

PURCHASE ORDER STANDARD TERMS AND CONDITIONS

Supply of goods and/or services

These conditions govern the supply of goods and/or services to the '**Purchaser**' (as defined in the Purchase Order) by its suppliers under a Purchase Order.

1. Precedence of documents: These terms and conditions are applicable to the Purchase Order to the exclusion of any other terms including any terms or conditions which the Supplier purports to apply under any quotation, proposal, invoice, confirmation of order, specification or other document, **save and except that these terms and conditions shall NOT apply where there is an existing executed agreement between the Purchaser and the Supplier pertaining to the goods and/or services as set out in the Purchase Order.**

2 Definitions: Unless the context otherwise requires, the following terms have the meanings given when used in this Contract:

'**Anti-Corruption Laws**' means any laws or international conventions relating to anti-corruption including but not limited to:

- (a) the Prevention and Combatting of Corrupt Activities Act 12 of 2004;
- (b) any other applicable law statute, ordinance, rule or regulation, order of any court, tribunal or any other judicial body or any other administrative requirement.

'**Contract**' means the Purchase Order, these standard terms and conditions together with all documents incorporated into these terms and conditions by reference.

'**POPI**' means the Protection of Personal Information Act, 4 of 2013 (as amended from time to time) and all regulations promulgated in terms of it.

'**Purchase Order**' means the request or order from the Purchaser to the Supplier to supply goods and/or services.

'**Purchaser's Corporate Policies**' means the most current version of the policies, codes and principles published by Anglo American plc, as amended from time to time, copies of which are available on request from the Purchaser.

'**SHE Requirements**' means all relevant law and government requirements relating to workplace health and safety and the environment, and the most current version of the Purchaser's policies with respect to health and safety, the environment and stakeholder relationships.

'**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.

3 Interpretation:

- (a) The clause headings are for reference purposes only and shall not influence its interpretation;
- (b) Where figures are referred to in numerals and in words, and there is any conflict, the words shall prevail;
- (c) Reference to days, shall be construed as calendar days. Where the day upon or by which any act is required to be performed is not a business day, the parties shall be deemed to have intended such act to be performed upon or by the next succeeding business day; and
- (d) Where a number of days are prescribed, it shall be calendar days and shall be reckoned exclusively of the 1st (first) and inclusively of the last day.

4. Non-exclusive relationship: The Supplier acknowledges and agrees that the Purchaser may engage any other party to supply goods and/or services of a similar nature to the goods and/or services being supplied by the Supplier in terms of the Purchase Order.

5 Quality:

- (a) Goods and/or services shall be supplied strictly in accordance with the terms (quantities, units, description, prices and delivery) stated in the relevant Purchase Order.
- (b) The Supplier warrants that the goods and/or services will:
 - (i) be of merchantable quality and fit for their intended purpose;
 - (ii) be free from all defects and imperfections affecting performance;
 - (iii) be of current manufacture, appropriate grade and suitable capacity;
 - (iv) conform in all respects to the specifications; and
 - (v) conform with all relevant requirements of any statute, law, regulation or legal requirement which may be in force in the country in which the Supplier is situated.

6 Warranty:

- (a) The Supplier shall provide a warranty on the goods and/or services for a period of no less than twelve (12) months from the delivery date unless a greater period has been stipulated by the Supplier, 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 Purchaser or, in the event that the goods cannot be replaced, shall refund the value of the goods to the Purchaser.

7. Risk and Title:

- (a) Risk and title in and to the goods shall pass to the Purchaser upon delivery of the goods to the site (stated in the relevant Purchase Order) and acceptance of the goods by the Purchaser. In the event where the point of delivery is specified as the site of the Purchaser's nominee, ownership and risk of loss or damage shall pass to the Purchaser upon delivery and acceptance of the goods by the Purchaser's nominee.
- (b) In the instance where the Purchase Order requires the Supplier to remove goods owned by the Purchaser from the Purchaser's site to that of the Supplier's, all risks such as, but not limited to, transportation, handling and storage shall be that of the Supplier from the time when the goods leave the Purchaser's site and such risk shall only revert back to the Purchaser upon successful offloading at the Purchaser's site.
- (c) The Supplier warrants that the goods as at date of delivery are free and clear of any lien, claim, demand, security, interest or any other encumbrance.

8. Packaging:

- (a) The Supplier shall ensure that the goods are packaged as per the instructions in the Purchase Order. In the event that there are no instructions in the Purchase Order, the Supplier shall meet the packaging standards as is customary in the industry so as to ensure adequate protection for the goods and eliminate damage.
- (b) All packaging materials shall become the property of the Purchaser.

9. Delivery:

- (a) The Supplier shall confirm the delivery date and time with the responsible person nominated in the Purchase Order, or any such duly authorised person, and inform such person of any event or circumstance which may impact the fulfilment of the Purchase Order. The Purchaser may grant or refuse an extension of the delivery date in its sole discretion, which consent may not be unreasonably withheld.
- (b) The Purchaser may, at its own discretion, cancel any Purchase Order in the event that the delivery is late.
- (c) The Purchaser shall not accept any goods in excess of the quantity specified in the Purchase Order. Such goods as may be in excess of the specified quantity in the Purchase Order shall be removed by the Supplier from the Purchaser's site within seven (7) days, at the Supplier's own cost and title and risk in these goods shall remain with the Supplier.
- (d) The Supplier shall, at the Supplier's cost, replace any goods lost or damaged in transit, howsoever caused.

10. Tests and Inspections: The Purchaser has the right to conduct tests and/or inspections of the goods after delivery and/or after payments have been made, as the Purchaser may deem necessary.

11. Hazardous Substances: In the event that the goods supplied by the Supplier are hazardous substances as defined in the Hazardous Substances Act, No 15 of 1973, the Supplier warrants that the goods are safe and without risk to health and safety when used, handled, processed, stored or transported; and the Supplier shall provide the Purchaser with detailed documented information about, inter alia, the use of the substance, the potential risk to health and safety associated with the substance, any restrictions or control on the use of this substance, the safety precautions to ensure that the substance is without risk to health and safety, and the procedure to be followed in the event of an accident involving exposure to these substances.

12. Penalties: Should the Supplier fail to fulfil its obligations in terms of the Contract by the stipulated delivery date, the Supplier shall compensate the Purchaser by paying 1% (one per cent) per day for each and every day that the goods are late. This penalty amount shall not exceed 10% (ten per cent) of the total purchase price. This penalty shall not apply in instances where the Supplier failed to meet the delivery date through no fault of its own. The Purchaser may elect in its sole discretion whether it wishes to invoke this penalty or claim damages for breach.

13. Invoicing and Payment:

- (a) The purchase price shall include all costs, including but not limited to labour, packaging, delivery, design, manufacture, inspection, testing medicals, inductions and transport.
- (b) All payments are conditional upon receipt by the Purchaser of the Supplier's tax invoice that complies in all instances with the Value Added Tax Act (Act 89 of 1991) (or any amendments and/or substitutions thereof) and must reflect the Purchase Order number.
- (c) Payment will be made as per the payment terms set out in the Purchase Order. If no terms appear on the Purchase Order, the Purchaser will pay the Supplier sixty (60) days after date of statement.
- (d) The Purchaser shall not be liable for any interest for late payments unless expressly agreed otherwise in writing by the Purchaser.
- (e) All payments shall be made by means of electronic funds transfer only.
- (f) The Purchaser may refuse payment of any tax invoice which it may contest. The Purchaser has the right to offset payments due under a Purchase Order against damages or loss sustained by the Purchaser owing to the Supplier's failure to perform in terms of the Purchase Order.

14. Income Tax Act:

- (a) The Supplier warrants that it understands the criteria that apply to distinguish independent contractors from personal service providers as envisaged in the Income Tax Act.
- (b) The Supplier indemnifies the Purchaser against all losses, claims, liabilities, damage or expense which the Purchaser may suffer or be exposed to as a result of, or which may be attributable to any liability of the Supplier for tax in respect of payments made in terms of the Purchase Order. For these purposes "tax" includes PAYE and all other forms of duties or taxation, and any penalties or interest.

15. Intellectual Property:

- (a) The Supplier warrants that neither the supply of goods, the use of the goods by the Purchaser, nor any design, materials, documents and methods of working provided by the Supplier in the performance of the services will infringe any patent, design, trade mark or name, copyright or other protected right, whether registered or not.
- (b) In this regard, the Supplier shall indemnify the Purchaser against all liabilities, damages, claims, losses, costs and all other expenses (including legal costs) whatsoever that the Purchaser may incur as a result of any alleged infringement or infringement of intellectual property rights.
- (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 services vests in the Purchaser on creation and the Supplier hereby cedes and assigns all such rights to the Purchaser with effect from the date of creation in order to vest such intellectual property in the Purchaser.

16. Limitation of Liability:

- (a) Neither the Purchaser nor the Supplier shall be liable or responsible to each other for any indirect, consequential or incidental damages, including but not limited to loss of profit or loss of production arising out of a breach of the Contract.
- (b) Clause 16(a) shall not apply to clause 14(b), clause 15(b) and clause 17(a) and (b).

17. Indemnity: The Supplier shall be liable for and indemnifies and holds the Purchaser harmless against all claims, damages, losses or costs whatsoever (including third party claims) relating to or as a result of:

- (a) the injury or death of any person,
 - (b) a breach by the Supplier of any law in the course of, or caused by the performance of its obligations under the Contract,
 - (c) any damage to property on the Purchaser's site,
- to the extent that the damage, death, injury or breach is due to an act and/or omission of the Supplier.

18. Employment Laws: The Supplier hereby indemnifies and holds the Purchaser harmless against all claims by the employees of the Supplier against the Purchaser, under any employment laws, and in the event of an award or determination being made against the Purchaser, the Supplier shall pay any amount ordered to be paid by the Purchaser. Should the Purchaser be compelled to pay any such amount(s) to an employee of the Supplier, the Supplier shall pay that amount to the Purchaser.

19. Insurance: The Supplier shall 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.

20. Site and Safety:

- (a) The Supplier shall comply with the SHE Requirements when on the Purchaser's site.
- (b) The Supplier shall comply with the Purchaser's Corporate Policies.
- (c) The Supplier undertakes to comply with all applicable legislation including (but not limited to) the Occupational Health and Safety Act No 85 of 1993, Mine Health and Safety Act No 29 of 1996, Compensation for Occupational Injuries and Diseases Act No 130 of 1993 and Hazardous Substances Act No 15 of 1973.

21. Confidentiality:

- (a) The Supplier shall keep the contents of the Purchase Order and any information or relating to the Purchaser or its operations or affairs or the goods and/or services which may be acquired by the Purchaser confidential, save and except for information:
 - (i) which is publicly available or becomes publicly available through no act or default of the Supplier; or
 - (ii) which came into the possession of the Supplier on a non-confidential basis from a source other than the Purchaser which source is not bound by a confidentiality agreement or other obligation of secrecy to the Purchaser or another person and is not otherwise under an obligation of secrecy to the Purchaser or another person ("**Confidential Information**").
- (b) The Supplier undertakes not to publish, disclose or reveal any Confidential Information to any other person or party whatsoever, other than as may be required by law, without the Purchaser's prior written consent.
- (c) The Supplier shall not, without the prior written approval of the Purchaser:
 - (i) take any photographs of the Purchaser's site or any part thereof;
 - (ii) publish any article, story or advertisement in connection with the goods and/or services on the site or elsewhere.

22. Default: If

- (a) the Supplier breaches any of its obligations under the Contract and fails to remedy such

- breach within seven (7) days of being requested by the Purchaser to do so,
- (b) the Supplier is placed under liquidation or is sequestrated, either provisionally or finally, whether voluntary or compulsorily,
 - (c) the Supplier is placed under business rescue or ceases to carry on business or disposes of some or all of its assets,
 - (d) the Supplier is unable to pay its debts as they become due,
- then the Purchaser may, without prejudice to any other rights it may have including the right to claim damages, terminate the Contract with immediate effect without payment for compensation to the Supplier for any damages whatsoever.

23. Termination for Convenience: The Purchaser may at any time, in its absolute discretion and without cause, terminate the Contract (Purchase Order) in whole or in part by giving thirty (30) days written notice to the Supplier of its intention to terminate. The Purchaser must pay the Supplier, as the Supplier's sole remedy in relation to the termination, all amounts due and unpaid for the goods delivered and/or services rendered at the date of termination.

24. Dispute Resolution: 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 (AFSA). The arbitration shall be held in Johannesburg.

25. Force Majeure:

- (a) Should either the Purchaser or the Supplier (hereinafter referred to as "**the invoking Party**") be prevented from fulfilling any of its obligations in terms of this Contract as a result of any act of God, war, fire, flood, legislation, insurrection, sanctions, trade embargo, illegal strikes or any economic or other cause beyond the reasonable control of such party (any such event hereinafter called "**force majeure**") then the invoking party will forthwith give written notice thereof to the other party specifying the cause and anticipated duration of the force majeure.
- (b) Performance of any such obligations will be suspended from the date on which notice is given of force majeure until the date on which notice is given of termination of force majeure ("**Suspension Period**").
- (c) The invoking party will not be liable for any delay or failure in the performance of any obligation hereunder, or loss or damage due to or resulting from the force majeure during the Suspension Period.

26. Anti Corruption:

- (a) A director, employee or agent of the Supplier must not:
 - (i) give or receive any commission, fee, rebate, gift or entertainment of significant value from; or
 - (ii) enter into any business agreement with,

any director, employee or agent of the Purchaser other than as a representative of the Purchaser or in the ordinary and proper course of business between any of those parties.

- (b) The Supplier must not undertake any activity that may constitute a breach of any provision of the Anti-Corruption Laws. The Supplier shall furthermore, in the performance of its obligations under the Contract, comply at all times and act in a manner consistent with the Business Integrity Policy.

Personal Information: The Supplier shall ensure that any personal information of the Purchaser will be held, used and disclosed in a manner consistent with POPI and any other applicable privacy requirements.

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

- (a) if posted, on the 10th day after posting;
- (b) if delivered personally, upon delivery;
- (c) if sent by facsimile or email:
 - (i) on a business day, on dispatch of the transmission; or
 - (ii) on a day other than a business day, on the next business day.

28. Right to audit: The Supplier must permit the Purchaser or its designated internal / external audit representatives reasonable access to the Supplier's premises for the purpose of conducting audits of the Supplier's records and/or processes to the extent necessary to verify the Supplier's compliance with the Purchase Order and these terms and conditions.

29. Assignment: The Supplier may not, without the prior written consent of the Purchaser, assign or otherwise deal with any right, title, interest or obligation under the Contract.

30. Subcontract: The Supplier shall not subcontract the whole or portions of the Purchase Order without the prior written consent of the Purchaser. The Supplier shall be responsible for the acts or defaults of any subcontractor, his agents or employees, as if they were the acts or defaults of the Supplier.

31. Governing Law: The Agreement is governed by and must be construed and enforced in accordance with the laws of the Republic of South Africa.

32. Entire Agreement: Subject to clause 1, the Contract contains the entire agreement between the parties as to the subject matter hereof and supersedes any previous arrangements or understandings (if any) relating to the subject matter hereof.

33. 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.

34. 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.

35. Amendment: The Supplier must acknowledge and confirm acceptance of any Purchase Order amendment, within a period of seven (7) days of the date of the Purchase Order amendment. Failure to acknowledge or confirm acceptance shall signify the Supplier's unqualified acceptance of the Purchase Order amendment.

36. No other relationship: Nothing contained in the Contract is to be construed as constituting a joint venture, agency or partnership between the Supplier and the Purchaser. It is specifically recorded that the Supplier is an employer in its own right.

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