

- 3.1 The price shall be as set out in the Schedule to the Special Conditions.
- 3.2 Prices therein set forth in different currencies shall be paid by the purchaser in those currencies.

### **4.0 PRICE ADJUSTMENTS**

- 4.1 Unless otherwise stipulated in the Special Conditions, all prices shall be deemed to be firm and inclusive of the cost of delivery to the purchaser.
- 4.2 Where the prices in the Special Conditions are stated to be subject to adjustment; or where the goods covered by the contract are to be imported and an adjustment to the prices in the contract (not occasioned by fault or negligence on the part of the supplier) are permitted in the Special Conditions by reason of variations in the rate of exchange between the currency of the country of manufacture and Botswana currency, or in the ocean / air freight and insurances, or in the customs clearing charges and / or where applicable, in Botswana customs duties, taxes and levies, any claim for price adjustments shall be submitted, prior to delivery of the goods or services, to the purchaser's representative and shall be supported by such documentary evidence as may be required by the purchaser's representative. No price adjustments shall be effective unless there has been a price variation acknowledgement under the hand of the purchaser's representative.
- 4.3 In the event of the requested effective date having been exceeded before the application for price adjustments is accepted by the purchaser's representative any deliveries shall continue to be made at the contract prices until such time as the application for price adjustments is accepted in writing by the purchaser's representative whereafter adjustments to the contract price shall be made to the

purchaser by means of one composite debit note supported with details of the invoices so affected.

- 4.4 Notwithstanding the provisions of 4.2, the purchaser shall have the right to reject any proposed price adjustments and instead, in its sole discretion, to cancel the contract or outstanding order forthwith without any liability for compensation to the supplier for any damages whatsoever including loss of business and / or profits resulting from such cancellation.
- 4.5 Cancellation in terms of this 4 shall be effected by written notification to this effect by the purchaser's representative to the supplier.

## **5.0 PACKING AND CONTAINERS**

- 5.1 If the goods are stipulated in the Special Conditions to be packed all goods shall be adequately and securely packed in such a manner as to prevent damage in transit.
- 5.2 Unless otherwise stipulated in the Special Conditions, the prices shall be deemed to include the cost of all packing materials and containers which shall be and remain the property of the purchaser.
- 5.3 The supplier shall identify each and every package, bundle, bag, carton, container or article by means of a suitable label either securely attached thereto or indelibly painted thereon, with the following information:
- 5.3.1 description of goods
  - 5.3.2 name and address of supplier
  - 5.3.3 name and address of purchaser
  - 5.3.4 order number

- 5.3.5 the purchaser's stock code, where specified in the order
  - 5.3.6 if purchased by mass, nett mass of the contents.
- 5.4 All goods that are hazardous substances shall be identified in accordance with the provisions of 28.

## **6.0 DELIVERIES**

- 6.1 In respect of the delivery of the services, this shall be made in terms of the Special Conditions as regards the parts of the services to be delivered, place of delivery, dates of such deliveries and dates for compliance and/or acceptance testing.
- 6.2 In the event of the purchaser requiring delivery by a method other than that which may be stipulated in the Special Conditions, any additional costs so incurred shall be for the account of the purchaser. If however such alternative method of delivery is necessitated by failure on the part of the supplier to effect delivery within the period stated in the Special Conditions or order (due to any circumstances other than those set out in 18), the provisions of 17 and 22 shall apply.
- 6.3 Where goods are delivered to the purchaser, and / or empty containers are collected from the purchaser, by means of road delivery it shall be incumbent upon the supplier to ensure that the necessary permit in terms of the Road Transport (Permits) Act Cap. 69:03 as amended and in force from time to time is held by the supplier or where applicable by the supplier's agents, distributors or where applicable by the road hauler employed for this purpose, and the supplier indemnifies the purchaser against any loss or delay suffered (including confiscation of the goods and / or empty containers or vehicle) as a result of any action / prosecution under the said act;



- 6.4 Where the goods are to be delivered to the purchaser by road or rail delivery the supplier shall be responsible for all costs arising from damage to property and / or injury to persons caused by the personnel and / or transport vehicles engaged in and upon the transportation of the goods and / or empty containers, irrespective of whether such damage and / or injury is caused within the boundaries of the area/s owned, leased or occupied by the purchaser or outside of such boundaries, and the supplier indemnifies the purchaser against any claims which might be made against the purchaser in respect of such damage and / or injury;
- 6.5 Delivery of goods and / or collection of empty containers shall be effected during the normal working hours of the purchaser, except where otherwise stipulated in the Special Conditions or order or where special arrangements regarding such delivery and / or collection are made between the supplier and the purchaser;
- 6.6 Deliveries shall be effected as stipulated in the Special Conditions or order and it shall be incumbent upon the supplier to provide the necessary labour for the off-loading of such goods.
- 6.7 Where provision is made in the Special Conditions or order for road delivery it is understood and agreed that should the Road Transport (Permits) Act Cap. 69:03 as amended be further amended so as to preclude road delivery, the alternative methods of delivery and any consequent price adjustments shall be the subject of discussion between the supplier and the purchaser's representative. Should the supplier and the purchaser be unable to reach agreement regarding the alternative methods of delivery and any consequent price adjustments, the purchaser shall have the right to cancel the contract or any particular order issued pursuant thereto forthwith, without any liability for compensation to the supplier for any damages whatsoever including loss of business and / or profits resulting from such cancellation.

6.8 Cancellation in terms of this 6 shall be confirmed by written notification to this effect by the purchaser's representative to the supplier.

## 7.0 RISK

7.1 Irrespective of whether the price basis of the order is inclusive of delivery to the destination of the purchaser or F.O.R. point of despatch and, where the price basis is F.O.R. point of despatch, irrespective of whether the supplier is required to consign goods carriage forward or to prepay delivery charges and debit the account of the purchaser, all goods shall nevertheless be and remain at the sole risk of the supplier and the supplier shall bear any and all costs whatsoever arising from or in respect of all losses, damages and / or destruction to the goods until such time as the goods have been received by the purchaser and receipt is acknowledged in writing for on behalf of the purchaser (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) and the supplier alone shall be responsible for and shall make any and all claims in respect of such losses, damages and / or destruction and the purchaser shall if so requested give to the supplier cession of action.

7.2 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 deliverer into the bulk storage equipment at the purchaser. The supplier shall be responsible for doing all things necessary to effect transfer of the goods delivered in bulk from the supplier containers to the purchaser's bulk storage equipment and for discharging the goods into the purchaser's bulk storage equipment.

7.3 The supplier holds the purchaser harmless and indemnifies the purchaser against any loss suffered by it as a result of any damage caused to any property of the

purchaser and against any claims of any employee of the purchaser or any third party arising from any death or injury or loss of or damage to any property as a result of any act or omission of the supplier, its employees, subcontractors or agents or personnel employed in the delivery of and transfer of goods supplied in bulk.

- 7.4 The risk in and to the services shall be vested in and remain with the supplier until same have been accepted by the purchaser as provided for in the Special Conditions.

## **8.0 STOCKS OF GOODS OR SPARES TO BE MAINTAINED**

- 8.1 The supplier shall maintain in stock sufficient quantities of the goods or spares for the proper execution of the contract. The purchaser may, in the Special Conditions or by way of order at its discretion, stipulate in writing the actual quantities of goods or spares that the purchaser requires the supplier to maintain in stock from time to time.

- 8.2 If the goods are imported and the Special Conditions so stipulate, the supplier shall obtain and place in safekeeping the manufacturing and/or purchasing and/or assembly, and/or commissioning, and/or testing specifications of such item/component to enable the purchaser to complete manufacture purchase and assembly, commissioning, testing of and/or continued operation of the goods set out on the list in the event of manufacture and/or delivery of the necessary items/components being interrupted due to circumstances beyond the control of the supplier.

## 9.0 SPARES

The supplier hereby warrants to the purchaser that the spares for the goods set forth in the Special Conditions shall be available for that period set forth in the Special Conditions.

## 10.0 WAYBILLS, INVOICES AND STATEMENTS

### 10.1 As regards goods

10.1.1 Waybills shall accompany every delivery and shall where appropriate include the following information:

10.1.1.1 order number;

10.1.1.2 the purchaser's stock code, (where specified in the order);

10.1.1.3 nett and gross mass;

10.1.1.4 number of bags, cartons or other containers where goods are supplied in such.

10.1.2 Invoices bearing the order number and the purchaser's stock code (where specified in the order) shall be sent, in duplicate, direct to the purchaser at the address specified in the Special Conditions or shown on the order on the day on which goods are delivered.

### 10.2 As regards services:

10.2.1 Invoices due in terms of the Special Conditions shall be forwarded on the day stipulated in the Special Conditions that same be rendered.

10.3 All invoices shall comply with the requirements of the Botswana Value Added Tax Act Cap 50:03 as amended and in force from time to time, and shall be submitted

to the purchaser on due date. Payment will be withheld until invoices so compliant are received.

- 10.4 Unless otherwise provided for in the Special Conditions, accounts shall be made up monthly as at the close of business on the 25<sup>th</sup> day of each month and monthly statements, in duplicate, recording the total amount due at that date shall be forwarded so as to reach the purchaser by not later than the 28<sup>th</sup> day of each month.

## **11.0 PAYMENT**

- 11.1 Provided that waybills, invoices and statements are received on due date, payment for goods and/or services accepted by the purchaser shall, without prejudice to the rights of the purchaser under any of the terms and conditions of the contract or in law, be made to the payee in the relevant currency, within thirty days from date of receipt of statement in the manner and at the address specified in the Special Conditions.
- 11.2 The supplier may not cede or assign the right to receive payment for goods or services supplied in terms of the order without the consent in writing of the purchaser's representative first being obtained. The purchaser shall not be bound to give such consent but may withhold same without assigning any reason therefor, or grant such consent subject to such cession of payments in no way affecting the duties and obligations of the supplier in terms of the order, and subject to such other terms and stipulations as the purchaser may, in the purchaser's absolute discretion, deem fit.
- 11.3 The purchaser and the supplier shall agree upon the most suitable method of payment, which shall be either by cheque or by EFT.

- 11.4 Should the purchaser and the supplier agree upon payment being made by cheque the supplier agrees that:
- 11.4.1 all cheques shall be forwarded by post (unregistered mail) to the supplier's postal address as provided by the supplier from time to time to the purchaser; and
  - 11.4.2 the purchaser will have fully and effectively discharged its obligation to make payment to the supplier once the purchaser has posted the cheque to the supplier at the address referred to in the Special Conditions.
- 11.5 Should the purchaser and the supplier agree upon payment being made by EFT, the supplier agrees that:
- 11.5.1 the supplier will provide the purchaser with written details of the supplier's bank account setting out the supplier's bank, branch and account number.
  - 11.5.2 the supplier will also either provide the purchaser with a cancelled cheque from the suppliers bank account referred to in the Special Conditions or complete the relevant documentation issued by the purchaser duly stamped by the supplier's bank.
  - 11.5.3 the purchaser will have fully and effectively discharged its obligation to make payment to the supplier on giving or causing to be given an instruction to its bankers to effect the transfer of the amount due to the supplier.
- 11.6 The supplier indemnifies the purchaser, its employees and agents against any claims of any nature which may be bought against any of them by any person or entity alleging non-payment of any amounts due to the supplier, the delivery,

posting or transfer of which has been effected in terms of 11.4 or 11.5 as the case may be.

## **12.0 WITHHOLDING TAX**

- 12.1 In respect of suppliers not resident in Botswana, the purchaser shall deduct tax from all suppliers as stipulated in the Income Tax Act of Botswana, as amended, and the Double Taxation Agreement, if any, in place between the Republic of Botswana and the country of residence of the supplier, as amended and in force from time to time. Such tax will be deducted by the purchaser from the total invoice value and shall be forwarded to the Commissioner of Internal Revenue, Gaborone with proof of such payment being furnished to the supplier.
- 12.2 It is the responsibility of the supplier to provide proof to the purchaser that the supplier is a resident of the Republic of Botswana and the purchaser shall, in its sole discretion, decide whether the supplier is a de facto resident of the Republic of Botswana.
- 12.3 In all instances where Withholding Tax is to be deducted by the purchaser, the purchaser will provide a certificate detailing the contract number, supplier and the amount of tax deducted in the prescribed form.
- 12.4 The Double Taxation Agreements in effect between the Republic of Botswana and various other countries provide in varying degrees and to various extents for the recovery of tax imposed in the Republic of Botswana from the tax authorities in those countries. It is the sole responsibility of the supplier at all times to:
- 12.4.1 determine whether a Double Taxation Agreement exists between the Republic of Botswana and the country in which the supplier is registered and / or resident and keep abreast of the terms of such Double Taxation Agreement and any amendments thereto; and

- 12.4.2 determine the manner in which income derived by the supplier from the Republic of Botswana is taxed in the country in which the supplier is registered and / or resident and keep abreast of any changes in such manner of taxation; and
- 12.4.3 determine the manner in which income derived by the supplier from the Republic of Botswana is taxed in the Republic of Botswana and keep abreast of any changes in such manner of taxation.
- 12.5 The supplier shall be responsible to provide the purchaser with a directive from the Commissioner of Internal Revenue as support for any deviation in the withholding tax rates set out above and requested by the supplier.

### **13.0 PREMISES**

- 13.1 Where the Special Conditions stipulate that the supplier shall supply the goods and/or services:-
  - 13.1.1 to premises and/or facilities to be erected and maintained by it on site; or
  - 13.1.2 to premises and/or facilities already erected on site, to be used by it then it shall be incumbent upon the supplier at its cost :
    - 13.1.2.1 where it is to erect the premises and/or facilities to:-
    - 13.1.2.2 submit the plans, design drawings and costs of the premises and/or facilities to the purchaser for approval;
    - 13.1.2.3 cause the premises and/or facilities to be erected within the period stipulated on the Special Conditions in accordance with all applicable laws, bye-laws and regulations; and



- 13.1.2.4 cause all necessary utilities services to be connected and/or supplied to the premises and/or facilities, by the appropriate service provider;
- 13.1.3 insure the premises and/or facilities, against such risk in an amount(s) equal to the replacement cost thereof, and cause the interest of the purchaser to be noted thereon;
- 13.1.4 keep all aspects of the premises and/or facilities in a neat and tidy condition, and in a good and serviceable state of repair (fair wear and tear excepted);
- 13.1.5 itself comply with and ensure that the premises and/or facilities and plant, machinery, equipment, fixtures and fittings thereon and therein comply with any laws, bye-laws, and regulations that may apply to it, the premises and/or facilities and the activities carried on thereon and therein;
- 13.1.6 obtain and maintain all such licences, permits and permissions as are necessary in respect of the activities carried out on and in the premises and/or facilities;

from time to time carry out such maintenance, repair, refurbishment and replacement of the premises and/or facilities and of any plant, machinery equipment, fixtures or fittings therein as accord with sound business practice in the industry of which the activities carried out in or on the premises and/or facilities form part, and as required by provision of any law, bye-law, regulation or directive of any regulatory authority having jurisdiction in respect of the premises and/or facilities or such activities, or such plant, equipment, fixtures or fittings;

cause the premises, facilities, plant, machinery, equipment, fixtures and fittings to be inspected as required by law, and comply with any directives of any competent officer pursuant to that inspection;

itself comply with and cause any person using the premises and/or facilities to comply with the provisions of any law, bye-law, regulation, licence, condition of title, lease under which the land on which the premises and/or are erected or situate, is held;

comply with all the provisions of any policy of insurance in respect of the premises, facilities, plant, machinery, equipment, fixtures and fittings and not do anything or omit to do anything or allow or permit any act or omission by which any insurance may be voided or repudiated;

if the premises and/or facilities or any part thereof or any plant, machinery, equipment, fixture or fitting is destroyed or damaged or lost, cause same to be rebuilt, repaired or replaced as expeditiously as possible;

pay such rent or other charges for the use thereof as the Special Conditions may stipulate.

13.2 The supplier acknowledges that at the termination or cancellation of the contract, the premises and facilities and any plant, machinery, equipment and fixtures and fittings which by their nature are attached thereto, or which cannot be removed without damage to the premises or site shall revert to the purchaser and, unless otherwise stipulated in the Special Conditions, without compensation.

13.3 The purchaser is in a state of continuous operation, and therefore all service and access ways on site shall be maintained open and free from obstacle or obstruction at all times. The supplier shall procure that neither it nor its employees

nor subcontractors nor agents nor employees thereof shall allow any obstacle or obstruction in or remain in such service or access ways.

#### **14.0 INTELLECTUAL PROPERTY RIGHTS**

- 14.1 The supplier indemnifies and shall keep indemnified the purchaser against all claims, losses and costs (including legal costs as between attorney and client) and all other expenses whatsoever that the purchaser may incur as a result of any action, proceeding or claim made against the purchaser arising from the acquisition, use, reproduction or adaptation of the goods or services or of any process associated therewith, or of any documents appertaining to the goods or services, constituting an infringement of any patent rights, registered designs, registered trademarks, copyright or other protected rights in respect of the goods or services.
- 14.2 This indemnity shall extend also to all losses, costs and expenses as aforesaid incurred by the purchaser in the event that the goods or services, or any part thereof, or any process, or any design, trademark, copyright, or documents appertaining to or in any way whatsoever associated with the goods or services or any part thereof, become the subject of an interdict or other process of law depriving the purchaser of the rights of possession, use, reproduction, or adaptation, or of any right to benefit therefrom.
- 14.3 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 purchaser and which design was not at the time of delivery of goods or the services 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 or the services and/or any process and/or

any rights or benefit therefrom, in a foreign country not specified by the purchaser or not disclosed to the supplier.

- 14.4 The purchaser shall promptly give the supplier notice of any action, proceeding, claim or threat instituted or made against it in respect of the infringement of intellectual property rights.
- 14.5 The contractor shall immediately inform the purchaser of any claims or threats made against the contractor in respect of the infringement of patents or other rights arising from the supply of the services by the contractor.
- 14.6 Immediately after the giving of such notice the purchaser and the contractor shall consult each other concerning the subject of the notice and the purchaser may at its option decide to:
- 14.6.1 permit the supplier at the latter's own expense to conduct any litigation that may ensue and any negotiations for a settlement of such litigation or claim, with the proviso that the supplier shall keep the purchaser informed of all steps that are taken and of the outcome; or
- 14.6.2 conduct any litigation that may ensue and all negotiations for a settlement in consultation with the supplier, in which event the supplier shall be liable for all reasonable costs associated therewith and shall be liable for the amount settled on.
- 14.7 In connection with and for the purposes of the contract, the supplier is deemed to have authorised the purchaser 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 works in which copyright

subsists, which are furnished by the supplier to the purchaser, and to authorise others so to do.

- 14.8 The rights and obligations in this clause shall survive the termination of the contract and shall continue in full force and effect for a period of 10 (ten) years from the date of which the works are taken over by the purchaser or the termination of the contract, whichever is the later.
- 14.9 The contractor shall pay all royalties and expenses and be liable for all costs in respect of the use of patent rights, trademarks or other protected rights, whether in the Republic of Botswana or elsewhere for all or any of the contractor's obligations undertaken in terms of the contract.
- 14.10 The supplier hereby grants to the purchaser the right to incorporate the part numbers relating to the goods and parts therefore, in its catalogue systems, and to reproduce the part numbers, in whole or in part, for any purpose and, in particular, for procuring such goods or parts.

## **15.0 INSPECTIONS, TESTS AND ANALYSES**

- 15.1 Where the goods or services are required to comply with specification, and such compliance is not ascertainable from a visual examination of the goods or services on delivery, acceptance by the delivery agent of the delivery of the goods or services shall not be construed as acceptance by the purchaser that the goods or services as delivered complied with the specification, and shall be without prejudice to the purchaser's right to reject the goods or services as being defective by virtue of non-compliance, when the same is ascertained at a later date.
- 15.2 The purchaser shall have the right to arrange for inspection of the goods or services at any time during the process of or upon completion of manufacture, assembly or installation and/or tests and/or analyses and require the contractor to

comply with clause 16.1, as the purchaser may deem necessary, to reject any goods or services which do not comply with the specification, without prejudice to the purchaser's rights in terms of 16, 17 and 22.

15.3 Should any dispute arise as to whether or not goods or services rejected by the purchaser comply with the specification, the supplier may within seven days of such rejection arrange for tests and / or analyses to be undertaken by a suitably qualified expert to be nominated by the purchaser and the results of such tests and / or analyses shall be final and binding. The costs of such tests and / or analyses shall initially be borne by the supplier but in the event of the tests and / or analyses proving that such goods or services do comply with the specification the purchaser shall refund to the supplier all costs incurred by the supplier in respect of such tests and / or analyses. In the event of the supplier, within seven days of such rejection, failing to arrange for such tests and / or analyses to be undertaken, the supplier shall be bound by the provisions of 16.1.

15.4 Regardless of the dispute and arrangement for tests and/or analysis as envisaged in this 15.4, the contractor shall be bound by the provisions of 15.2, and in the event the tests and/or analyses proving that the services do comply with the specifications, the purchaser shall pay to the contractor the contract price for the goods delivered and the costs of removal or replacement of any goods in compliance with 15.2.

## **16.0 REMEDIES IN CASE OF DEFAULT IN PERFORMANCE**

16.1 Should the supplier deliver any goods or services which do not comply with the specification or fail to deliver the goods or services within the time specified for delivery, the purchaser shall have the right to refuse to take delivery of, or after having taken delivery to reject, the goods or services. In the event of such refusal

or rejection the goods or services shall be held by the purchaser at the sole risk of the supplier, and the purchaser shall be entitled:

- 16.1.1 to retain the goods or services, if located in a security area as defined by the purchaser, and the supplier alone shall be liable for and pay all costs of and incidental to such goods; or
  - 16.1.2 to require the supplier to remove, and the supplier shall remove, the goods or services and the supplier alone shall be liable for and shall pay all costs of and incidental to such removal, including demurrage; or, in the purchaser's sole discretion;
  - 16.1.3 to require the supplier to replace as soon as possible and deliver as soon as possible, and the supplier shall so replace, the goods or services so refused or rejected with goods or services complying with the specification and the supplier alone shall be liable for and shall pay all costs of and incidental to such replacement;
  - 16.1.4 to purchase from another source goods or services complying with the specification to replace the goods or services so refused or rejected and procure delivery thereof as soon as possible, in which event the purchaser shall be entitled to recover from the supplier any amount by which the price so paid exceeds the price stated in the Special Conditions or order, and all costs of delivery by the fastest possible means shall be taken into account in assessing such excess.
- 16.2 The supplier shall in addition refund to the purchaser the purchase price if paid, and all other costs incurred by the purchaser in respect of the goods or services so refused or rejected.

- 16.3 Should any dispute arise as to whether or not goods or services refused or rejected by the purchaser comply with the specification, the supplier may within seven days of such refusal or rejection arrange for tests and / or analyses to be undertaken by a suitably qualified expert to be nominated by the purchaser and the results of such tests and / or analyses shall be final and binding. The costs of such tests and / or analyses shall initially be borne by the supplier but in the event of the tests and / or analyses proving that such goods or services do comply with the specification the purchaser shall refund to the supplier all costs incurred by the supplier in respect of such tests and / or analyses. Regardless of the dispute and arrangement for tests and/or analysis as envisaged in this 16.3, the supplier shall be bound by the provisions of 16.1, and in the event tests and/or analyses proving that the goods or services do comply with the specification, the purchaser shall pay to the supplier the contract price for the goods or services delivered and the costs of removal (16.1.2) or replacement (16.1.3). In the event of the contractor, within seven days of such refusal or rejection, failing to arrange for such tests and/or analyses to be undertaken, the contractor shall be bound by the provisions of 16.1.
- 16.4 Where goods are of a perishable nature or where goods or services are patently of a quality other than that stipulated in the specification, the purchaser's decision shall be final and binding.
- 16.5 Acceptance by the purchaser of any goods or services not complying with the specification shall not prejudice or affect the purchaser's rights to refuse or reject any subsequent deliveries of goods or services not complying with any of the aforesaid.
- 16.6 In the event of any latent defects manifesting themselves on the goods or services, the purchaser shall give written notice to the supplier that the purchaser



requires the supplier to replace, and the supplier shall replace, such defective goods or services; the supplier alone shall be liable for and shall pay all costs of and incidental to such replacement.

- 16.7 Should any dispute arise as to whether or not latent defects are present in the goods or services the supplier may within seven days of the date of receipt of such notice arrange for tests and / or analyses to be undertaken by a suitably qualified expert to be nominated by the purchaser and the results of such tests and / or analyses shall be final and binding. The costs of such tests and / or analyses shall initially be borne by the supplier but in the event of the tests and / or analyses proving that latent defects are not present in the goods or services the purchaser shall refund to the supplier all costs incurred by the supplier in respect of such tests and / or analyses. Regardless of the dispute and arrangement for tests and/or analysis as envisaged in this 16.7, the supplier shall be bound by the provisions of 16.6, and in the event the tests and/or analyses proving that the goods or services suffer no latent defect, the purchaser shall pay to the supplier the contract price for the goods or services delivered and the costs of replacement made pursuant to 16.6.
- 16.8 Failure on the part of the purchaser to implement the provisions of 16.6 or 16.7 in respect of particular goods or services in which latent defects are present shall not prejudice or affect the purchaser's rights to implement the said provisions in the event of latent defects being present in other goods or services supplied in terms of the contract.
- 16.9 In addition to the purchaser's rights set out in 16.6, 16.7 and 16.8, the purchaser shall have all other common law rights which it would otherwise have for latent defects in the goods or services, both with regard to the remedies available to it

and with regard to the length of time that the supplier remains liable for the latent defects.

16.10 The supplier acknowledges that time is of the essence for the contract and each order and that should the delivery of the goods or services be delayed beyond the period stated in the Special Conditions or order (due to any circumstances other than those set out in 18) the purchaser shall in its sole discretion, be entitled but not obliged:

16.10.1 to extend the delivery period stated in the Special Conditions or order to such extent as the purchaser may deem fit, any such extension to the delivery period being authorised by means of an official order modification; or

16.10.2 to require the supplier to effect, and the supplier shall effect, delivery by a method other than that which may be stipulated in the Special Conditions or order and any costs so incurred shall be for the account of the supplier; or

16.10.3 to purchase the required quantity of goods or services from another source and procure delivery thereof as soon as possible and to recover from the supplier any amount by which the price so paid exceeds the price stated in the order and all costs of delivery by fastest possible means shall be taken into account in assessing such excess.

16.11 Acceptance by the purchaser of any goods or services in respect of which delivery has been delayed beyond the period stated in the order shall not prejudice or affect the purchaser's rights to implement the provisions of 16.10 in the event of any subsequent deliveries of goods or services being delayed beyond the period stated in the Special Conditions or order.

16.12 Any action by the purchaser in terms of this 16 shall be without prejudice to any claims for damages that the purchaser might have against the supplier.

16.13 The provisions of this 16 and any action by the purchaser in terms thereof shall not derogate from, or diminish, the rights of the purchaser to implement the provisions of 18.

## **17.0 DAMAGES**

17.1 In the event the supplier fails to deliver any part or all of the goods or services on due date or on due date effects defective delivery and hence competent delivery is not made on due date, then the supplier shall be obliged to effect payment to the purchaser as a genuine pre-estimate of liquidated damages an amount calculated as set forth in the Special Conditions.

17.2 Such amount shall be paid by the supplier to the purchaser within 14 days of demand therefore.

17.3 The purchaser shall be entitled to set off any amount due by the supplier to it in terms of 17.1, from any amount payable by the purchaser to the supplier under the contract.

17.4 The obligation to effect payment of the general pre-estimate of liquidated damages and actual payment of same, is without prejudice to the rights of the purchaser to claim any other damages which it may actually have suffered and be entitled to at law, not calculated in the pre-estimate made as at date of execution of the contract.

## 18.0 FORCE MAJEURE

18.1 Save as otherwise provided for in the Special Conditions, the purchaser and / or the supplier shall be discharged from obligations in terms of the contract or particular order and released from all liability in respect thereof, whether for damages or otherwise, during such time that the purchaser and / or the supplier is prevented from fulfilling obligations in terms of the contract or particular order by reason of acts of God, force majeure, strikes, riots, or any other circumstance beyond the control of the purchaser and / or the supplier as the case may be without fault or negligence, provided that the party affected by any of the events aforesaid, (i) shall have given written notice to the other immediately upon the intervention of the event of its existence and its likely durations and (ii) tenders evidence to the other that it has taken and is taking all reasonable measures to mitigate the effect of, shorten the period and remove the effect of the event.

18.2 It is however understood and agreed that if, as a result of any of the circumstances set out in 18.1, delivery is delayed beyond the period stated in the Special Conditions or order, the purchaser shall, without prejudice to the purchaser's rights under any of the provisions of the contract or in law have the right to:

18.2.1 extend the delivery period stated in the contract or order to such extent as the purchaser may deem fit, provided that any such extension to the delivery period shall be authorised by means of a written notification to this effect by the purchaser's representative to the supplier; or alternatively, and in the purchaser's sole discretion;

18.2.2 cancel the contract or order forthwith without any liability for compensation to the supplier for any damages whatsoever

including loss of business and / or profits resulting from such cancellation; and

18.2.3 to purchase the required quantity of goods from another source and procure delivery thereof as soon as possible

without liability for compensation to the supplier for any damages whatsoever including loss of business and/or profits resulting from this action.

It shall be incumbent upon the purchaser or the supplier whichever be so affected immediately to notify the other in writing of any inability to fulfil obligations in terms of the order by reason of any of the circumstances set out in this 18.

18.3 Cancellation in terms of this 18 shall be confirmed by means of written notice to this effect by the purchaser's representative to the supplier.

## **19.0 PRO RATA SUPPLY**

19.1 Should the supplier be unable to deliver the contractual requirements of the purchaser owing to any of the circumstances set out in 18 but should the contractor be in a position to deliver a portion of the contractual requirements of the purchaser, the contractor shall supply the purchaser with its pro rata share, which share shall be calculated on –

19.1.1 the average monthly purchases made by the purchaser jointly in terms of the contract compared with

19.1.2 the contractor's average monthly total sales

during the period from the date on which the contract commenced until the time of the contractor's inability to deliver.

- 19.2 In such event, it shall be incumbent upon the contractor to notify the purchaser in writing of the total quantity which the contractor has supplied to other parties since the date on which the contract commenced, and the reduced quantity which the contractor proposes to supply to the purchaser.
- 19.3 Notwithstanding anything to the contrary in the contract contained, the purchaser shall be entitled to purchase the shortfall in goods supplied from sources outside the contract.

## **20.0 PURCHASES OUTSIDE THE CONTRACT**

- 20.1 No undertaking can be given as to the quantity of the goods or services that may be purchased during the contract period.
- 20.2 The purchaser shall have the right during the currency of the contract to purchase a portion of the contractual requirements of the purchaser from sources outside the contract, it being understood and agreed however that such purchases from sources outside the contract shall at the expiry date of the contract not have exceeded 10% (ten per centum) by value of the purchases to be made by the purchaser in terms of the contract.
- 20.3 The purchase of goods or services outside the contract for use on any work undertaken by outside parties on behalf of the purchaser during the currency of the contract shall not be a breach of the contract. In addition the contract excludes any goods which are supplied as component and/or ancillary parts of any equipment purchased or acquired by the purchaser during the currency of the contract.

## 21.0 MOST FAVOURED PROVISION

- 21.1 If during the currency of the contract the supplier (or any agent or distributor appointed by the supplier) should supply, or offer to supply, goods or services of the contract specification to any other purchaser, consumer or reseller at prices lower than the contract prices, the purchaser shall be entitled to a corresponding reduction in the contract prices. Delivery costs shall be taken into account when comparing the contract prices and the prices at which goods or services of the contract specification are supplied, or offered for supply, to any other purchaser, consumer or reseller.
- 21.2 Any reduction in the contract prices made in terms of this 21 shall apply to all deliveries of the goods or services to the purchaser on and after the date on which the goods or services are supplied, or offered for supply, at prices lower than the contract prices.
- 21.3 It is understood and agreed that, irrespective of whether the contract prices are stated to be firm or subject to adjustment, the provisions of this 21 shall apply.

## 22.0 CANCELLATION

- 22.1 In the event of 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):
- 22.1.1 failing to deliver the required quantity of goods or services, provided that such failure is not attributable to any of the circumstances set out in 18; or
- 22.1.2 delivering, purporting or endeavouring to deliver any goods or services which do not comply with the specification; or

- 22.1.3 delivering or attempting to deliver short mass and / or measure or giving false mass and / or measure in the waybills and / or invoices rendered in terms of the contract or order; or
- 22.1.4 committing any breach of any of the other terms and conditions of the contract the purchaser shall, 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, be entitled:
- 22.1.5 forthwith to cancel the contract or any order and any other contract/s and/or undertaking/s in force between the supplier and the purchaser, without any liability for compensation to the supplier for any damages whatsoever including loss of business and / or profits resulting from such cancellation; or alternatively, and in the purchaser's sole discretion,
- 22.1.6 to give written notice to the supplier that the purchaser 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 purchaser that such breach will not occur again, the purchaser shall, at the expiry of such period of seven days, have the right to cancel the contract or particular order and any other contract/s and / or undertaking/s in force between the supplier and the purchaser, without any liability for compensation to the supplier for any damages whatsoever including loss of business and / or profits resulting from such cancellation.



22.2 In the event of:

- 22.2.1 the supplier or the manufacturer of the goods being placed under liquidation, either provisionally or finally, whether voluntarily or compulsorily; or
- 22.2.2 the supplier or the manufacturer of the goods being placed under judicial management, either provisionally or finally; or
- 22.2.3 the estate of the supplier or the manufacturer of the goods being sequestered, either provisionally or finally; or
- 22.2.4 the estate of the supplier or the manufacturer of the goods being surrendered; or
- 22.2.5 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
- 22.2.6 there being repeated failure of the equipment used by the supplier or manufacturer which results in frequent delays in delivery; or
- 22.2.7 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
- 22.2.8 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; and
- 22.2.9 the supplier being prevented by force majeure (as contemplated in clause 18) from effecting delivery in terms of any order or under

this contract for such period which in the sole and absolute view of the purchaser is likely to prejudice the operations of the purchaser

the purchaser shall, without prejudice to any of its other rights under this 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, be entitled forthwith to cancel the contract and/or any outstanding order or any other contract/s and / or undertaking/s in force between the supplier and the purchaser, without any liability for compensation to the supplier for any damages whatsoever including loss of business and / or profits resulting from such cancellation.

22.3 Any action by the purchaser in terms of this 22 shall be without prejudice to any claims for damages that the purchaser might have against the supplier.

### **23.0 DRAWINGS, TEST CERTIFICATES AND RELATED DOCUMENTS**

Such drawings, test certificates and related documents as are stipulated in the Special Conditions shall be forwarded to the purchaser before or with delivery and under no circumstances should these documents be packed with any goods delivered under the contract.

### **24.0 CESSATION OR CURTAILMENT OF OPERATIONS**

If during the currency of the contract any of the operations of the purchaser cease or are curtailed, the purchaser shall have the right to reduce the purchaser's requirements in the contract or terminate the contract without payment of any compensation to the contractor for any damages whatsoever including loss of business and/or profits resulting from such reduction.

Reduction or termination in terms of this 24 shall be in writing and be signed by the purchaser's representative.

## **25.0 CONFIDENTIALITY, NON-DISCLOSURE, NON USE UNDERTAKING**

25.1 The supplier acknowledges that in performance of the contract it shall have confidential information as defined in Clause 25.4 herein, disclosed to it, or that such information shall come to its knowledge.

25.2 The supplier undertakes for and on behalf of itself and its advisors, consultants, partners, members, associates, employees, contractors, sub-contractors, agents and sub-agents (as applicable), whether permanent or temporary, to make every effort to hold in trust and confidence all such confidential information received or acquired and not to use, (commercially, technically or otherwise) pass on, publish, disclose or in any manner make available any such confidential information to anyone without the prior written consent of the purchaser.

25.3 The supplier undertakes, on request by the purchaser, to produce to it a non-disclosure undertaking in terms similar to this undertaking executed by each of its advisors, consultants, partners, members, associates, employees, contractors, sub-contractors, agents and sub-agents (as applicable), whether permanent or temporary.

25.4 The supplier agrees that for the purposes hereof "confidential information" shall mean all information or any process, method, technique, usage, system, patent, copyright, in use by the purchaser disclosed to it or its representatives, employees, contractors, sub-contractors or agents by Debswana or which comes to its knowledge, directly or indirectly as a result of its/their participation in the contract but subject at all times that the aforesaid provisions, shall not include information which:

- 25.4.1 at the time it was disclosed, was already known to it or was public knowledge, or thereafter became public knowledge other than through its default, or
- 25.4.2 became known to it, without restriction as to its use and disclosure, from a third party with valid title thereto, or
- 25.4.3 was or is developed by or known to it and any of its advisors, consultants, partners, members, associates, employees, contractors, sub-contractors, agents or sub-agents, either before or subsequent to the disclosure of such information to it, such consultant, partners, associates, employees, contractors, sub-contractors, agent or sub-agent having no knowledge of the content of such disclosure.
- 25.5 The supplier undertakes to disclose such confidential information only to those of its advisors, consultants, partners, members, associates, employees, contractors, sub-contractors, agents or sub-agents, whether permanent or temporary, who require knowledge of such information on a need to know basis to enable the carrying out of any work directly or indirectly connected with the contract.
- 25.6 The supplier undertakes to report to the purchaser any unauthorised disclosure, actual or threatened, of any confidential information that it may become aware of and to co-operate with the purchaser in taking such action as may be deemed to be appropriate in the circumstances.

25.7 The supplier shall not, without the prior written approval of the purchaser's representative:

25.7.1 take or permit to be taken any photograph of the site or of the premises, or of the purchaser's property or any portion thereof;

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

25.7.3 display any advertisements in connection with the contract.

25.8 The rights and obligations contained in this clause 25 shall survive the completion and/or cancellation of the contract, and shall continue to be in full force and effect for a period of 10 years from the date on which the contract is completed or cancelled or terminated for whatever reason.

25.9 The contractor acknowledges any breach of this clause 25 by it and/or its advisors, consultants, partners, members, associates, employees, contractors, sub-contractors, agents or sub-agents, whether permanent or temporary, shall cause irreparable harm and give rise to claim by the injured party and/or the purchaser against it, and undertake to compensate the purchaser for all loss, liability, damages or expenses arising out of or which may be attributable to:-

25.9.1 any intentional or negligent disclosure of the confidential information

25.9.2 any unauthorised use of confidential information.

## **26.0 CUSTOMS AND EXPORT DOCUMENTATION**

The supplier shall ensure that all necessary regulations and documentation procedures for the export or import of goods to the Republic of Botswana are complied with.

Should an independent transport contractor be used to delivery the goods to the purchaser, the supplier shall ensure that all the necessary export/import documentation is provided with the goods to be delivered.

Cost arising as a result of non-compliance by the supplier with the regulations and procedure as required by the South African Government and/or the Botswana Government shall be for the account of and be payable by the supplier.

## **27.0 PRODUCT LIABILITY**

The supplier hereby indemnifies and holds the purchaser harmless against any claim by any person for losses arising from damage to or loss of property or death or injury arising from the exposure to and use by that person of any of the goods or services supplied under the contract where such use is a normal use of such goods or services, or is a use as advised by the manufacturer of the goods or or owner, or licensor of the services (if other than the contractor) or the contractor, whether or not such damage or death or injury arises as a result of any defect in the goods or services.

## **28.0 HAZARDOUS SUBSTANCES**

In the event that the goods are a hazardous substance which may cause injury or ill-health to or death of a human or animal or plant life or damage to the environment, by reason of their toxic, ignitable, radioactive, corrosive, carcinogenic or irritant nature or the generation of pressure thereby in certain circumstances and certain electronic products:

28.1 the supplier warrants that, as far as reasonably practicable, the goods are safe and without risk to health, safety and environment when properly used, handled, processed, stored or transported by the purchaser.

28.2 the supplier shall provide adequate information about:

28.2.1 the use of the goods;

28.2.2 the risks to human and animal health and safety and damage to the plant life and environment associated with the goods;

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

28.2.4 the safety precautions to be implemented in respect of storage, transportation and handling of the goods, to ensure that the goods are without risk to human and animal health or safety, plant life and the environment;

28.2.5 the procedure to be followed in the case of an accident involving excessive exposure to the goods, or any other emergency involving the goods; and

28.2.6 the disposal of used containers in which the goods have been stored and any waste involving the goods.

28.3 the supplier shall in effecting delivery of the goods take all measures necessary to ensure that no person or any property of the purchaser is exposed to the goods or the goods exposed to him/her/it in such a way as to suffer contamination, radiation, burns or injury, illness, damage or disruption;

28.4 the supplier hereby holds the purchaser harmless and indemnifies the purchaser against any loss or damage suffered by it or any of its employees or claim by any third party arising from loss of or damage to property or death or injury or illness arising from any use, handling, processing, storage, transportation or exposure to

the goods in accordance with the information advised by or in compliance with the measures undertaken or prescribed by the supplier as envisaged in this 28.

28.5 This information shall be contained in a separate document, which shall be incorporated in the contract.

## **29.0 INSURANCE**

29.1 Throughout the duration of the contract, the supplier shall take out and maintain

29.1.1 product liability insurance in respect of the goods against such risks and in amount as accords with sound business practice;

29.1.2 professional negligence indemnity insurance in such amount as accords with sound business practice;

29.1.3 general public liability against such risks and in such amounts as accords with sound business practice;

29.1.4 workmens compensation insurance in respect of its employees, as accords with the provisions of the Worker's Compensation Insurance Act Cap 47:08 as amended and in force from time to time and as accords with sound business practice.

29.1.5 replacement insurance in respect of the goods until acceptance thereof by the purchaser.

29.2 The risks covered, amounts of insurance and insurer shall be as approved by the purchaser.

29.3 Upon request of the purchaser the supplier shall provide the purchaser with a copy of any insurance policy pertaining to the insurance, that the policy is current and valid, and that all premiums due in respect thereof have been paid.



## 30.0 COMPLIANCE

- 30.1 The supplier, in carrying out the obligations placed upon it under the terms of the contract ensure that it and its directors, employees, sub-contractors and agents and employees thereof comply with all laws, bye-laws, regulations that apply to it, its business and employees and the execution of the obligations in terms hereof.
- 30.2 The supplier shall procure that it/its directors, employees, sub-contractors and agents and employees thereof involved in the contract familiarise itself/themselves and comply with:
- 30.2.1 the Mines and Minerals Act Cap 66:01, and all regulations promulgated thereto, as amended as in force from time to time;
  - 30.2.2 the Mines Quarries Works and Machinery Act Cap 44:02, and all regulations promulgated thereto, as amended, as in force from time to time;
  - 30.2.3 the Precious and Semi Precious Stones Protection Act Cap 66:02, and all regulations promulgated thereto, as amended, as in force from time to time;
  - 30.2.4 the purchaser's Rules and Regulations as regard General Safety, Health, and Environment, Gifts, Hospitality and Corruption, so amended and in force from time to time;
  - 30.2.5 the purchaser's Environmental Policy as amended and in force from time to time
  - 30.2.6 the purchaser's Rules and Regulations as regard security and search as amended and in force from time to time (all of which are hereinafter referred to as "the Legislation")

30.3 The contractor shall itself and procure that its directors, employees sub-contractors and agents and employees thereof involved in the contract shall, for the duration of the contract, adhere to all and any provisions of the Legislation which apply or are likely to apply to all and any aspects of the performance by it or any such director, employee, sub-contractor or agent of its obligations under the contract or sub-contract or agency agreement as it pertains to the contract.

30.4 Any breach by a director, employee of the contractor, sub-contractor or agent or employee thereof of the provisions of this Clause shall be deemed a breach by the contractor of the provisions of this Clause.

### **31.0 NO CESSION, ASSIGNMENT**

The supplier shall not cede, assign, transfer or sublet the contract or any order or any portion thereof without the consent in writing of the purchaser's representative first being obtained. The purchaser shall not be bound to give such consent but may withhold same without assigning any reason therefor, or grant such consent subject to such terms and conditions as the purchaser may, in its absolute discretion, deem fit.

Should such consent be given to the supplier, it shall not relieve the supplier from any liability or obligation under the contract or order.

### **32.0 MORATORIUM ON EMPLOYING PURCHASER'S EMPLOYEES**

32.1 The supplier shall without the prior written consent of the purchaser not make any promise or make any offer of employment to any employee of the purchaser during the duration of the contract and for a period of six months after the termination or cancellation or expiry by effluxion of time of the contract.

32.2 The supplier covenants and agrees with the purchaser not to make approaches to employ staff engaged by the purchaser except as permitted by this clause.

32.3 The supplier hereby agrees not to do anything or cause anything to be done whereby employees of the purchaser are directly or indirectly induced to leave the employ of the purchaser without the consent of the purchaser.

32.4 In the event of such consent not being forthcoming, no employee of the purchaser shall be employed by the supplier for a period of six months (or such lesser period as the purchaser might otherwise approve) from the date of the employee leaving the purchaser's employ.

### **33.0 RIGHTS IN LAW**

It is understood and agreed that any rights that might accrue to the purchaser under any of the terms and conditions of the order shall be without prejudice to any other rights that the purchaser might have in law.

### **34.0 LAW TO APPLY**

The contract shall be read, construed and performed according to the laws of the Republic of Botswana.

### **35.0 CORRESPONDENCE**

All correspondence relating to the contract shall be addressed to the purchaser at the address of the purchaser as stated in the Special Conditions.

### **36.0 ACCEPTANCE OF ORDER**

36.1 Notwithstanding any reference in an order to the contract, it is understood and agreed that the delivery of goods against an order shall be deemed to signify the supplier's unconditional acceptance of the terms, conditions and prices set out in the order.

36.2 No terms and/or conditions and / or prices, other than stated in the contract, which may be stated or implied and contained in any tender / quotation or in any written or verbal acknowledgement or referred to in the order or in any packing slip or waybill or consignment note or invoice or statement relating to the order, shall apply, notwithstanding any signature thereto or other express or implied confirmation thereof by any person purporting to act on behalf of the purchaser, unless expressly agreed thereto by written instrument under the hand of the purchaser's representative..

### **37.0 VARIATIONS**

37.1 No order or amendment, variation or modification of an order which has the effect of amending or varying or modifying the contract or any amendment variation or modification of any term of the contract shall be binding as against the purchaser unless the cost thereof in terms of time (delay or extension of time to perform) and money with full detail thereof has been submitted to the order agent and purchaser's representative, and the terms thereof have been approved in writing by the purchaser's representative and the order agent, and written notification to this effect given by the purchaser's representative and order agent to the supplier.

37.2 The amendment, variation or modification shall take effect from the date of such written notification.

### **38.0 TERMINATION**

In the event the contract is stated to endure for longer than one year (calculated from the commencement date) then, notwithstanding any provision to the contrary, it shall be capable of termination, at the sole and absolute discretion of the purchaser, for any reason whatsoever, upon three months written notice under the hand of the purchaser's representative, given by the purchaser to the supplier.

## 39.0 ARBITRATION

- 39.1 Any dispute arising out of this agreement or the interpretation thereof, both while in force and after its termination, shall be submitted to and determined by arbitration.
- 39.2 The arbitration shall be:
- 39.2.1 held at such place as shall be agreed or failing such agreement as shall be determined by the purchaser
  - 39.2.2 conducted in English
  - 39.2.3 governed by the laws of Botswana
  - 39.2.4 to be conducted and held in such manner as to ensure it is completed as soon as possible.
- 39.3 There shall be one arbitrator who shall be, if the question and issue is:
- 39.3.1 primarily an accounting matter, an independent certified public accountant;
  - 39.3.2 primarily a legal matter, an independent practising senior counsel;
  - 39.3.3 any other matter, a suitably qualified independent person.
- 39.4 The nature of the question in issue and appointment of the arbitrator shall be agreed upon the parties. Failing agreement between them on the identity of the arbitrator or on whether the question in issue is the matter contemplated in 39.3.1, 39.3.2 or in 39.3.3 within a period of 14 days after the arbitration has been demanded, either of the parties shall be entitled to request the President for the time being of the Law Society of Botswana to determine the nature of the question

in issue and/or make the appointment of arbitrator in which in making its appointment, shall have regard to the value and nature of the dispute.

39.5 The arbitration shall be governed by the rules of the Arbitration Foundation of Southern Africa, as amended from time to time; The arbitrator shall have the power conferred upon an arbitrator under those rules and shall be entitled to decide on such procedures, as permitted by those rules, for the speedy determination of the dispute and in particular he shall have the sole and absolute discretion to determine whether and to what extent it shall be necessary to make discovery of documents or hear oral evidence.

39.6 The decision of the arbitrator shall be final and binding on the parties and may be made an order of any court of competent jurisdiction.

#### **40.0 CONFLICT**

In the event of there being any conflict between any of the conditions herein contained and any special contract stipulated by the purchaser, the Special Conditions shall prevail.