

GENERAL CONDITIONS OF PURCHASE
OF GOODS AND SERVICES

1.

Definitions

- 1.1 **"Accepted"** or **"Acceptance"** means acceptance by the Company's Representative in writing, signifying that the Goods are complete and functional in all respects.
- 1.2 **"Accumulation Period"** means the period commencing on the first day of a calendar month and ending on the last day of that calendar month.
- 1.3 **"Company"** means, Richards Bay Titanium (Pty) Limited and Richards Bay Mining (Pty) Limited as the case may be, trading as Richards Bay Mining (RBM), VAT No. 4610103220.
- 1.4 **"Company Personal Information"** means any Personal Information that Company transfers or discloses to the Service Provider or which the Service Provider collects on behalf of Rio Tinto from time to time in connection with the Contract.
- 1.5 **"Contract"** means the Order or the Supply Agreement (if applicable) and these General Conditions.
- 1.6 **"Goods"** means the goods specified in the Order.
- 1.7 **"Government Agency"** means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
- 1.8 **"Official"** includes:
- (a) any officer or employee of any Government Agency, or any person acting in an official capacity on behalf of any such Government Agency;
 - (b) any officer, employee or official of a political party;
 - (c) any candidate for political office; or
 - (d) any officer or employee of a public international organisation (for example, the United Nations, IMF or World Bank).
- 1.9 **"Payment Date"** means, unless otherwise specified in the Order, the fifteenth day of the second month following the end of the Accumulation Period in which the VAT invoice is received by the Company (for the avoidance of doubt, the term '45 days

after end of Accumulation Period' when used in the Order has the same meaning as "Payment Date").

1.10 **"Personnel"** means:

- (a) in relation to the Supplier, any of its officers, employees, sub-contractors (including sub-contractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Services;
- (b) in relation to the Company, any of its past or present officers, employees, agents or representatives; and
- (c) in relation to a sub-contractor, any of its officers, employees, agents or representatives involved either directly or indirectly in the performance of the Services.

1.11 **"Order"** means the Goods and/or Services specified on the Company's official Order form.

1.12 **"Personal Information"** means information relating to identifiable individuals and includes (but is not limited to) all information relating to individuals that is protected by Privacy Legislation in the country where:

- (a) The relevant individuals are located, or
- (b) The data relating to those individuals is processed.

1.13 **"Price"** means the Contract price stated in the Order or the Supply Agreement.

1.14 **"Privacy Legislation"** means all applicable legislation relating to privacy and data protection.

1.15 **"Representative"** means the person appointed by the Company who is authorised to act for and on behalf of the Company, as specified in the Order or Supply Agreement or such other person as the Company may, in writing, substitute for that person.

1.16 **"Rio Tinto" / "Rio Tinto Group"** means (a) any affiliate of Rio Tinto plc or Rio Tinto Limited; (b) any entity or joint venture in which Rio Tinto plc or Rio Tinto Limited or any affiliate of Rio Tinto plc or Rio Tinto Limited has a participating interest of not less than 50%; (c) any entity or joint venture managed by Rio Tinto plc, Rio Tinto Limited or any affiliate of Rio Tinto plc or Rio Tinto Limited; and (d) such other entities as the Buyer and the **Seller** agree in writing; "Rio Tinto Limited" means Rio Tinto Limited (ABN 96 004 458 404) having its registered office at 360 Collins Street, Melbourne, Victoria,

3000; and "Rio Tinto plc" means Rio Tinto plc (Company No. 719885) of 6 St James's Square, London, SW1Y 4AD, United Kingdom.

- 1.17 **"Services"** means the services specified in the Order.
- 1.18 **"Site"** means the actual place on the Company's property where the Goods and/or Services are to be supplied, installed and/or executed by the Supplier.
- 1.19 **"Specifications"** means the drawings, schedules and technical data pertaining to the Goods or Services.
- 1.20 **"Supplier"** means the person to whom the Order is addressed, or the contractor in the Supply Agreement.
- 1.21 **"Supply Agreement"** means an agreement entered into between the Company and the Supplier in terms of the Contract.

2.

Terms

All Orders placed by the Company shall be subject to these conditions save as may be modified by the Order or Supply Agreement, and these conditions shall operate to the exclusion of the Supplier's terms and conditions of sale or supply.

3.

Discrepancies

- 3.1 Should there be a discrepancy between the constituent documents of the Contract, the order of precedence shall be as follows:
 - (a) the Order;
 - (b) the drawings, schedules and specifications (if any);
 - (c) the Supply Agreement;
 - (d) these General Conditions.
- 3.2 If there is any contradiction or conflict in description, dimensions or quantities in the Order, the Supplier shall refer to the Company for clarification and if necessary for

written rectification before the Supplier commences executing the Order or any part thereof in respect of which such apparent conflict or contradiction exists. Any anticipated or actual delay by reason of the foregoing in the execution of the Order shall immediately be communicated to the Company's Manager: Commercial Services.

4.

Materials

- 4.1 The Supplier warrants that the materials and/or equipment it uses in connection with the Contract shall be furnished in accordance with the Specifications, shall be suitable and fit for the purpose intended and shall be subject to the approval of the Representative. Such approval shall not be construed as relieving the Supplier of any of its responsibilities or warranties as stipulated in the Contract documents.
- 4.2 Unless the Specifications provide otherwise, all materials and equipment supplied are to be new and of the best grade for their respective kinds for the purpose.
- 4.3 Any materials or equipment considered faulty or incorrectly or badly erected or installed shall be substituted, altered or changed at the Supplier's sole expense. Articles or materials may be substituted for those specified only with the written consent of the Representative. The methods used by the Supplier shall be such as will produce performance satisfactory to the Representative for the Service intended and shall be in accordance with the best practice.
- 4.4 The Supplier shall fully disclose all hazards, potential and actual, that may be associated in any way whatsoever with the Goods including in particular hazards associated with the direct or indirect use of and exposure to or storage and disposal of the Goods. Where the Goods are potentially hazardous the Supplier shall:
- (a) furnish full details as to the safe transport, storage, handling, use and disposal of the Goods;
 - (b) furnish full details of the recommended treatment for persons who may be harmed or injured through use of or contact with the Goods;
 - (c) label all Goods and packages containing the Goods in such a way that persons who handle them or are exposed to them are clearly warned as to the hazards and the safety precautions which shall be observed in relation thereto;

- (d) in the case of all chemicals supplied, be accompanied by a Material Safety Data Sheet as required in terms of the Occupational Health and Safety Act, 85 of 1993.

5.

Standard of Services

If Services are being provided, the Supplier shall:

- 5.1 supply the Services with all proper care and diligence and in accordance with the highest recognised standards applicable to such Services;
- 5.2 ensure that its employees will have the qualifications, experience and skills required for the performance of the Services;
- 5.3 ensure its employees are sober at all times while on Site, not under the influence of mind altering drugs, are well presented and courteous;
- 5.4 perform the Services in such a manner so as not to disrupt or interfere with the normal business operations of the Company and which will not cause any damage to any person or his property;
- 5.5 comply with all of the Company's standard health, safety, security, fire, environmental and other ancillary standards, policies and regulations as amended from time to time;
- 5.6 act as the Company's mandatory in terms of Section 37 of the Occupational Health & Safety Act, No. 85 of 1993 and enforce compliance with that Act on its employees and sub-contractors.
- 5.7 Establishment of procedures

The Supplier must establish and maintain procedures, policies and precautions to prevent its Personnel from making, receiving, providing or offering gifts, entertainment, payments, loans or other consideration to Personnel of the Company, or the Rio Tinto Group for the purpose of influencing such Personnel to act contrary to the best interests of the Company. This obligation will apply to the activities of Supplier Personnel in their relations with the Company Personnel arising from the Contract.

6.

Access

Access to the Site shall be only by means of an RBM access card issued to the Supplier's employees and his sub-contractors. Such person shall be required to display their RBM access card prominently on their clothing and produce it on request by the Company or its security personnel. Access will be granted only through a designated access control point and in compliance with the Company's clocking-in/clocking out procedures from time to time. The RBM access card is to be returned to the Company on the termination of any such person's engagement in the Contract, and failing such return, the Supplier shall be liable to payment of a levy of R100,00 per access card not returned.

7.

Inspection and audit

- 7.1 The Company shall be entitled, at such frequency as it may determine, to send the Representative or his nominee to the Supplier's works at any stage of manufacture or production for the purpose of inspecting and monitoring the progress of the Contract. The Supplier shall afford the representative access to the work in progress and all facilities and information relating thereto for the purpose of such inspection. The Company reserves the right to reject Goods at any stage of manufacture which would in the Company's opinion be subject to rejection for any reason in terms of clause 10.
- 7.2 The Supplier shall keep proper accounting and administrative records relating to its dealings with the Company. The Company shall have the right, at its cost, to have its auditors make an examination and audit of the records of the Supplier during the term of the Contract and for a period of 2 (two) years thereafter, provided that such audit(s) shall be conducted during normal business hours at a time and place mutually agreeable to the parties.

8.

Risk, delivery and acceptance

- 8.1 The risk in and to any Goods and Services shall remain with the Supplier until Accepted.
- 8.2 Notwithstanding any receipt or inspection certificate which the Company may give, the Company shall be entitled to reject Goods or Services if they are subsequently found to be defective as regards their quality, quantity, workmanship or design (where design is the responsibility of the Supplier).
- 8.3 All carriers charged with transportation of the Goods shall be deemed to be the Supplier's agent to the point of delivery stated in the Order.

- 8.4 Goods will only be received by the Company at the delivery address stated in the Order form.
- 8.5 All deliveries of Goods shall be effected during the hours of 7.30 a.m. to 2.00 p.m. on Mondays to Thursdays and 7.30 a.m. to 1.00 p.m. on Fridays.
- 8.6 Time is the essence of the Order.
- 8.7 Should delivery of the Goods or Services not be made by the dates specified in the Order or if the Company is of the opinion that the Supplier will be unable to make timeous delivery, whether in whole or in part, the Company shall be entitled to cancel the Order either in whole or to the extent of such default. Such cancellation shall be without prejudice and in addition to any other rights and remedies available to the Company.
- 8.8 The Company shall be entitled without prejudice to any other rights available to it either in terms of these conditions or at law to recover from the Supplier a penalty in lieu of damages in a sum equal to 1% of the Price for each week or part thereof during which the Supplier is in default in effecting delivery of the Order or any outstanding portion thereof.

9.

Invoices and packing

- 9.1 The Company's Order number shall be quoted on all invoices, delivery notes, consignment notes and correspondence which shall give details of Goods or Services to which they relate. The Company reserves the right to return incomplete documents to the Supplier for rectification and in that event shall not be responsible for any delay in payment of the Price resulting therefrom.
- 9.2 The Supplier must supply the Company with a proper VAT invoice, as defined in the Value-Added Tax Act No.89 of 1991 as amended or replaced from time to time, for all amounts paid to the Supplier by the Company for the Goods or Services and must on request provide the Company with proof of the Supplier's registration in terms of the Value Added Tax Act.
- 9.3 Detailed invoices shall be forwarded to the Company's administration office at the address shown on the Order form. Separate invoices shall be issued in respect of each individual Order number. The Company shall not be responsible for any invoice

handed to any of its employees or for any delay in payment thereof resulting therefrom.

- 9.4 Where packing is included in the Order, durable labels shall be affixed to each package, case, carton or other container and shall clearly show the Company's name, the address to which delivery is to be made and the Order number. Each such package, case, carton or other container shall contain a packing list identifying the Goods or the Services as well as identifying them, where applicable, with the equipment for which they are intended.
- 9.5 The Supplier must pack and protect all Goods ready for despatch so that they are in accordance with all applicable laws, comply with Company's policies provided in writing to the Supplier, and comply with first class international standards having regard to methods of transport to the Site and handling and to the weather conditions whilst in transit to the Site.
- 9.6 All packages, cases, cartons and containers and packaging material shall be deemed to have been included in the Price and shall become the Company's property upon delivery. The Supplier shall be responsible for packing and marking Goods in such manner as will eliminate loss or damage in transit.

10.

Rejection of Goods and Services

If any Goods or Services are found at any time to be:

- 10.1 defective in quality, quantity, material, workmanship or design (where design is the responsibility of the Supplier); or
- 10.2 damaged because of unsatisfactory packaging; or
- 10.3 not in conformity with the requirements of the Contract; or
- 10.4 not in conformity with any approved samples; or
- 10.5 not in conformity with the normal standards of quality for such Goods or Services; or
- 10.6 defective or deficient in any other way;

then notwithstanding delivery to the Company of, or payment for, such Goods or Services by the Company, the Company shall have the right in addition and without prejudice to any other rights

and remedies available to it either to reject and tender the return of the Goods or Services at the Supplier's expense and to recover the Price paid for the Goods or Services and rectify the rejected Goods or Services and recover the cost thereof from the Supplier.

11.

Price provisions

- 11.1 Subject to the provisions of clause 12, the Price may not be varied.
- 11.2 Where Goods are sold by weight they are purchased by net weight only.
- 11.3 If any Order covers Goods to be imported into South Africa with payment to be made in a foreign currency the rate of exchange stated in the Order shall apply. Any profit or loss resulting from any variation in the rate of exchange shall be for the account of the Supplier.
- 11.4 Payment will become due upon the receipt by the Company of a VAT invoice and will become payable on the Payment Date.
- 11.5 Payment will be effected by electronic bank transfer into a bank account nominated by the Supplier or by any other method of payment elected by the Company.

12.

Price adjustment

Should the Price stipulated in the Order be subject to revision at the instance of the Supplier the following provisions shall apply:

- 12.1 the Company shall not be liable for any increase in the Price of Goods or Services which are delivered after the delivery date stipulated in the Order;
- 12.2 the Supplier shall give the Company not less than 60 (sixty) days' prior notice in writing of any adjustment which it intends to make to the Price in respect of Goods or Services to be delivered after the adjusted Price takes effect. Such written notification shall include full details showing how the adjusted Price is arrived at. The Supplier shall furnish to the Company such information as the Company may require in respect of the proposed adjustment to the Price and the Company shall have the right to inspect and audit the books of account of the Supplier for the purpose of deriving therefrom such information as it may require in connection herewith;

- 12.3 whenever the Supplier gives the notification referred to in clause 12.2 the Company shall have the sole and exclusive right and option to purchase the whole or any part of the Supplier's stocks of the Goods at any date prior to the date upon which the adjustment in Price takes effect at the price ruling in the Order or any adjusted Price to which the Company may previously have agreed;
- 12.4 notwithstanding anything contained in the Order final acceptance of any claims for Price adjustment by the Supplier shall be at the sole discretion of the Company. Should the Company and the Supplier fail to reach agreement on any adjustment to the Price the Order in respect of all of the Goods or Services or the balance thereof still to be supplied shall be deemed to have been cancelled and neither party shall have any claim of any nature whatsoever against the other arising out of such cancellation.

13.

UIF, PAYE and VAT

Where the Order requires the Supplier to provide a labour broking service, the following provisions will apply:

- 13.1 within 3 (three) days of the date of Order, the Supplier must provide evidence to the satisfaction of the Company as to whether the Supplier is a labour broker or a personal Supplier. If the Supplier believes that it is not either a labour broker or a personal Supplier then it shall be obliged to provide the Company with an affidavit or solemn declaration specifying why it is not a personal Supplier and why the provisions of Paragraph 2(1A) of the Fourth Schedule to the Income Tax Act, 1962, are not applicable. Should the Supplier fail to provide the Company with such evidence, the Company is entitled to deduct tax from payments due to the Supplier at the rate and in the manner provided for in the Income Tax Act;
- 13.2 where the Supplier has been issued with a certificate of exemption by the South African Revenue Services, the Supplier must renew such certificate of exemption timeously and keep it current for the duration of this agreement, provided that in the event that the certificate of exemption is cancelled or not renewed for any reason, the Supplier must notify the Company within 3 (three) days of such cancellation or expiry;
- 13.3 the Supplier shall provide the Company with certificates of good standing from the Unemployment Insurance Fund and in respect of the Skills Development Levy and from the South African Revenue Services in respect of PAYE in respect of the labourers provided in terms of such service;

- 13.4 the Supplier hereby indemnifies the Company against all claims, losses, damages and costs (including legal costs on an attorney and own client scale) arising out of or in connection with the non-deduction by the Company of any tax from any payment due to the Supplier.

14.

Compliance with laws and regulations

- 14.1 The Supplier shall conform in all respects with the provisions of any act of parliament, ordinance and the regulations or by-laws of any local or other statutory authority which may be applicable to the execution of the Contract and shall keep the Company, the Rio Tinto Group and its and their respective Personnel indemnified against all penalties and liability of any kind for breach of any such act, ordinance, regulation or by-law.

- 14.2 Where the Goods are to be delivered to the Site by the Supplier or a carrier employed by the Supplier, the Supplier warrants and undertakes that it and such carrier will comply with the provisions of SANS Codes 10187-1 to 9 and 10232-1.

- 14.3 In addition to its obligations in terms of clause 14.1 above, the Supplier shall effect and maintain in full force and effect during the subsistence of the Contract:

- (a) insurance of the Supplier's employees in terms of the provisions of the Compensation for Occupational Injuries and Diseases Act 130 of 1993, as amended, ("COIDA") and Occupational Diseases in Mines and Works Act 78 of 1973, as amended;
- (b) its COIDA registration and its certificate of good standing issued by the COIDA Compensation Commissioner;
- (c) timeous payment of all assessments payable in terms of COIDA; and
- (d) employee common law liability insurance;

in terms and for amounts approved by the Company and shall submit proof thereof to the Company immediately upon receipt of the Order and whenever thereafter required by the Company.

- 14.4 The Supplier indemnifies the Company, the Rio Tinto Group and its and their respective Personnel against any loss or damages, claim or demand made by any

party against them as a result of the Supplier's failure to comply in all respects with the provisions of this Contract and the laws applicable thereto.

14.5 Improper advantage or benefit to an Official or any other person

- (a) The Supplier represents and warrants that it has not offered, paid, promised to pay, authorised the payment of or transferred money or anything of value to any person (including an Official or private individual or enterprise) to secure any improper advantage or benefit in relation to the matters contemplated by the Contract, either directly or indirectly through a third party.
- (b) The Supplier must not directly or indirectly offer, pay, give, authorize, solicit or accept any bribe or other undue advantage (of whatever nature or amount, including facilitation payments) to be made to or received from any person (including an Official, private individual or enterprise) in order to obtain, retain or direct business or to influence or secure any other improper advantage or benefit in connection with the Contract.
- (c) The Supplier has not violated and will not violate, in connection with the Contract, the the Australian Criminal Code Act 1995, the US Foreign Corrupt Practices Act 1977, the UK Bribery Act 2010 or any other similar applicable law (including any applicable Australian State or Territory laws), or engaged in any conduct that would have violated the same had such conduct occurred in the jurisdiction in which such laws apply. Seller represents and warrants that it will comply with all applicable laws concerning the import, export or re-export of goods, services or technology and economic or trade sanctions or restrictive measures, including such laws or measures enacted, administered, imposed or enforced by Australia, the European Union, the U.S. Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), the U.S. Department of State or the United Nations Security Council.
- (d) The Supplier agrees to indemnify the Company, Rio Tinto and its and their respective Personnel Group for any losses, damages and costs incurred as a result of its breach.
- (e) The representations will continue throughout the contract period.

14.6 Notification regarding change of interests

The Supplier agrees to promptly notify the Company in writing of any material changes in the direct or indirect ownership in the Supplier or its affiliates. The Supplier covenants that should the Company notify it of any concerns that there has been a breach of the provisions of this Clause or Clause 14.5, it must cooperate in good faith with the Company in determining whether such a breach has occurred. If the Company determines in its sole discretion that there has been such a breach or that

the Supplier has taken any action that would create a material risk of liability for the Company under any applicable law, it may treat the breach as an event of default and to exercise any rights it may have under the Contract upon the occurrence of an event of default, but without regard to any waiting periods or cure periods specified in the Contract.

- 14.7 The Supplier must require its sub-contractors to agree to and comply with contractual provisions substantially identical to those contained this Clause.
- 14.8 The Supplier agrees to notify the Company promptly upon discovery of any instance where the Supplier or any of its Personnel fail to comply with this Clause.

15.

Compliance with Rio Tinto Business Standards

In supplying the Goods and performing the Services, the Supplier must, and must ensure that its Personnel:

- (a) comply with the Rio Tinto Group's policies including "*The Way We Work*", the Supplier Code of Conduct and the Business Integrity Standard available at <http://www.riotinto.com/aboutus/policies-standards-and-guidance-5243.aspx> or www.riotinto.com (together the "**Rio Tinto Business Practices and Standards**");
- (b) report all actual, alleged or suspected non-compliance with the Rio Tinto Business Practices and Standards to Rio Tinto or the Company or through Rio Tinto's Speak-OUT program;
- (c) cooperate promptly and fully with Rio Tinto and the Company in any investigation of an alleged or suspected breach of the Rio Tinto Business Practices and Standards;

The Company reserves the right to monitor and/or audit the Supplier's adherence to the Rio Tinto Business Practices and Standards.

16.

Privacy and Data Protection

- 16.1 Each Party agrees and warrants to the other Party that it will comply with Privacy Legislation in respect of any Personal Information it collects, uses, discloses or otherwise processes pursuant to the Contract.
- 16.2 In addition to its obligations under Privacy Legislation, the Supplier agrees to:
- (a) only Process the Company's Personal Information for the purposes of supplying Goods or Services under the Contract, and as directed by Company;
 - (b) not disclose the Company's Personal Information to any other person without the Company's prior written consent, unless the disclosure is required by law and the Supplier complies with clause 16.2(c);
 - (c) immediately notify the Company that the disclosure of the Company's Personal Information may be required by law;

- (d) promptly notify Company as soon as it receives an individual's complaint regarding the processing of their Company Personal Data and cooperate fully when Company is investigating any claim relating to such complaint; and
- (e) provide information required by Company to demonstrate compliance with the obligations in this Clause 16.

16.3 Supplier must put into place and maintain appropriate technical and organisational measures to secure Company's Personal Information, having regard to the risk of accidental or unauthorised access, loss, destruction, misuse, modification, disclosure or damage to Company's Personal Information.

16.4. If Supplier has knowledge of any:

- (a) accidental loss or destruction of, or unauthorised disclosure of or access to Company's Personal Information; or
- (b) data security breach of its or its approved subcontractors' systems that are used in the provision of the Services which may have impact upon the security of Company's Personal Information,
Supplier must:
 - A. expeditiously report such unauthorised disclosure or access to Company;
 - B. mitigate, to the extent practicable, any harmful effect of such disclosure or access that is known to Supplier or its approved subcontractors;
 - C. cooperate with Company in providing any notices to individuals regarding accidental or unauthorised disclosures, as directed by Company; and
- (c) co-operate with any investigation into the incident that is subsequently undertaken by any data privacy authority, in consultation with Company.

16.5 The Supplier indemnifies the Company and must keep the Company indemnified in respect of all liabilities incurred by or awarded against the Company relating to any breach by the Supplier of its obligations under Privacy Legislation or this Clause 16.

16.6 This Clause 16 will survive the termination of the Contract

17.

Patents

Unless otherwise specified by the Supplier in the Supply Agreement, the Supplier warrants that the Goods do not and will not constitute an infringement of any trade mark, patent, copyright, design or any other industrial or intellectual property rights ("the rights"). The Supplier hereby indemnifies the Company and the Rio Tinto Group against any claims which may be made against them for an infringement or unauthorised use of the rights. All royalties and expenses arising from the use of the rights shall be payable by the Supplier. The Supplier agrees that the Company shall have the free and unrestricted right to maintain or replace any broken or worn part of the Goods notwithstanding that such Goods are subject to any of the rights. The Supplier expressly warrants that it has authority to grant this unrestricted right to the Company or to any person whom the Company may nominate.

18.

Consumer Protection Act

- 18.1 The Order is deemed to constitute a "transaction" for the purposes of the Consumer Protection Act in that the Company will be deemed to have all of the consumer rights recognised by and set out in the Consumer Protection Act, notwithstanding that the Company is a juristic person with an asset value of annual turnover of or in excess of the threshold determined in terms of Section 6 of the Consumer Protection Act from time to time.
- 18.2 The Supplier warrants that it is familiar with all of the provisions of the Consumer Protection Act and that it hereby accepts its rights and obligations in terms of the deemed application of the Consumer Protection Act, for the Company, as the deemed "consumer", and for the Supplier as the deemed "supplier" as those terms are used in the Consumer Protection Act.
- 18.3 Any infringement by the Supplier of the Company's deemed consumer rights, and/or any failure by the Supplier to comply with its obligations in terms of the deemed application of the Consumer Protection Act, will constitute a material breach of the Contract between the parties.
- 18.4 The Supplier hereby indemnifies and holds the Company harmless against all loss, liability, damage or expense which the Company may suffer as a result of or which are attributable to any and all claims, including but not limited to any claims which may be made by consumers (as that term is defined in the Consumer Protection Act 68 of 2008) in terms of the Consumer Protection Act and in particular Sections 55 and 56, and/or 61 of the Consumer Protection Act, which may arise in respect of the transaction.

19.

Breach and termination

- 19.1 The Company shall have the right to terminate this contract upon giving not less than 60 (sixty) days' written notice to the Supplier. In such event the Supplier shall be remunerated for work properly performed and not paid for, up to the date of termination, at the rate or price provided in the Contract. The Supplier shall not have any claim for any additional remuneration or otherwise against the Company. Notwithstanding such termination, the Supplier shall remain liable for all of the services performed by it, and the Goods supplied by it as at the date of termination,

and its obligations in respect thereof shall remain in full force and effect and shall be enforceable in terms hereof.

19.2 The Company shall be entitled to summarily terminate the Order without payment of any compensation to the Supplier and in addition to and without prejudice to any other rights which it may have in law including the right to claim damages or otherwise should the Supplier:

- (a) commit any material breach of any of the terms and conditions of the Order;
- (b) be placed in liquidation either voluntarily or compulsorily by Order of Court or otherwise;
- (c) or anyone in the Supplier's employ pay or offer to pay, give or offer to give any money, present or inducement of any nature whatsoever whether by way of commission, gratuity or otherwise or lend or offer to lend any money or give or offer to give any other valuable consideration to any person in the employ of the Company.

19.3 The Company reserves the right to cancel the Contract at any time even though the Supplier may not be in breach thereof. In such event all substantiated expenses incurred by the Supplier up to the date of cancellation shall be paid by the Company and the Supplier shall have no further claim of any nature whatsoever against the Company.

20.

Arbitration

20.1 If any dispute arises between any of the parties to this agreement at any time in regard to:

- (a) any matter arising out of or relating to this agreement;
- (b) the interpretation of this agreement;
- (c) the termination of this agreement or any matter arising out of the termination of this agreement;
- (d) a claim for rectification of this agreement;

then the parties to that dispute shall endeavour to resolve their differences by a process of negotiation. If the parties are not able to reach agreement, the dispute shall be submitted to and decided upon by arbitration.

- 20.2 The arbitration shall be held in Durban.
- 20.3 The arbitrator shall be such person as may be mutually agreed upon between the parties. If the parties fail to reach agreement regarding the appointment of an arbitrator, any of the parties may request the Arbitration Foundation of Southern Africa to appoint an arbitrator in which event the standard administrative procedures and schedule of costs of the Arbitration Foundation of Southern Africa shall apply.
- 20.4 The language to be used in the arbitration proceedings shall be English.
- 20.5 The arbitrator may:
- (a) rely upon his own expert knowledge and experience;
 - (b) receive and take into account such written and oral evidence as he shall determine to be relevant, whether or not admissible in law, and attribute such weight to it as he shall deem appropriate;
 - (c) make one or more interim awards;
 - (d) appoint an assessor, valuer or other expert to assist him.
- 20.6 This clause will remain in force notwithstanding the termination of the agreement of which it forms a part.

21.

Cession and assignment

- 21.1 The Supplier shall not cede, assign or otherwise make over the Order or Supply Agreement or any part thereof or share any interest therein or sub-let or entrust the performance of anything to be done thereunder to any other person without the prior written consent of the Company which may be refused without any reasons being given therefor. Such consent shall not relieve the Supplier of any of its obligations and it shall be responsible to the Company for the acts and omissions of its sub-contractors as if they had been acts and omissions of the Supplier.

- 21.2 Richards Bay Titanium(Pty) Limited and Richards Bay Mining (Pty) Limited shall each be entitled at any time during the currency of the Order/Supply Agreement and upon giving written notice to that effect to assign its rights and obligations under the Order to the other of them or their affiliated or associated company/ies and the Supplier hereby consents to such assignment. In such event the Supplier shall have no claim of any nature or description whatsoever against the assignor after the date of assignment.

22.

Law applicable

- 22.1 The law of the Contract shall be South African law.
- 22.2 The Company and the Supplier hereby submit to the jurisdiction of the High Court of South Africa.

23.

Domicilium and Notices

- 23.1 Each of the parties chooses domicilium citandi et executandi for all purposes arising from or in connection with this agreement, including the delivery of notices, as follows:

Company:

Street Address:

P O Box:

Email Address:

Supplier:

Street Address:

P O Box:

Email Address:

- 23.2 Each party will be entitled from time to time by written notice to the other parties to change any of its domicilium addresses to any other address within the Republic of South Africa, provided that one of the addresses shall always be a street address at which the service of legal processes can be effected.
- 23.3 Any notice which:

- (a) is delivered by hand at the addressee's street address domicilium shall be deemed to have been received by the addressee at the time of delivery; or
- (b) is posted by prepaid registered post from an address within the Republic of South Africa to the addressee at its domicilium shall be presumed, until the contrary is proved by the addressee, to have been received by the addressee on the seventh day after the date of posting; or
- (c) if transmitted by email to the addressee at its domicilium shall be deemed to have been received by the addressee on sending, or, if the transmission is made out of normal business hours, on the first business day following after the date of transmission, provided the sender does not receive a delivery failure notice.

24.

General

- 24.1 This agreement contains the entire understanding of the parties as to its subject matter. Neither party shall be bound by any condition, warranty, representation or undertaking of any kind, whether express or implied, except as set forth in this agreement.
- 24.2 No purported amendment or modification of this agreement shall be valid unless in writing and signed by both parties.
- 24.3 The failure of either party at any time to require performance of any provision of this agreement shall not affect the right of such party to require performance of that provision or of any other provision in the future. No waiver by either party with respect to a breach of any provision of this agreement shall be construed as a waiver with respect to any continuing or subsequent breach of that provision, or as a waiver of any other right under this agreement.
- 24.4 If the date for payment of any monies under the Order falls on either a weekend or public holiday, the payment will be due on the following business day.