

IMPALA BAFOKENG RESOURCES (PTY) LTD

GENERAL TERMS AND CONDITIONS

IBR 19

SERVICE CONTRACTS AND/OR ORDERS

GENERAL TERMS AND CONDITIONS OF SERVICES CONTRACTS AND ORDERS

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1. **DEFINITIONS**

The following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them:

- 1.1. **“Client”** means the Client named in the Contract.
- 1.2. **“Client’s Components”** means any components, material, or other tangible items supplied by the Client, at the Client’s cost to the Supplier as “free issue”.
- 1.3. **“Contract”** means the Contract to which these General Terms and Conditions for Service Contracts and /or Purchase Orders form part of. It includes Special Conditions of Contract if specified as well as Purchase Orders if accepted.”
- 1.4. **“Contract Data”** means the specific data, which together with these General Terms and Conditions of the Contract, collectively describe the risks, liabilities, and obligations of the contracting Parties and the procedures for the administration of the Contract.
- 1.5. **“Supplier”** means the Contracting party named in the Contract who is employed by the Client to perform the Services described in the Contract and the legal successors to the Supplier and legally permitted assignees.
- 1.6. **“Contract Price”** means the price to be paid for the performance of the Services in accordance with the agreed pricing structure.
- 1.7. **“Day”** means a calendar day.
- 1.8. **“Defect”** means a part of the Services, as performed, which does not comply with the requirements of the Contract.
- 1.9. **“Deliverable”** means any measurable, tangible, verifiable outcome, result, or item that must be produced or completed.
- 1.10. **“Delivery”** means delivery in compliance with the terms of the Contract before the due date at the point of delivery specified in the Contract.
- 1.11. **“Engineer”** means the Engineering Manager of Impala Bafokeng Resources (Pty) Ltd or any other Engineer appointed from time to time by the Client and notified in place of the Engineer designated.
- 1.12. **“Key Contact Persons”** means persons who are named as Client’s or Supplier’s key on-site representatives in the Contract.
- 1.13. **“Key Persons”** means persons who are named as Client’s or Supplier’s representatives who will be engaged in the performance of this Contract.

- 1.14. **“Procurement Manager”** means the Manager Procurement of Impala Bafokeng Resources (Pty) Ltd or its nominated representative appointed from time to time by the Client and notified in writing to the Supplier.
- 1.15. **“Purchase Order”** means and includes the contents of the Purchase Order as amplified by these instructions and all documents attached to the Purchase Order (of which constitutes the Contract as contemplated in 1.3.).
- 1.16. **“Others”** means persons or organisations who are not the Client, the Supplier or any employee, Subcontractor, or supplier of the Supplier.
- 1.17. **“Parties”** means the Client and the Supplier.
- 1.18. **“Person”** includes incorporated or unincorporated bodies of persons, and the singular shall include the plural and vice versa.
- 1.19. **“Personnel”** means the persons hired by the Supplier as employees and assigned to the performance of the Services or any part thereof as outlined in the detailed Scope of Work.
- 1.20. **“Personnel Schedule”** means the schedule naming all the Supplier’s employees and Key Persons.
- 1.21. **“Scope of Work”** (SOW) means the document which defines the Client’s objectives and requirements and specifies the Service which must or may be provided under the Contract and/or by the Supplier.
- 1.22. **“Services”** means the work to be performed by the Supplier pursuant to the Contract and/or Special Conditions of Contract as described in the Scope of Work.
- 1.23. **“Special Conditions of Contract”** means any specifically defined provisions other than those defined in these General Terms and Conditions and / or any amendments made to these General Terms and Conditions as contemplated under the Special Conditions of Contract and / or Purchase Order.
- 1.24. **“Successful Tenderer”** means the person or Supplier whose tender has been accepted by the Client and who on acceptance of the Contract becomes the “Supplier”.
- 1.25. **“Successful Tenderer’s Material”** means any components, material or other tangible items supplied by the Successful Tenderer at the Successful Tenderer’s cost.
- 1.26. **“Tenderer”** means the person or Supplier who submits a tender in response to the Client’s Invitation to Tender.

2. INTERPRETATION

- 2.1. Unless inconsistent with the context, an expression which denotes:
 - 2.1.1. any gender includes the other genders.
 - 2.1.2. a natural person includes a juristic person and vice versa.
 - 2.1.3. the singular includes the plural and vice versa.
- 2.2. The clause headings shall not limit, alter, or affect the meaning of the Contract.

3. GENERAL

3.1. Governing Law

The law governing the Contract and/or shall be the law of the Republic of South Africa.

3.2. Change In Legislation

If after the commencement of the Contract, the cost or duration of the Services is altered as a result of changes in, or additions to, any statute, regulation, or bye-law, or the requirements of any authority having jurisdiction over any matter in respect of the Contract, then the Contract Price and time for completion shall be adjusted in order to reflect the impact of those changes at the sole discretion, provided that, within fourteen (14) Days of first having become aware of the change, the Supplier furnished the Client with detailed justification for the adjustment to the Contract Price or Period of Performance (or both).

3.3. Language

- 3.3.1. The language of the Contract and of all communications between the Parties shall be English.
- 3.3.2. All reports, recommendations, and reports prepared by the Supplier under the Contract shall be in English.

3.4. Notices

- 3.4.1. Any notice, request, consent, approvals, or other communication made between the Parties pursuant to the Contract shall be in writing and forwarded to the address specified in the Contract.
- 3.4.2. Such communication shall be deemed to have been made when delivered in person to an authorised representative of the Party to whom the communication is addressed, or one (1) week after having been sent by registered post to the address stated in the Contract, or when sent by e-mail to such Party or unless otherwise specified in the Special Conditions of Contract and/or Order.

- 3.4.3. A Party may change its address for receipt of communications by giving the other Party thirty (30) Days advance notice of such change.

3.5. Location

The Services shall be performed at such locations as specified in the Contract, and where the location of a particular task is not so specified, at such locations as the Client may approve.

3.6. Confidentiality

Both parties shall keep all sensitive information obtained by them in the context of the Contract confidential and shall not divulge it without the written approval of the other Party.

3.7. Variations

3.7.1. The Client may, without changing the objectives or fundamental scope of the Contract, order variations to the Services in writing or may request the Supplier to submit proposals, including the time and cost implications, for variations to the Services.

3.7.2. The reasonable cost of preparation and submission of such proposals and the incorporation into the Contract of any variations to the Services ordered by the Client, including any change in the Contract Price, shall be agreed between the Supplier and the Client.

3.7.3. Where a variation is necessitated by default or breach of Contract by the Supplier, any additional cost attributable to such variation shall be borne by the Supplier.

3.8. Sole Agreement

The Contract (constitutes the sole agreement between the Parties for the performance of the Services and any representation not contained therein shall not be of any force or effect. No amendments will be of any force or effect unless reduced to writing and signed by both Parties.

3.9. Indemnification

The Supplier shall, at his own expense, indemnify, protect, and defend the Client, its agents, and employees, from and against all actions, claims, losses, and damage arising from any negligent act or omission by the Supplier in the performance of the Services, including any violation of legal provisions, or rights of others, in respect of patents, trademarks and other forms of intellectual property such as copyrights.

3.10. **Equipment and Materials furnished by the Client.**

- 3.10.1. Equipment and materials made available to the Supplier by the Client or purchased by the Supplier with funds provided by the Client for the performance of the Services shall be the property of the Client and shall be marked accordingly. Upon termination or expiration of the Contract, the Supplier shall make available to the Client an inventory of such equipment and materials and shall dispose of them in accordance with the Client's instructions.
- 3.10.2. The Supplier shall, at his own expense, ensure the equipment and materials referred to in 3.10.1 for their full replacement value, unless stated otherwise.

3.11. **Illegal and Impossible Requirements**

The Supplier shall notify the Client immediately, on becoming aware that the Contract requires him to undertake anything which is illegal or impossible.

3.12. **Program / Work Schedule**

- 3.12.1. The Supplier shall, within the time period set out in the Contract, unless otherwise specified in the Special Conditions of Contract and/or Order, submit to the Client a program/ work schedule for the performance of the Services which shall, *inter alia*, include:
- 3.12.1.1. the order and timing of operations by the Supplier and any actions required of the Client and Others.
 - 3.12.1.2. the dates by which the Supplier plans to complete work needed to allow the Client and Others to undertake work required of them; and
 - 3.12.1.3. other information as required in terms of the Scope of Work (SOW) or Special Conditions of Contract and/or Order.
- 3.12.2. The Client may, during the course of the Contract, request the Supplier to amend the program / work schedule. Where this is not practicable, the Supplier shall advise the Client accordingly and advise it of alternative measures, if any, which might be taken.
- 3.12.3. The Supplier shall regularly update the program / work schedule to reflect actual progress to date and expected future progress.

4. **CLIENT'S OBLIGATIONS**

4.1. **Assistance**

The Client shall cooperate with the Supplier and shall not interfere with or obstruct the proper performance of the Services. The Client shall as soon as practicable procure the

Supplier's ready access to premises or sites, necessary for the performance of the Services.

4.2. **Notification of Material Change or Defect**

The Client shall immediately advise the Supplier on becoming aware of:

- 4.2.1. any matter other than a change in legislation which will materially change, or has changed the Services; or
- 4.2.2. a material defect or deficiency in the Services.

4.3. **Issue of Instructions**

Where the Supplier is required to administer the work or services of Others, or any contract or agreement, on behalf of the Client, then the Client shall issue instructions related to such work, services, contract, or agreement only through the Supplier.

4.4. **Payment to Supplier**

The Client shall pay the Supplier the contract price in accordance with the provisions of the Contract.

5. **SUPPLIER'S OBLIGATIONS**

5.1. **General**

- 5.1.1. The Supplier shall perform the Services in accordance with the Scope of Work (SOW) with all reasonable care, diligence, and skill in accordance with generally accepted professional techniques and standards.
- 5.1.2. If the Supplier is a joint venture or consortium of two or more persons, the Supplier shall designate one person to act as leader with authority to bind the joint venture or consortium. Neither the composition nor the constitution of the joint venture or consortium shall be altered without the prior consent in writing of the Client, which shall not be unreasonably withheld.

5.2. **Exercise of Authority**

The Supplier shall have no authority to relieve Others appointed by the Client to undertake work or services on the contract of any of their duties, obligations, or responsibilities under their respective agreements or contracts unless expressly authorised by the Client in response to an application by the Supplier in writing to do so.

5.3. **Designated Representative**

Unless otherwise communicated in the Special Conditions of Contract and/or Order, the authorised and designated person named in the Contract has complete authority to receive instructions from and give information to the Client on behalf of the Supplier.

5.4. **Insurances to be taken out by Supplier**

5.4.1. The Supplier shall as a minimum and at his own cost take out and maintain in force all such insurances as are stipulated in the Contract unless otherwise specified in Special Conditions of Contract and / or Order.

5.4.2. The Supplier shall, at the Client's request, provide evidence to the Client showing that the insurance required in terms of Clause 5.4.1 has been taken out and maintained in force.

5.5. **Supplier's Actions requiring Client's Prior Approval**

The Supplier shall obtain the Client's prior approval in writing before taking, *inter alia*, any of the following actions:

5.5.1. appointing Subcontractors for the performance of any part of the Services.

5.5.2. appointing Key Contact Persons not listed by name in the Contract, unless otherwise specified in Special Conditions of Contract and / or Order.

5.5.3. any other action that may be specified in the Special Conditions of Contract and/or Order.

5.6. **Co-operation of Others**

If the Supplier is required to perform the Services in co-operation with Others, he may make recommendations to the Client in respect of the appointment of such Others. The Supplier shall, however, only be responsible for his own performance and the performance of Subcontractors unless otherwise provided for.

5.7. **Notice of Change by Supplier**

On becoming aware of any matter which will materially change or has changed the Services, the Supplier shall within fourteen (14) days thereof give notice to the Client.

6. CONFLICTS OF INTEREST

6.1. Suppliers not to Benefit from Commissions, Discounts, etc.

The remuneration of the Supplier under the Contract shall constitute the Supplier's sole remuneration in connection with the Contract, or the Services, and the Supplier shall not accept for his own benefit any trade commission, discount, or similar payment in connection with activities pursuant to the Contract, or in the discharge of his obligations under the Contract, and shall use his best efforts to ensure that the Personnel, any Subcontractors, and agents of either of them shall, similarly, not receive any additional remuneration.

6.2. Royalties and the like

The Supplier shall not have the benefit, whether directly or indirectly, of any royalty or of any gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the Contract unless so agreed by the Client in writing.

6.3. Independence

The Supplier shall refrain from entering any relationship which could be perceived as compromising his independence of judgment, or that of Subcontractors or Personnel.

6.4. Conflict of Interest

The Supplier shall declare upfront any potential or perceived conflict of interest that may exist between the Supplier and the Client. Failure to declare such potential or perceived conflict of interest may result in the cancellation of the Contract or rendering of the tender submission null and void.

7. SUPPLIER'S PERSONNEL

7.1. General

7.1.1. The Supplier shall employ and provide all qualified and experienced Personnel required to perform the Services.

7.1.2. Where required in terms of the Contract, the Supplier shall provide Key Persons as listed in the Contract unless otherwise specified in Special Conditions of Contract and/or Order, in order to perform specific duties. If at any time, a particular Key Person cannot be made available, the Supplier may engage a replacement who is equally or better qualified to perform the stated duty, subject to the Client's approval, which approval shall not be unreasonably withheld.

7.1.3. The Supplier shall bear all additional costs arising out of or incidental to the replacement of Personnel, except where such replacement is otherwise provided for in the Special Conditions of Contract and/or Order.

- 7.1.4. The Supplier shall take all measures necessary and shall provide all materials and equipment necessary to enable Personnel to perform their duties in a safe and efficient manner.

7.2. Provision of Personnel in terms of a Personnel Schedule

- 7.2.1. The Supplier shall, where required in terms of the Contract, provide appropriate Personnel for such time periods as required in terms of the Contract and enter all data pertaining to Personnel including titles, job descriptions, qualifications, and estimated periods of engagement on the performance of the Services in the Personnel Schedule.
- 7.2.2. Where the Supplier proposes to utilise, a person not named in the Personnel Schedule, he shall submit the name, relevant qualifications, and experience of the proposed replacement person to the Client for approval. Should the Client not object in writing within ten (10) Days of receipt of such notification, the replacement shall be deemed to have been approved by the Client.
- 7.2.3. The Services shall be performed by the Personnel listed in the Personnel Schedule for the periods of time indicated therein. The Supplier may, subject to the approval of the Client, make such adjustments to the data provided in terms of Clause 7.2.1 above as may be appropriate to ensure the efficient performance of the Services, provided that the adjustments will not cause payments to exceed any limit placed on the Contract Price.
- 7.2.4. The Supplier shall, if required in terms of Clause 7.2.1:
 - 7.2.4.1. forward to the Client for approval, within fifteen (15) Days of the award of the Contract , the Personnel Schedule, and a timetable for the placement of Personnel.
 - 7.2.4.2. inform the Client of the date of commencement and departure of each member of Personnel during the course of the Contract .
 - 7.2.4.3. submit to the Client for his approval a timely request for any proposed change to Personnel.

8. COMMENCEMENT, COMPLETION, MODIFICATION AND TERMINATION

8.1. Commencement of Services

The Contract shall commence within thirty (30) days after a letter of award has been issued to the Supplier or such date as may be stated in the Special Conditions of Contract and/or Order.

8.2.

8.3. Contract Expiry

The Contract shall expire on the last anniversary month of the Contract unless otherwise stated in the Special Conditions of Terms of Contract and/or Order.

8.4. Force Majeure

8.4.1. An Event of Force Majeure includes, without limitation, vis major, casus fortuitus, nation-wide or industry-wide strike (but not a strike which is limited to the personnel of the affected Party), political riot, insurrection or other civil disorder, war (whether declared or not) or military operations.

8.4.2. Should the affected Party partially or completely cease to be prevented from fulfilling its obligations by the Event of Force Majeure, the affected Party shall immediately give Written notice to the unaffected Party of such cessation and the affected Party shall, as soon as possible, fulfil its obligations which were previously suspended; provided that in the event and to the extent that fulfilment is no longer possible or the other Party has given Written notice that it no longer requires such fulfilment, the affected Party shall not be obliged to fulfil its suspended obligations and the unaffected Party shall not be obliged to fulfil its corresponding obligations.

8.4.3. The failure of a Party to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of *Force Majeure*, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order to meet the terms and conditions of this Contract, and has informed the other Party as soon as possible about the occurrence of such an event.

8.5. Termination

8.5.1. The Client may terminate the Contract without prejudice to any right of action or remedy which has accrued or thereafter accrues to the Client if the Supplier:

8.5.1.1. does not remedy a failure in the performance of its obligations under the Contract within fourteen (14) Days after having been notified thereof, or within any further period as the Client may have subsequently approved in writing.

8.5.1.2. if the Supplier becomes insolvent or liquidated or otherwise in the opinion of the Client is in financial circumstances as to prejudice the performance of the Contract.

8.5.2. The Client shall give the Supplier not less than thirty (30) days written notice of any termination made in terms of 8.4.1.1 or 8.4.1.2.

- 8.5.3. The Supplier may terminate the Contract , by giving not less than thirty (30) Days written notice to the Client after the occurrence of any of the following events:
- 8.5.3.1. if the Client fails to pay any monies due to the Supplier in terms of the Contract and not subject to dispute pursuant to Clause 12 within forty-five (45) Days after receiving written notice from the Supplier that such payment is overdue.
 - 8.5.3.2. if the Client is in material breach of a term of the Contract and fails to rectify such breach within thirty (30) Days of the receipt of written notice requiring him to do so.
- 8.5.4. Upon termination of this Contract pursuant to Clause 8.4.1 the Client shall remunerate the Supplier in terms of the Contract and/or Services satisfactorily performed prior to the effective date of termination.
- 8.5.5. Should the Supplier, being an individual or the last surviving principal of a partnership or body corporate, die or be prevented by illness or any other circumstances beyond his control from performing the obligations implied by the Contract, the Contract shall be terminated without prejudice to the accrued rights of either Party against the other.

8.6. Modification of Scope of Work

The Client may increase or decrease areas of performance due to expansion or reduction of areas by giving the Supplier thirty (30) Days written notice prior to the effective date.

8.7. Rights and Liabilities of the Parties

Completion, suspension, or termination of the Contract shall not prejudice or affect the accrued rights or liabilities of the Parties.

9. OWNERSHIP OF DOCUMENTS AND COPYRIGHT

- 9.1. The Parties shall hold in confidence all confidential information received from each other and not divulge confidential information to any person, including any of its employees, save for employees directly involved with the execution of this Contract.
- 9.2. The Parties shall prevent disclosure of the confidential information, except as may be required by law.
- 9.3. The provisions of this clause shall remain in force for as long as may be necessary to protect either party's interests, irrespective of the date on which this Contract is terminated or cancelled for any reason whatsoever.
- 9.4. All documents relating to this Contract shall remain the property of the Client.

10. ASSIGNMENT

- 10.1. The Supplier shall not cede, assign, or transfer the Contract or any part thereof or any rights or obligations thereof to any other person except with the consent in writing of the Client.
- 10.2. The Client shall be entitled to cede, assign, and delegate their rights and obligations in terms of this Contract to any other person on written notice to the Supplier.
- 10.3. The approval of an assignment by the Client shall not relieve the Supplier of its obligations for the part of the Contract already performed or the part not assigned.

11. SUBCONTRACTING

- 11.1. A Supplier may not subcontract any work which it has the skill and competency to perform unless otherwise permitted in the Special Conditions of Contract.
- 11.2. A subcontract, where permitted in terms of the Contract Data, shall be valid only if it is a written agreement by which the Supplier entrusts the performance of a part of or the whole of the Services to Others.
- 11.3. The Supplier shall not subcontract to nor engage a Subcontractor to perform any part of the Services without the prior written authorization of the Client. The services to be subcontracted and the identity of the Subcontractor shall be notified to the Client. The Client shall, within fourteen (14) Days of receipt of the notification and a full motivation for why such services are to be subcontracted, notify the Supplier of his decision, stating reasons, should it withhold such authorization. If the Supplier enters into a subcontract with a Subcontractor without prior approval, the Client may forthwith terminate the Contract.
- 11.4. The Client shall have no contractual relationships with Subcontractors. However, if a Subcontractor is found by the Client to be incompetent, the Client may request the Supplier either to provide a Subcontractor with qualifications and experience acceptable to the Client as a replacement or to resume the performance of the relevant part of the Services itself.
- 11.5. The Supplier shall advise the Client without delay of the variation or termination of any subcontract for the performance of all or part of the Services.
- 11.6. The Supplier shall be responsible for the acts, defaults, and negligence of Subcontractors and their agents or employees in the performance of the Services, as if they were the acts, defaults, or negligence of the Supplier, its agents or employees unless agreed otherwise.
- 11.7. Approval by the Client of the subcontracting of any part of or the whole of the Contract and/or Order or of the engagement by the Supplier of Subcontractors to perform any part of or the whole of the Services shall not relieve the Supplier of any of its obligations under the Contract and/or Order.

12. DISPUTE RESOLUTION

12.1. Settlements

- 12.1.1. The Parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to the Contract and may not initiate any further proceedings until either Party has, by written notice to the other, declared that such negotiations have failed.
- 12.1.2. Any dispute, which arises between the Parties pursuant to this Contract , or the breach, termination or invalidity thereof shall be referred to joint committee consisting of the Client Representative namely the Group Supply Chain Manager and/or one or more persons nominated by the Client and one or more representatives of the Supplier. The joint committee shall endeavour to resolve the dispute within fourteen (14) days after the dispute has been referred to them.
- 12.1.3. Should the joint committee be unable to resolve the dispute, either Party may, within five (5) days thereafter notify the other Party that it wishes to refer the dispute to mediation. In that event, the Parties shall endeavour to agree on the mediator and the mediation procedure.
- 12.1.4. If the Parties are unable to agree to mediation, the mediation procedure, or the mediator, or in the event that the mediation does not result in the settlement of the dispute, then either Party may give Written Notice to the other Party to refer the dispute to arbitration.

12.2. Arbitration

- 12.2.1. The Parties may agree on the arbitration procedure and on the arbitrator but failing agreement within seven (7) Days of a Party delivering to the other Party that it wishes to institute arbitration proceedings; the arbitration shall take place in accordance with the United Nations Commission on International Trade Law (“UNCITRAL”) Arbitration Rules in force at the time of the dispute.
- 12.2.2. The appointing authority in terms of the UNCITRAL Arbitration Rules shall be the Association of Arbitrators (Southern Africa). The number of arbitrators shall be one (1).
- 12.2.3. Unless agreed otherwise the arbitration shall be administered by the Parties.
- 12.2.4. The place of arbitration shall be Sandton, South Africa.
- 12.2.5. Nothing in this clause 12 shall preclude any Party from seeking interim and / or urgent relief from a Court of competent jurisdiction and to this end the Parties hereby consent to the jurisdiction of the High Court of South Africa (South Gauteng High Court, Johannesburg).

13. LIABILITY

13.1. Liability of the Supplier

- 13.1.1. The Supplier shall be liable to the Client arising out of or in connection with the Contract if a breach of Clause 5.1 is established against it.
- 13.1.2. The Supplier shall correct a Defect on becoming aware of it. If the Supplier does not correct a Defect within a reasonable time stated in a notification and the Defect arose from a failure of the Supplier to comply with its obligation to provide the Services, the Supplier shall pay to the Client the amount which the latter assesses as being the cost of having such Defect corrected by Others.
- 13.1.3. All persons in a joint venture or consortium shall be jointly and severally liable to the Client in terms of this Contract and shall carry individually the minimum levels of insurance stated in the Special Conditions of Contract , if any.

13.2. Liability of the Client

The Client shall be liable to the Supplier arising out of or in connection with the Contract if a breach of an obligation of its terms of the Contract is established. The Supplier shall have no separate delictual right of action against the Client.

13.3. Compensation

If it is established that either Party is liable to the other, compensation shall be payable only on the following terms:

- 13.3.1. Compensation shall be limited to the amount of reasonably foreseeable loss and damage suffered as a result of the breach.
- 13.3.2. In any event, the amount of compensation will be limited to the amount specified in Clause 13.5.

13.4. Duration of Liability

Notwithstanding the terms of the Prescription Act No. 68 of 1969 (as amended) or any other applicable statute of limitation neither the Client nor the Supplier shall be held liable for any loss or damage resulting from any occurrence unless a claim is formally made within the period stated in the Special Conditions of Contract or, where no such period is stated, within a period of three (3) years from the date of termination or completion of the Contract .

13.5. Limit of Compensation

- 13.5.1. Unless otherwise indicated in the Contract Data, the maximum amount of compensation payable by either Party to the other in respect of liability under the Contract and/or Order is limited to:

- 13.5.1.1. the sum insured in terms of 5.4 in respect of insurable events; and
- 13.5.1.2. the sum stated in the Special Conditions of Contractor, where no such amount is stated, an amount equal to twice the amount of fees payable to the Supplier under the Contract , excluding reimbursement and expenses for items other than salaries of Personnel, in respect of non-insurable events.
- 13.5.2. Each Party agrees to waive all claims against the other insofar as the aggregate of compensation which might otherwise be payable exceeds the aforesaid maximum amount payable.
- 13.5.3. If either Party makes a claim for compensation against the other Party and this is not established, the claimant shall reimburse the other for his reasonable costs incurred as a result of the claim or if proceedings are initiated in terms of Clause 12 for such costs as may be awarded.

13.6. Indemnity by the Client

Unless otherwise indicated in the Contract Data, the Supplier shall indemnify the Client against all claims by third parties which arise out of or in connection with the performance of the Services save to the extent that such claims are covered by the insurances arranged under Clause 5.4.

13.7. Exceptions

- 13.7.1. The Supplier shall have no liability whatsoever for actions, claims, losses, or damages occasioned by:
 - 13.7.1.1. the Client omitting to act on any recommendation, or overriding any act, decision, or recommendation, of the Supplier, or requiring the Supplier to implement a decision or recommendation with which the Supplier disagrees or on which he expresses a serious reservation; or
 - 13.7.1.2. the improper execution of the Supplier's instructions by agents, employees, or independent Suppliers of the Client.

14. PAYMENT OF THE SUPPLIER

- 14.1. Payment of invoices for Suppliers will be affected 30 (thirty) days from the date of the receipt of the correct statement or as otherwise stated in the Special Conditions of Contract and/or Order. Invoices/statements should be submitted after the Client has, in writing, acknowledged receipt of the Services provided. A correct and original monthly statement reflecting the above invoices must be submitted to the Client.
- 14.2. The monthly statements, invoices and all supporting documentation must be received before payment can be affected. If the Supplier's documentation is incomplete or incorrect, payment of these documents will only be affected in the following month once the correct

documents are received, payment will be affected 30 (thirty) days from receipt of a correct statement or 45 (forty-five) days from receipt of a correct invoice.

- 14.3. For VAT registered Suppliers, all invoices on the Supplier's statement must comply with the VAT Act, No. 89 of 1991, or any Act replacing it, before payment can be affected.
- 14.4. Settlement discounts, if any, agreed upon will be deducted from payments by the Client.
- 14.5. The Client may set-off any amounts owed by the Supplier from any amount due.
- 14.6. Payment will be affected by bank transfer, the Client's liability towards the Supplier will be deemed to be met with Bank Transfer being made. The Supplier assumes the entire risk with Bank Transfer, upon transfer being made. The Supplier will ensure that Client at all times has the correct banking information of the Supplier in order to make a bank transfer.
- 14.7. All original invoices must be forwarded to the Client on a continuous basis throughout the month addressed to the relevant authorised person to the address as stated below:

IMPALA BAFOKENG RESOURCES

Sun City Road (R565)
Boshoek Farm
Rustenburg
0301

- 14.8. All payments are provisional and are subject to audit by the Client. The Supplier will preserve its records for such a period as the South African Revenue Services (SARS) may require, or five (5) years from date of payment by the Client, whichever is the longer.
- 14.9. All correspondence (relating to matters other than invoices) must reflect the relevant Contract and/or Order Number and be addressed to the Client's representative and sent to:

IMPALA BAFOKENG RESOURCES

[Insert business area]
[Insert new address]

15. AMOUNTS DUE TO THE CLIENT

Amounts due to the Client shall be paid by the Supplier within thirty (30) days of receipt of the relevant invoices. If the Client does not receive payment by the due date, he shall be entitled to charge interest on the unpaid amount, which is payable by the Supplier, at the rate stated in the Contract unless otherwise specified in the Special Conditions of Contract and/or Order, calculated from the due date for payment.