

## PURCHASE ORDER TERMS AND CONDITIONS

These terms and conditions govern the supply of the Goods and/or Services, or leasing of the Equipment, under the Purchase Order by the Supplier to the Company, **save and except where there is an existing signed agreement between the parties pertaining to the Goods, Services and/or Equipment as set out in the Purchase Order in which case the terms and conditions of that agreement will apply.**

It is further noted that the Company forms part of the Thungela Group of Companies (“**Thungela Group**”). Accordingly, all Thungela Group policies, standards, procedures, codes, principles and specifications referenced in these Purchase Order Terms and Conditions will continue to apply until substituted on notice by the Company. Please note that all email addresses, website references and weblinks in these Purchase Order Terms and Conditions containing the Anglo-American plc domain name and/or URL (if any) shall remain accessible to the Supplier and/or shall be substituted with the new domain name/s and URL details notified by the Company and/or published by the Thungela Group.

**1. DEFINITIONS:** Unless the context otherwise requires, the following terms have the meanings given when used in this Contract:

**‘Anti-Corruption Laws’** means:

- (a) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997;
- (b) the United Nations Convention against Corruption 2003;
- (c) the Foreign Corrupt Practices Act of 1977 of the United States of America (as amended by the Foreign Corrupt Practices Act Amendments of 1988 and 1998) (‘FCPA’);
- (d) the UK Bribery Act 2010;
- (e) the Prevention and Combatting of Corrupt Activities Act 12 of 2004; and
- (f) any other Relevant Law which:
  - (i) prohibits the offering of any gift, payment or other benefit to any person or any officer, employee, agent or advisor of such person; and/or
  - (ii) is broadly equivalent to the FCPA and/or the UK Bribery Act 2010 or was intended to enact the provisions of the OECD Convention, or which has as its objective the prevention of corruption and which are applicable in the jurisdiction in which the parties are registered, conduct business and in which the Goods, Services and/or Equipment are provided or leased.

**‘Background IP’** means Intellectual Property owned or licensed by the relevant party which exists prior to issue of the Purchase Order or developed other than in the provision of the Services and is used to provide the Services or otherwise made available to the other party for the purposes of the Contract.

**‘Contract’** means the Purchase Order, these terms and conditions and all documents incorporated into these terms and conditions by reference but excludes any other terms and conditions (including those which the Supplier

purports to apply) under any quotation, proposal, Invoice, confirmation of order, specification or other document of the Supplier.

**‘EME’** means an exempt micro enterprise with an annual turnover of less than R10 million Rand and which has provided the necessary verification of its status as an exempt micro enterprise (including but not limited to signed affidavit or BBBEE certificate) to the satisfaction of the Company.

**‘Equipment’** means the equipment leased to the Company as specified in the Purchase Order (if any). **‘Goods’** means the goods specified in the Purchase Order (if any).

**‘Group Business Integrity Policy’** means the policy so named and found at [www.thungela.com](http://www.thungela.com)

**‘Losses’** includes damages, costs, charges, expenses, penalties, interest, legal costs and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person.

**‘Purchase Order’** means the written request or order clearly identified as a purchase order from the Company to the Supplier to supply the Goods and/or Services, or to lease the Equipment from the Supplier.

**‘Company’** means the corporate body or person specified in the Purchase Order as the purchaser and includes its successors in title and permitted assigns.

**‘Company’s Corporate Policies’** means the latest version of the policies, codes and principles published by Thungela, as amended from time to time, including the Responsible Sourcing Standard for Suppliers, copies of which are available on request from the Company or at [www.thungela.com](http://www.thungela.com) **‘Relevant Law’** includes statutes, ordinances, regulations, by-laws, subordinate legislation, conventions, orders and awards of any government authority and proclamations applicable in connection with the performance of the Contract.

**‘Services’** means the services specified in the Purchase Order (if any).

**‘SHE Policies’** means policies, codes, procedures and directions with respect to health and safety, the environment and stakeholder relationships applicable to the Site.

**‘SHE Requirements’** means all Relevant Law relating to workplace health, safety and the environment, and the SHE Policies.

**‘Site’** means the areas specified in the Purchase Order for delivery of the Goods, Services and/or Equipment.

**‘Supplier’** means the corporate body or person to whom or to which the Purchase Order is addressed and includes the Supplier’s successors in title and permitted assigns.

**‘QSE’** means a qualifying small enterprise with an annual turnover of 10 million Rand up to 50 million Rand and which has provided the necessary verification of its status as a qualifying small enterprise (including but not limited to signed affidavit or BBBEE certificate) to the satisfaction of the Company.

**‘VAT’** means value added tax or any analogous tax in any jurisdiction including goods and services tax, use, sales and local taxes of any kind.

## **2. INTERPRETATION:**

- (a) Clause headings are for reference only.

- (b) The words 'include' and 'including' are to be construed without limitation.
- (c) Reference to any legal instrument is a reference to same as amended, modified, substituted or re-enacted from time to time.
- (d) If the due date for anything to be done under the Contract is not a business day in the Company's jurisdiction, then it must be done on the next business day.
- (e) A day means a period of 24 consecutive hours from midnight.
- (f) Any number of days is reckoned exclusively of the first and inclusively of the last day.

**3. QUALITY AND QUANTITY:**

- (a) The Goods, Services and Equipment shall be supplied or leased to the Company in the quantities, and at the prices, stated in the Purchase Order and, in the case of Goods and Equipment, the Supplier shall not substitute the Goods or Equipment with any similar alternative goods or equipment.
- (b) The Supplier warrants that:
  - (i) the Goods will be of merchantable quality, current manufacture, appropriate grade and suitable capacity, and be free from all defects and imperfections affecting performance;
  - (ii) the Goods, Services and Equipment will conform in all respects to the stipulated specifications, and conform with all Relevant Laws and applicable codes and standards;
  - (iii) the Services will be performed in accordance with best practice standards of skill, care and diligence to be expected of a competent contractor performing similar services;
  - (iv) the Equipment is in good working order and condition and does not contain any defects which may adversely impact the Company's use thereof for its intended purpose or may impact the health or safety of the Company's personnel;
  - (v) all required service and maintenance of the Equipment has been undertaken and is up to date; and
  - (vi) its obligations hereunder will be performed by competent and appropriately skilled and trained personnel.

**4. DEFECTS AND WARRANTY:**

- (a) The Supplier must at its expense rectify any defect in the Goods or reperform any defective Services occurring within the warranty period for the Goods and the Services (fair wear and tear excepted), which period shall be at least 12 months from their date of delivery unless a greater period has been stipulated by the Supplier in writing, in which event, the greater period shall apply.
- (b) If the Goods fail for any reason other than fair wear and tear within the warranty period, the Supplier shall either replace the Goods at no cost to the Company or, if the

- Goods cannot be replaced, refund all amounts paid by the Company for the Goods.
- (c) The Company must advise the Supplier of any defect in or damage to the Equipment and the Supplier must:
  - (i) repair the defective or damaged Equipment;
  - (ii) supply to the Company an appropriate replacement for the Equipment while it is being repaired, if requested to do so; and
  - (iii) if necessary, transport the Equipment from the Site to the Supplier's premises for repairs and re-deliver the repaired or replacement Equipment.
- (d) If emergency repairs to the Equipment are required and the Supplier fails to undertake such repairs within a reasonable time of the Company's request to do so, the Company may cost carry out, or procure the carrying out of, such emergency repairs without invalidating any warranty given by the Supplier.
- (e) The Supplier is liable for all costs associated with repair of defective or damaged Equipment unless the defect or damage is the direct result of the negligent or deliberate misuse of the Equipment by the Company or its personnel.

**5. RISK AND TITLE:**

- (a) Title in and to the Goods (which shall be free and clear of any liens, claims, security interest or other encumbrance) shall either pass to the Company upon payment or, if the Goods are to be incorporated into the Site or equipment, incorporation thereof, whichever occurs first. Risk in and to the Goods shall pass upon delivery thereof at the place for delivery stated in the Purchase Order.
- (b) If the Purchase Order requires the Supplier to remove Company owned goods from the Site, risk of loss of or damage to such goods, including during transportation, handling and storage thereof by the Supplier, shall pass to the Supplier when it takes control of the goods and shall revert back to the Company when they are returned to the Site.
- (c) Ownership of the Equipment remains with the Supplier and risk of loss or damage to the Equipment shall pass to the Company upon delivery thereof at the Site. Risk in the Equipment reverts back to the Supplier during any period in which the Equipment is in the possession or under the control of the Supplier or its contractors or personnel for repair or maintenance purposes (including during transportation) or when the Supplier is operating the Equipment for the Company.

**6. PROTECTION OF GOODS AND EQUIPMENT:**

- (a) The Supplier must protect the Goods and Equipment from loss or damage arising from any cause, and ensure the Goods and Equipment are appropriately packed, handled and transported to the Site to prevent damage or shrinkage while in transit or storage. The Supplier must ensure that the delivery documents accompanying the Goods and Equipment bear the Purchase Order number.
- (b) All packaging materials shall become the

- property of the Company.
- (c) Where marine transit is applicable, the following also applies:
- (i) crating and preservation must be suitable for sea going transport and all apertures closed and sealed to protect the goods against corrosion and water/moisture ingress;
  - (ii) goods placed in plastic wrappers must display the part number or item information without requiring opening of 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; and
  - (iii) goods must be packed in such a manner to avoid contact damage.
- (d) The Supplier shall, at its own cost, replace any Goods or Equipment lost or damaged in transit.

**7. DELIVERY:**

- (a) The Supplier shall within 2 days of receipt of the Purchase Order confirm its acceptance of the delivery and/or performance date and time with the responsible person nominated in the Purchase Order, or any duly authorised person.
- (b) If any delay in delivering the Goods, performing the Services or delivering or repairing the Equipment, occurs or is foreseen, the Supplier must immediately notify the Company of the cause and anticipated length of the delay. The Company may grant or refuse an extension of the delivery date in its sole discretion.
- (c) The Company may cancel the Purchase Order in whole or in part if any delivery is late.
- (d) The Company shall not accept any goods in excess of the quantity of Goods specified in the Purchase Order. The Supplier must at its own cost remove all excess goods from the Site within 7 days, and title and risk in these goods shall at all times remain with the Supplier.
- (e) The Supplier shall at delivery of the Equipment to the Site, provide the Company with:
- (i) all documents, manuals and other information essential for the use, operation and maintenance of the Equipment;
  - (ii) details of all attachments and accessories; and
  - (iii) a genuine indication of the state of the Equipment, including the remaining utilisation hours for major componentry and sub-components, and a reasonable estimate of the life remaining in the Equipment expressed as a percentage or any other form requested by the Company.
- (f) If any of the Goods or Equipment delivered to the Site, or Services performed, are not as described in, or does not comply with, the Contract, the Company may reject such Goods, Equipment or Services in writing, stating the reasons therefor, and direct the

Supplier, in the case of Goods or Equipment, to either replace or rectify the rejected Goods or Equipment, and in the case of Services, to reperform the Services.

**8. TESTS AND INSPECTIONS:**

- (a) The Company has the right to conduct tests and/or inspections of the Goods, Services and/or Equipment during or after their delivery or performance, or after payment by the Company.
- (b) No inspection of the Goods, Services and/or Equipment by the Company constitutes acceptance of Goods, Services and/or Equipment which does not comply with the Contract, and in the case of the Equipment, nor does it affect the power of the Company subsequently to reject the Goods, Services or Equipment under clause 7(f) should the Company subsequently become aware that the Goods, Services or Equipment do not comply with the Contract.

- 9. HAZARDOUS MATERIALS:** If any of the Goods or Equipment are, or if the Services or Equipment include the use of, substances, materials or emissions identified as hazardous by any Relevant Law or SHE Requirement ('**Hazardous Materials**'), the Supplier must exercise utmost care in the use, handling, storage, transportation and disposal thereof whether on the Site or otherwise, and provide the Company with detailed documented information about the use thereof, potential risk to health, safety and the environment associated therewith, any restrictions or control on use thereof, safety precautions to be applied in respect thereof, and procedures to be followed should an incident involving exposure thereto occur.

**10. INVOICING AND PAYMENT:**

- (a) The price for the Goods, Services and/or Equipment:
- (i) is exclusive of VAT; and
  - (ii) shall include all costs associated with the supply thereof and the Supplier's compliance with the Contract.
- (c) Subject to the Goods, Services and/or Equipment supplied complying with the Contract, and further subject to the Company receiving a valid tax invoice that complies with applicable VAT laws and the Company's invoice requirements ('Invoice'), the Company must pay the Supplier within:
- (i) 14 days from date of Invoice if the Supplier qualifies as EME; or
  - (ii) 30 days from date of Invoice if the Supplier qualifies as QSE
  - (iii) 60 days from date of Invoice if the Supplier does not qualify as an EME or a QSE.
- (d) In the event that the Supplier (who does not qualify as an EME or a QSE) requires a payment period of less than 60 days, subject to the Suppliers prior written agreement, the Supplier shall provide the Company the following discounts on the value of the Invoice:
- (i) payment within 45 days from date of Invoice, the Supplier shall provide the

- Company with a 5% discount on the value of the Invoice: or
- (ii) payment within 30 days from date of Invoice, the Supplier shall provide the Company with a 5.5% discount on the value of the Invoice: or
  - (iii) payment within 15 days from date of Invoice, the Supplier shall provide the Company with a 6.5% discount on the value of the Invoice.
- (e) Where electronic Invoices are submitted by the Supplier, the Company agrees to accept such Invoices as validly issued Invoices, provided clause 10(b) is complied with, and the Supplier guarantees the authenticity of origin and integrity of the content thereof.
  - (f) Provided the Supplier complies with clause 10(b), the Company will pay to the Supplier any VAT properly chargeable in connection with an Invoice.
  - (g) The Company shall not be liable for any interest for late payments.
  - (h) The Company may:
    - (i) deduct and withhold amounts required by relevant tax laws or regulations from a payment made to the Supplier and pay the withheld amounts directly to the relevant tax authorities and such amounts are deemed to have been paid to the Supplier on the date on which the remainder of the payment to which it relates was paid to the Supplier;
    - (ii) withhold payment of any Invoice, or part thereof, which it reasonably disputes; and
    - (iii) offset payments due under the Purchase Order against liquidated Losses sustained by the Company owing to the Supplier's failure to perform under the Contract.
  - (i) Should the Supplier fail, for reasons not attributable to the Company, to submit an Invoice within 120 days from the date on which the Goods, Services and/or Equipment have been supplied and accepted by the Company as compliant, the Company shall be entitled, on notice to the Supplier, to cancel the Purchase Order. In these circumstances the Supplier must request the Company in writing to reissue a Purchase Order before the Supplier will be able to submit its Invoice. The Company will not incur any liability to the Supplier as a result of the cancellation of the Purchase Order.

**11. INDEPENDENT CONTRACTOR STATUS:**

- (a) The Supplier warrants that it is not a personal service provider as envisaged under any income tax related Relevant Laws and will:
  - (i) provide confirmation thereof to the Company when requested; and
  - (ii) immediately notify the Company in writing should the status of any statement in the confirmation change at any time.
- (b) The Supplier indemnifies the Company against all Losses which the Company may

suffer or be exposed to in connection with:

- (i) a breach of clause 11(a); and/or
- (ii) any liability of the Supplier for any tax in respect of payments made in terms of the Contract.

**12. INTELLECTUAL PROPERTY:**

- (a) The Supplier warrants that neither the supply of the Goods, Services or Equipment, the use or receipt thereof by the Company, nor any design, materials, documents and methods of working provided by the Supplier in the performance of the Services will infringe any patent, design, trademark or name, copyright or other protected right, whether registered or not (**'Intellectual Property'**).
- (b) The ownership of any Background IP of the Company and Supplier is unchanged by this Contract.
- (c) Title to, copyright in and other Intellectual Property rights in any documents or other property created by the Supplier for or in connection with the Goods and/or Services vests in the Company on creation and the Supplier hereby cedes and assigns all such rights to the Company with effect from the date of creation in order to vest such Intellectual Property in the Company.
- (d) If the Company's use of the Equipment requires the use of third party Intellectual Property included or embedded in the Equipment, the Supplier must procure that the Company is granted a worldwide, irrevocable, non-exclusive royalty free licence to use that Intellectual Property in connection with the Equipment.

**13. LIABILITY AND INDEMNITY:**

- (a) The Supplier indemnifies the Company against all Losses arising in connection with:
  - (i) the injury or death of any person;
  - (ii) a breach of any Relevant Law;
  - (iii) any damage to a Site; or
  - (iv) any actual or alleged breach of third party Intellectual Property,
 arising as result of any act or omission of the Supplier, its personnel, subcontractors, agents or assigns.
- (b) Neither party shall be liable to the other for any indirect, consequential or incidental damages, including loss of profit or business, arising in connection with the Contract
- (c) The provisions of clause 13(b) shall not apply to clauses 13(a)(i), 13(a)(iv) or a breach of clause 17.
- (d) The indemnity under clause 13(a) shall survive termination of the Contract.

**14. EMPLOYMENT LAWS:** The Supplier indemnifies the

Company against any and all claims by the Supplier's employees against the Company in terms of any Relevant Laws relating to employment, and any award or determination made against the Company by a government body in relation thereto. The Supplier warrants that it is and will remain compliant with all employment related Relevant Laws in respect of its own employees.

**15. INSURANCE:** The Supplier must:

- (a) effect and maintain all insurances that a prudent person in the Supplier's position would consider

appropriate in the circumstances having regard to the Supplier's obligations under the Contract, including marine transit insurance should marine transit of any of the Goods or Equipment be required; and

- (b) insure the Goods and Equipment for the period that they are in transit to the Site, and in the case of Equipment, for their duration on Site, against all loss or damage arising any insurable cause, for a limit of not less than the full replacement cost of those Goods or Equipment.

**16. SITE ACCESS AND SAFETY:**

- (a) The Supplier undertakes to at all times for the duration of this Contract, and ensure that its personnel and subcontractors, comply with:
  - (i) the SHE Requirements when on a Site;
  - (ii) all lawful directions relating to health, safety and environment given by the Company;
  - (iii) the Company's Corporate Policies which it must ensure it obtains; and
  - (iv) all Relevant Laws.
- (b) Access to a Site is subject to the Site's access requirements from time to time, including that the Supplier's personnel and subcontractors first successfully complete all induction and training required by the Site, and that the Site's security personnel may search the belongings and vehicles of the Supplier's personnel and subcontractors upon entry to and/or exit from the Site.
- (c) The Company reserves the right to revoke, withhold or suspend access to a Site of any person contemplated in clause 16(b), and may require a suitable replacement for such person with at the Supplier's cost.
- (d) If any person contemplated in clause 16(b) breaches a SHE Requirement, or if the Supplier breaches the Responsible Sourcing Standard for Suppliers, the Company may remove the Supplier, its personnel and subcontractors from Site, suspend the performance of the Contract at the Supplier's cost until the breach has been remedied and/or terminate the Contract with immediate effect on written notice.
- (e) The Supplier acknowledges the extremely importance the Company places on workplace health and safety, protection of the environment, positive stakeholder relationships and achieving the vision of 'Zero Harm'.
- (f) The Supplier must report any incident relating to workplace health and safety or the environment or which impacts on stakeholder relationships (which is reportable under the SHE Requirements) to the Company as soon as reasonably possible and in any event within a time period that ensures the Company can comply with all Relevant Laws, and provide all assistance the Company reasonably requires to investigate such incident.

**17. CONFIDENTIALITY:**

- (a) A party shall treat and keep the contents of the Contract and any information which has or will come into its possession or knowledge in connection with this Contract or the

performance hereof, or relating to the other party's business or operations, as secret and confidential, except for information which at the time of its disclosure:

- (i) is publicly available (including to relevant competitors) through no breach of this Contract; or
- (ii) is made available on a non-confidential basis by a third party who is not bound by any obligation of confidentiality,

('Confidential Information').

- (b) A party may only disclose Confidential Information of the other party:
  - (i) with the prior written consent of the last mentioned party;
  - (ii) to the extent required by Relevant Law or any applicable stock exchange listing rule; and
  - (iii) to its personnel, officers, agents, subcontractors, insurers, professional advisors and affiliated entities provided that they are under an express or implied enforceable obligation to that party to keep the Confidential Information confidential.
- (c) The Supplier shall not without the Company's prior written approval take photographs or recordings of a Site, or publish any statement, article, story or advertisement in connection with the Contract in any media, website or marketing material.

**18. SUPPLIER DEFAULT:** If the Supplier:

- (a) breaches any obligation or undertaking under the Contract and fails to remedy it within 7 days of the Company's written request to do so; or
- (b) becomes insolvent, then the Company may, without prejudice to any other rights it may have, including to claim damages, terminate the Contract with immediate effect.

**19. TERMINATION FOR CONVENIENCE:** The Company may at any time, in its absolute discretion, terminate the Contract in whole or in part on 30 days' written notice to the Supplier. The Company must pay the Supplier, as the Supplier's sole remedy in relation to such termination, all amounts due and unpaid for the Goods delivered, Services rendered and/or Equipment leased at the date of termination. The Company may furthermore at any time, on written notice to the Supplier, cancel any Purchase Order which was issued to the Supplier erroneously, without incurring any liability to the Supplier as a result of the cancellation of the Purchase Order. If the error in the issuing of the cancelled Purchase Order cannot be corrected through the issue of a new Purchase Order and/or was due to the Supplier's default, the Company shall not be obliged to reissue a new Purchase Order, in which case the Contract will terminate *ipso facto* on cancellation of the Purchase Order.

**20. RETURN OF EQUIPMENT AT TERMINATION:** At the termination of the Contract or expiry of the period for which the Equipment is leased to the Company as specified in the Purchase Order, the Company shall deliver or make available to the Supplier for collection the Equipment and all parts thereof in good working order and condition, fair wear and tear as a result of the appropriate use of

the Equipment excepted.

**21. DISPUTE RESOLUTION:**

- (a) Any dispute between the parties arising out of the Contract shall be submitted to arbitration in accordance with the commercial arbitration rules of the Arbitration Foundation of Southern Africa, provided the parties first attempted at least once to resolve the dispute by negotiation. The arbitration shall be held in Sandton, South Africa, and conducted in English.
- (b) Nothing in this clause 21 shall preclude either party from seeking an urgent interdict or urgent relief from a court of competent jurisdiction, including pending the award of the arbitrator.
- (c) The laws of the Republic of South Africa apply to this Contract and any non-contractual obligations arising out of or in connection with it.

**22. FORCE MAJEURE:**

- (a) If a party is prevented or materially delayed from fulfilling any of its obligations under this Contract as a result of any cause beyond that party's reasonable control and not attributable to any fault of its own, that party must as soon as possible give written notice thereof to the other party specifying the cause and anticipated duration of the particular event, and the party's affected obligations.
- (b) Performance of affected obligations will be suspended from the date on which notice is given under clause 22(a) until the date of termination of the particular event as notified by the affected party and that party will incur no liability in respect of any delay or failure in the performance of its affected obligations during the period of suspension.
- (c) If the event contemplated in clause 22(a) continues for more than 60 consecutive days, either party may cancel this Contract on the expiry of such 60 days on written notice to the other party.

**23. ANTI-CORRUPTION:**

- (a) The Supplier, its employees, directors, officers, agents and subcontractors, must not undertake any activity that constitutes, or may constitute, a breach of any Anti-Corruption Laws and shall, in the performance of its obligations under the Contract, at all times comply with the Group Business Integrity Policy, failing which, without limitation to any other right or remedy available to the Company, the Company may:
  - (i) suspend the performance of the Contract at the Supplier's expense;
  - (ii) remove the Supplier or any of its employees, subcontractors or agents from and refuse access to the Site; and/or
  - (iii) terminate the Contract with immediate effect, without any liability for any Losses suffered by the Supplier or its employees, subcontractors, agents or assigns.
- (b) The Supplier represents that there is no

relationship between it and the Company or their respective directors and employees that gives rise to an actual or potential conflict of interest and the Supplier undertakes to immediately notify the Company upon becoming aware that any such relationship has or may have arisen.

- (c) The Supplier warrants that:
  - (i) none of its directors, shareholders, partners, members, trustees or beneficiaries are Public Officials;
  - (ii) if any person in clause 23(c)(i) becomes a Public Official, the Supplier will notify the Company within 7 days thereof;
  - (iii) it has notified the Company if any of the persons in clause 23(c)(i) have immediate family or close relatives who are Public Officials which may result in an actual, or perceived, conflict of interest; and
  - (iv) it will provide all information reasonably requested by the Company in relation to clauses 23(c)(i) to (iii).
- (d) Under this clause 23, 'Public Official' includes any official or employee of government or any ministry, department, court, tribunal, competition authority, commission, board, agency, institution or similar entity of such government or government-owned or controlled entity; any employee of a public international organisation such as the European Union, the United Nations, the World Bank or the International Monetary Fund; any political party official or candidate for local or central or political office; any person performing a public function; and traditional leaders.

**24. FRONTING:** If the Company becomes aware or has a reasonable suspicion that any fronting (the offense under section 130(1) of the Broad-Based Black Economic Empowerment Act, No. 53 of 2003 ('BBBEE Act') and the Broad Based Black Economic Empowerment Amendment Act No. 46 of 2013) is taking or has taken place, then the Company may suspend and/or terminate the Contract with immediate effect without any liability for any Losses.

**25. PERSONAL INFORMATION:** For the purposes of this clause, "data subject", "personal information", "process" and "responsible party" have the meanings given to them in the Protection of Personal Information Act, No. 4 of 2013, including any subsequent amendments to the Act. To the extent that the Supplier processes personal information for or on behalf of the Company in performing its obligations under this Contract, the Supplier must:

- (a) only process personal information for the purposes of performing its obligations under this Contract or as otherwise authorised by the Company in writing;
- (b) not disclose personal information without the Company's prior written consent, except as required by law;
- (c) take reasonable technical and organisational measures to protect personal information against loss, damage, unauthorised destruction and unlawful access or processing;
- (d) immediately notify the Company where there are reasonable grounds to believe that personal information has been lost, damaged, accessed or acquired by any unauthorised person; and

- (e) except as required by law or agreement between the parties, return or destroy (at the Company's direction) all personal information when it is no longer required for purposes of this Contract, on termination of this Contract, if required by law; or at the Company's request at any time.

**26. INCLUSIVE PROCUREMENT:**

- (a) The Supplier warrants that its primary source of labour shall be the host community identified in the Company's social and labour plan of the relevant Site ('Host Community') and the Supplier shall implement skills development programs which should identify supervisory and management characteristics available in the Host Communities, and skills transfer plans to ensure that labour recruited from the Host Communities are able to perform tasks safely and efficiently.
- (b) The Supplier undertakes to commit to purchase goods and services required for performance under this Contract from Host Community businesses, focusing on SMMEs. All goods and services procured from Host Community businesses must meet all safety, technical capability and delivery requirements.
- (c) The Supplier shall embark and demonstrate evidence of enterprise and supplier development activities consistent with the BBBEE Act, aimed at improving the capacity of Host Community businesses.
- (d) The Supplier shall, when requested by the Company, provide the Company with reports in the requisite format detailing information requested from the Company, including the number of employees recruited from the Host Communities; the number of Host Community businesses from which goods and services are procured by the Supplier and total spend with Host Community businesses; and other information the Company may require.
- (e) The Supplier shall:
- (i) use its best endeavours to work in partnership with the Company in order to identify, participate and co-invest in social development projects which shall include enterprise and supplier development programmes, charitable, education, health, skills building and other types of development activity; and use reasonable endeavours to mitigate potential negative social impacts, utilising at minimum the guidance outlined in the Thungela Social Way Policy.

**27. NOTICES:** Notices must be in writing, in English and addressed to the receiving party at the physical or email address specified in the Purchase Order and will be deemed to have been received:

- (a) if posted by registered post, on the 10th day after posting;
- (b) if delivered personally, upon delivery;
- (c) if sent by email on a business day, on date of transmission of the email, or on a day other than a business day, on the next business

day.

**28. RIGHT TO AUDIT:** The Supplier shall permit the Company or its nominated audit representatives' reasonable access to the Supplier's premises, records and/or processes to the extent necessary to verify the Supplier's compliance with the SHE Requirements and/or the Responsible Sourcing Standard for Suppliers.

**29. ASSIGNMENT:**

- (a) Subject to clause 29(b), neither party may, without the other party's prior written consent, cede, assign and/or delegate to any person any right, title, interest or obligation under the Contract (including liabilities), which consent shall not be unreasonably withheld.
- (b) The Company may cede, assign and/or delegate any of its rights, title, interests or obligations under the Contract to any Thungela Group entity, without obtaining the Supplier's consent but must notify the Supplier thereof, whether prior to or after the cession, assignment or delegation.

**30. SUBCONTRACT:** The Supplier shall not subcontract the whole or portions of the performance of the Contract without the Company's prior written consent. The Supplier shall be responsible and liable for the acts or defaults of any subcontractor and its employees, as if they were the acts or defaults of the Supplier.

**31. SEVERABILITY:** If any provision contained in the Contract is void, illegal or unenforceable, that provision is severable from the Contract and the remainder of the Contract has full force and effect.

**32. NON-WAIVER:** No failure by a party to enforce any provision of this Contract will constitute a waiver of such provision or affect in any way a party's right to require the performance of such provision at any time in the future.

**33. AMENDMENT:** The Supplier must acknowledge and confirm acceptance of any Purchase Order amendment within 2 days of the date of the Purchase Order amendment by the Company, failing which the Purchase Order amendment shall be deemed to be accepted.

**34. NO OTHER RELATIONSHIP:** Nothing contained in the Contract is to be construed as constituting a joint venture, agency or partnership between the parties. It is specifically recorded that the Supplier is an employer in its own right.

**35. SURVIVAL:** Any provision of the Contract which contemplates performance or observance subsequent to any termination or expiration of the Contract shall survive the termination or expiration and continue in full force and effect.