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**AGREEMENT NO. *DRAFT COPY***

**AGREEMENT**

**BETWEEN**

**ARCELORMITTAL SOUTH AFRICA LIMITED**

**AND**

**XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX**

**FOR**

**THE ROAD TRANSPORT OF ARCELORMITTAL'S TIN AND DWI PRODUCTS FROM ARCELORMITTAL VANDERBIJLPARK WORKS TO ARCELORMITTAL'S DOMESTIC CUSTOMERS**

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## 1 DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1 the singular includes the plural and vice versa;
- 1.2 a reference to one gender includes the other;
- 1.3 a reference to a firm or body corporate includes a natural person and vice versa;
- 1.4 clause headings are for convenience only and shall not be taken into consideration in the interpretation of the Agreement;
- 1.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.6 where figures are referred to in numerals and in words, if there is any conflict, the words shall prevail;
- 1.7 all schedules and annexures hereto shall be deemed to be incorporated herein and shall form an integral part hereof;
- 1.8 reference to days, months or years shall be construed as Gregorian calendar days, months or years;
- 1.9 where a number of days are prescribed, it shall be reckoned exclusively of the 1st (first) and inclusively of the last day;
- 1.10 expressions defined in the Agreement shall bear the same meanings in schedules or annexures to the Agreement, which do not contain their own definitions.
- 1.11 The following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings, unless inconsistent with or otherwise expressly indicated in the Agreement:
  - 1.11.1 “**ArcelorMittal**” means ArcelorMittal South Africa Limited, a public company registered in the Republic of South Africa, (Registration No. 1989/002164/06);
  - 1.11.2 “**Agreement**” means this agreement as contained in this document and all its annexures or schedules;
  - 1.11.3 “**BBBEE**” means Broad Based Black Economic Empowerment as defined in the Broad Based Black Economic Empowerment Act 53 of 2003 as amended from time to time;
  - 1.11.4 “**Business Day**” means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;

- 1.11.5 **Contractor**” means XXXXXXXXXXXXXXXX a South African company with registration number: XXXXXXXXXXXXX;
- 1.11.6 **Contractor Employees**” means employees of the Contractor, including, but not limited to the Contractor’s directors, members, officers, third parties, contractors, sub-contractors and other persons who have a contractual relationship (in writing or otherwise) with the Contractor entrusted with the duty to deliver or render services in relation to the delivery of the Products on behalf of the Contractor;
- 1.11.7 **Customers**” means ArcelorMittal’s clients as may be directed from time to time by ArcelorMittal for the purposes of this Agreement;
- 1.11.8 **Destination**” means the Customers’ premises where the Products are destined to be delivered by the Contractor as directed by ArcelorMittal pursuant to this Agreement;
- 1.11.9 **Effective Date**” means XXXXXXXXXXXX notwithstanding the Signature Date;
- 1.11.10 **Party**” means ArcelorMittal or the Contractor;
- 1.11.11 **Parties**” means ArcelorMittal and the Contractor;
- 1.11.12 **Products**” means steel manufactured by ArcelorMittal Newcastle;
- 1.11.13 **Signature Date**” means the date of signature of this Agreement by the Party signing last;
- 1.11.14 **Take-Over-Point**” means the area where the Products shall be inspected and accepted by both ArcelorMittal and the Contractor, where after the Products shall be placed onto the Contractor’s mode of transport by an overhead crane and/or forklift or other equipment used for loading purposes;
- 1.11.15 **Termination Date**” means xxxxxxxxx;
- 1.11.16 **VAT**” means value added tax in terms of the Value-Added Tax Act No. 89 of 1991 as levied in terms of the Income Tax Act No 58 of 1962, both as amended from time to time; and
- 1.11.17 **Works**” means ArcelorMittal Newcastle situated in Newcastle, Kwazulu Natal.
- 1.12 The principle of *contra proferentem* shall not apply in so far as interpretation of this Agreement is concerned

## 2 APPOINTMENT

- 2.1 ArcelorMittal hereby appoints the Contractor to convey the Products from the Take-Over-Point at the Works to the Destination.

- 2.2 The Contractor hereby accepts this appointment on the terms and conditions stated in this Agreement.
- 2.3 It is specifically recorded that ArcelorMittal provides no warranties, undertakings or representations as to the tonnages of Products which shall be available for transport by the Contractor during the term of this Agreement.
- 2.4 It is further recorded that ArcelorMittal shall under no circumstances be held accountable for any costs incurred by the Contractor such as the purchase of equipment or material or recruitment of staff in order to give effect to this Agreement.

### **3 DURATION**

- 3.1 This Agreement shall, notwithstanding the Signature Date, commence on the Effective Date and will continue to be in force for xxxxxx months until xxxxxxxx.
- 3.2 ArcelorMittal shall be entitled to extend the period of this Agreement by giving written notice to the Contractor of its intention to do so prior to the date of termination of this Agreement.
- 3.3 The terms and conditions applicable to the renewal period shall be the same as the terms and conditions as contained in this Agreement save as otherwise agreed by the Parties.
- 3.4 ArcelorMittal shall be entitled to terminate the Agreement at any time by giving the Contractor 1 (one) month's prior written notice to such effect without incurring any further liability, loss or claim of whatsoever nature including any labour related claims.

### **4 CONTRACTOR'S OBLIGATIONS**

- 4.1 The Contractor shall at its sole expense supply and maintain in good working order all necessary transport vehicles, labour, equipment, fuel and other facilities, necessary for the safe transportation of the Products.
- 4.2 The Contractor shall be familiar with the geographical locations of the Destinations to enable transport thereto, and shall be capable and equipped to fully comply with the terms of this Agreement.
- 4.3 The Contractor undertakes to remove loaded vehicles from the Works' loading bays promptly and/or immediately when instructed to do so, determine the Products' mass on the Works' weighbridge and deliver the Products directly to the Destination.
- 4.4 The Contractor shall promptly deliver the Products in the same good order and condition as the Contractor received them when they were loaded at the Works.
- 4.5 All risk in and to the Products shall pass to the Contractor upon the loading of the Products onto the Contractor's mode of transport, until delivered to and signed off as received in good order at the Destination. It is to this end an explicit condition of this

Agreement that the Products shall reach the Destination on time against a specific order, without any form of damage or defects being incurred during the time that the Products are under the control of the Contractor. The Contractor accepts liability for all damages to or loss of the Products whilst under its control

- 4.6 The Contractor shall deliver the Products to the Destination according to the times as set and stipulated by ArcelorMittal. In the event of failure to deliver on time as required, then ArcelorMittal shall at its sole discretion be entitled to withhold 5 (five) percent of the load's transport cost due to the Contractor in terms of this Agreement, or appoint another company to transport the Products and claim damages where incurred.
- 4.7 The Contractor shall deliver the Products without any form of damage or defects
- 4.8 In the event of a strike the Contractor undertakes to ensure that the following procedures are followed:
- 4.8.1 the Contractor shall notify ArcelorMittal of any prior knowledge of a strike as soon as reasonably possible;
- 4.8.2 the Contractor shall attempt to resolve the dispute prior to a strike or as soon as reasonably possible;
- 4.8.3 notwithstanding the above, the Contractor shall endeavour through the following steps to fulfil the emergency transport needs of ArcelorMittal in as far as reasonably possible by:
- 4.8.3.1 drawing on other employees who are qualified and competent from other operations to transport the Products as required by ArcelorMittal;
- 4.8.3.2 employing qualified and competent outside driver contractors;
- 4.8.3.3 employing other acceptable carriers to transport the Products for the duration of the strike.
- 4.9 If none of the Contractor's endeavours lead to the fulfilment of ArcelorMittal's transport needs at any point, ArcelorMittal shall in its sole discretion (to the extent of the shortcoming) be entitled to engage other road carriers to transport the Products without prejudice to any claim for damages and/or costs incurred by so doing, that it has or may have against the Contractor.
- 4.10 The Contractor shall comply with all reasonable written requests of ArcelorMittal from time to time in relation to the services rendered in terms of this Agreement, it being recorded that ArcelorMittal shall provide the Contractor with all necessary information and data required by the Contractor to discharge its obligations under the Agreement. It is the responsibility of the Contractor to request from ArcelorMittal information relevant to the execution of its obligations in terms of this Agreement.

- 4.11 The Contractor shall together with the Contractor Employees comply with all of the provisions of the applicable policies of ArcelorMittal in regard to anti-fraud, anti-bribery, conflict of interest, declaration and anti-corruption which documentation are available upon request from ArcelorMittal.
- 4.12 The Contractor undertakes in all matters to act in good faith towards ArcelorMittal and to work co-operatively and constructively with ArcelorMittal's representatives and employees.
- 4.13 The Contractor further undertakes to duly comply with all statutory control measures and applicable regulations governing the transportation of the Products, and shall keep the Products in the condition as they were when received from ArcelorMittal. Covering of the Products with tarpaulin or similar during transportation is compulsory.
- 4.14 The Contractor shall use ONLY drivers with valid driver's licences for the purposes of this Agreement.
- 4.15 The Contractor shall avoid unnecessary delays in the transport of the Products, shall attend to any breakdowns on route expeditiously and provide sufficient back up transport to ensure a continuous service and timeous transport of the Products as anticipated herein.
- 4.16 The Contractor shall perform a professional service in terms of this Agreement to uphold and promote ArcelorMittal's reputation and image with its clients or Customers.
- 4.17 The Contractor shall at its expense train and provide suitable drivers and Contractor Employees for the purposes of this Agreement.
- 4.18 The Contractor shall not offer, give or agree to give any person in the service of ArcelorMittal or any member of their family or any person claiming to act on behalf of any such person, any gifts or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or forborne to do acts in relation to the obtaining or execution of the Agreement.
- 4.19 The Contractor shall comply with all specifications, including technical requirements and safety rules, of ArcelorMittal regarding the transportation of the Products in terms of this Agreement, failing which, ArcelorMittal shall at its discretion and without prejudice to other remedies it may have in law or in terms of the Agreement, bar the Contractor from entering the Works until all such requirements are met.

## **5 WARRANTIES**

The Contractor certifies and warrants that it:

- 5.1 shall devote its time, attention and abilities as may be necessary for the provision of the required transportation services to the reasonable satisfaction of ArcelorMittal;



- 5.2 will perform the required transportation services in a professional manner and that all services and materials furnished under this Agreement will be rendered in such manner as conforms with industry accepted norms and standards;
- 5.3 shall advise and assist with respect to all aspects of the delivery of Products;
- 5.4 at the time of signature hereto possesses all licences and permits that are required by law and are necessary to perform in terms of this Agreement and that all such licenses and permits will be in effect for the term of the Agreement and any extension thereof;
- 5.5 has the ability, experience, expertise and skills necessary to perform the required transportation services. For avoidance of doubt, the Contractor shall use all reasonable skill, care and diligence, to a standard to be reasonably expected from a first class and professional firm and provider of similar services at all times in performing all its obligations under the Agreement; and
- 5.6 has the full right, power, authority and capacity and has taken or caused to be taken all steps, actions and corporate procedures necessary to enter into, execute, deliver and perform all of its obligations in terms of the Agreement and no services, materials or reports furnished by the Contractor in terms of the Agreement shall in any way infringe upon or violate any applicable law, rule or regulation, any contract with a third party or any rights of any third person, including, without limitation, rights of patent, trade secret, trademark or copyright.

## **6 TARIFFS**

- 6.1 The tariffs applicable to the transportation services rendered by the Contractor to ArcelorMittal in terms of this Agreement shall be as set out in Annexure C hereto.
- 6.2 The tariffs are exclusive of VAT. The Contractor must calculate VAT in accordance with the relevant statutory provision and indicate it separately on its invoices to ArcelorMittal.
- 6.3 ArcelorMittal shall from time to time issue a Letter of Adjustment to the Contractor should there be an adjustment in tariffs pursuant to clause 7 below.

## **7 PRICE BASIS**

- 7.1 The tariffs contained in Annexure C shall remain fixed until 30 June 2014 except for fuel price adjustments as contained in clause 7.4.
- 7.2 Should the Agreement be extended for a period longer than one year, the tariffs shall be reviewed and negotiated in good faith by the Parties before the one-year anniversary of the Agreement and annually thereafter. The negotiated tariffs will be applicable with effect from the date of anniversary of the Agreement and annually thereafter. If the Parties fail to reach agreement, then the following formula shall be used to determine the tariff adjustment.

$$P = \frac{PO}{100} (20 + \frac{80BM}{BMO})$$

Where:

P = Revised tariff

PO = Original tender tariff

20 = The fixed portion of the tariff, which will not be subject to adjustment

BM = The average of the SEIFSA Index for road freight costs (Table L2) for the months that lapsed since the month of tender (BMO)

BMO = The SEIFSA Index for road freight costs (Table L2) for the month of tender, i.e. March 2014

- 7.3 Statutory movements in the price of diesel shall be reviewed monthly. In the event that the cumulative change in the price of diesel amounts to an increase of 10% or more since the previous tariff adjustment, it will be the responsibility of the Contractor to apply for the tariff adjustment and ArcelorMittal shall on receipt of a request adjust the tariff, provided the application for the adjustment of the tariff is received and proved to ArcelorMittal's satisfaction within 14 (fourteen) days from the date of the official adjustment of the diesel price by the governmental authority concerned. The adjusted tariff will be effective from the 1<sup>st</sup> calendar day of the month following the month in which the diesel price adjustment occurred. If the application is received and proved after the 14 (fourteen) days, the adjusted tariff will be effective from the 1<sup>st</sup> calendar day of the second month following the month in which the diesel price change occurred. The portion of the tariff that will be subject to diesel price adjustments is 38%.
- 7.4 The base date for determination of the diesel price shall be 01 April 2014 (R13.3047 per litre) and the applicable tariff for Gauteng as reflected on the South African Petroleum Industry Association's website (<http://www.sapia.co.za/stats/diesel/htm>), shall apply to all transport tariff adjustments due to diesel price changes.
- 7.5 If there is a cumulative decrease of 10% or more in the price of diesel since the previous tariff adjustment due to the change in the price of diesel, ArcelorMittal shall be entitled to adjust the tariffs accordingly within 14 (fourteen) days from the date of the official adjustment of that diesel price by the governmental authority concerned. The adjusted tariffs will be effective from the 1<sup>st</sup> calendar day of the month following the month in which the diesel price adjustment occurred.
- 7.6 All requests for tariff adjustments shall be submitted to the Senior Procurement Specialist, Logistics, ArcelorMittal. The current designated official is Mr Tsirello Mokoena and the request can be e-mailed to [Tsirello.mokoena@arcelormittal.com](mailto:Tsirello.mokoena@arcelormittal.com) or can be faxed to fax number 016 889 3643.

## **8 CONDITIONS OF PAYMENT**

- 8.1 Payment shall be made on the first day of the second month following the month in which the Products were delivered, provided monthly statements of account shall in all instances reach ArcelorMittal's Corporate Finance Department, Accounts Payable situated in Vanderbijlpark, not later than the seventh day of the month following the month in which the services were rendered.
- 8.2 ArcelorMittal shall not be accountable to pay any interest or penalties of any sort due to the Contractor's failure to submit its invoices on time. Invoices that are submitted by the Contractor 6 (six) months after applicable service was rendered shall not be accommodated and will not be paid by ArcelorMittal.
- 8.3 ArcelorMittal will supply the Contractor with Order Numbers, Load Numbers and Destination for the transport of the Products. The Contractor must ensure that the relevant Order Number is reflected on all related documentation, i.e. delivery notes, Invoices, etc.
- 8.4 The Contractor shall ensure that ArcelorMittal's and the Contractor's VAT numbers are reflected on all related invoices. ArcelorMittal's VAT number is **4920114990**.
- 8.5 The Contractor shall ensure that its Vendor number is reflected on all related invoices. The Contractor's vendor number with ArcelorMittal Newcastle Works is XXXXXXXXX.
- 8.6 Although the Contractor's vehicles will be weighed at both ArcelorMittal and the Customer's mass-measuring bridge/s, the nett mass as determined at ArcelorMittal's mass-measuring bridges shall be final and will be used to calculate payment. ArcelorMittal shall ensure that its weighbridge is properly calibrated at all relevant times to ensure a true and correct mass reading of loads.

## **9 ESTIMATED TONNAGES, LOADING & OFF-LOADING AND LOADING AND OFF-LOADING METHODS**

- 9.1 The quantity of Products to be transported is subject to clause 2.3.
- 9.2 The total quantity to be transported is approximately XXX% of the steel production destined for the domestic market that is estimated at XXXXXX tons per month or XXXX tons per annum.
- 9.3 **Loading Times and Method of Loading**
- Currently loading times are 24 hours per day, 7 days per week. Loading during weekends are mostly to accommodate customers on the longer routes such as customers in the Western Cape.
- Loading will be done by means of ArcelorMittal's Overhead Cranes or Forklifts.
- 9.4 The Contractor shall comply with ArcelorMittal's Loading Pattern works instruction as issued and updated from time to time.

9.5 The quantities reflected in clause 9.2 are only given as a guide to indicate the extent of the work to be performed. The estimated quantities are given without any obligation on the part of ArcelorMittal and the quantities may vary from time to time in accordance with ArcelorMittal's requirements. The Contractor shall be responsible for the handling and transportation of all Product quantities as may be specified by ArcelorMittal from time to time.

9.6 **Off-Loading Times and Off-Loading Methods**

9.7 Almost all customers only off-load on the following days and during the following times:  
Mondays to Thursdays: 07:00 to 16:00  
Fridays: 07:00 to 12:00  
Week-ends and Public Holidays: No Off-Loading

9.8 The Contractor shall **not be responsible for the off-loading of the Products** at the Destination. The Products must at all times be off-loaded by the Customers and in the event that the Contractor off-loads the Products, the Contractor shall do so entirely at its own risk and hereby indemnifies ArcelorMittal against any claims of whatsoever nature, and/or any loss or damage to the Products as a result of the Contractor's decision to off-load the Products.

9.9 The loading and off-loading times as reflected in clauses 9.3 and 9.7 shall apply to this Agreement unless otherwise agreed to in writing by the Parties.

**10 DELIVERY SCHEDULE AND COMMUNICATION**

10.1 ArcelorMittal will supply their transport requirements by means of orders to the Contractor on a regular basis.

10.2 Any deviation from the quantity on the order must at all times be communicated to all Parties concerned.

10.2.1 The Contractor can contact the Manager, Despatch Planning, at ArcelorMittal Newcastle Works for all operational related issues, *inter alia* loading related issues at ArcelorMittal's Newcastle Works and off-loading related issues at the customer/destination. The current designated official is Mr James Ehlers and she can be contacted at 016 889 8085 or 083 304 0320.

**11 MONTHLY REPORTS**

The Contractor shall on a monthly basis supply a report specifying the tonnage transported and the amount invoiced for that specific month. This report must be supplied to the Logistics Procurement Analyst or to such other person(s) as directed by ArcelorMittal from time to time. The current designated official is Ms Caroline McCallum and the report can be sent via e-mail to her at caroline.mccallum@arcelormittal.com or faxed to her on fax number 016 889 3643.

**12 VEHICLES AND EQUIPMENT TO BE USED**

The Contractor shall use vehicles and equipment suitable in every aspect for the transport, loading and off-loading of the Products. These vehicles and equipment shall at all times be subject to the reasonable approval of ArcelorMittal and shall be licensed as required by law.

**13 SAFETY PROCEDURES**

- 13.1 The Contractor shall, in respect of all matters arising in the fulfilment of this Agreement, conform to all safety and operating procedures prescribed by law, by ArcelorMittal and the Customers, which safety and operating procedures the Contractor by signature hereto warrants it is familiar with, has read and has understood and the Contractor acknowledges that it is its duty to keep itself informed of any updates or changes in procedure. All drivers and Contractor Employees must be trained by the Contractor in the workings and application of the Occupational Health and Safety Act as well as any ArcelorMittal safety rules, applicable policies and regulations, and where so required, that of the Customers.
- 13.2 The Contractor will be compelled to supply all its drivers or Contractor Employees with PPE (Personal Protective Equipment, i.e. overall, hard-hat, safety shoes, safety glasses, hearing protection, safety gloves, etc.).
- 13.3 All costs related to driver or Contractor Employees' training shall be for the account of the Contractor.

**14 SHE INCIDENTS (SAFETY, HEALTH AND ENVIRONMENTAL)**

- 14.1 For the purposes of this clause, a "SHE Incident" shall mean a safety fatality, occupational health fatality, major occupational hygiene incident or major environmental incident as defined by ArcelorMittal from time to time.
- 14.2 In the event of a SHE Incident occurring at the Works, the Contractor shall submit within 3 (three) days of the occurrence of such a SHE Incident a report to the Works Manager and the relevant ArcelorMittal Manager of the division where the SHE Incident took place detailing the following information:
- 14.2.1 the background to the occurrence of the SHE Incident;
  - 14.2.2 a description of the SHE Incident;
  - 14.2.3 possible causes of the SHE Incident; and
  - 14.2.4 remedial, corrective or preventative actions taken.

14.3 In addition to the foregoing the Contractor shall upon reasonable notice from ArcelorMittal prepare and present a presentation detailing the information required in terms of clause 14.2 above to the ArcelorMittal SHE Committee and attend all meetings and investigations in this regard as may be required by ArcelorMittal.

## **15 INSURANCE**

15.1 Upon execution of the Agreement, the Contractor shall have and maintain at its sole cost and expense throughout the term of the Agreement, comprehensive general liability insurance, including GIT insurance cover for the Products in transit, as well as all-risk insurance cover including fire and theft for its material, equipment, property and vehicles ("Insurance Cover") from a reputable insurance company acceptable to ArcelorMittal. XXXXX current Insurer is XXXXXXXXXXXXX.

15.2 This Insurance Cover shall *inter alia*, specifically provide insurance for each load of Products transported for at least its market value, cover for its indemnity obligations in terms of clause 22 and any liability whether bodily injury, public liability and/or contractual liability which may arise as a result of the Agreement or the Contractor and Contractor Employees' wilful misconduct, negligent acts and/or omissions. The current market value of ArcelorMittal Vanderbijlpark's steel is approximately R12,000 per ton.

15.3 The Insurance Cover shall not be cancelled or amended in any manner which restricts the existing coverage without the Contractor giving ArcelorMittal at least 30 (thirty) days prior written notice to that effect.

15.4 The cost of insurance is included in the transportation tariffs as reflected in Annexure C and the Contractor shall be responsible for payment of all insurance premiums and any excess in respect of the Insurance Cover and the Contractor shall strictly comply with all terms and conditions of the insurance policy.

15.5 The Contractor shall furnish ArcelorMittal with a certificate of insurance evidencing the Insurance Cover prior to the Effective Date and upon request of ArcelorMittal at any time during the duration of the Agreement.

15.6 Compliance by the Contractor with this insurance provision shall not relieve the Contractor from liability under the indemnity provisions of this Agreement.

## **16 RISK AND LIABILITY**

16.1 When receiving the Products at the Take Over Point, the Contractor shall ensure that any and all damage or discrepancies observed are noted and notify ArcelorMittal immediately, but not later than within 6 (six) hours of the Contractor becoming aware of any such damages or discrepancies. The Contractor undertakes not to handle any damaged Products until ArcelorMittal has inspected such damaged Products. ArcelorMittal shall carry out such inspection when it deems it to be necessary.

- 16.2 The Contractor shall be liable for loss or damage to the Products, whilst the Products are in custody and control of the Contractor. The Products will be considered to be in the Contractor's custody and under its control from the time of receipt at the Take Over Point until delivered to the Destination.
- 16.3 Notwithstanding any instruction that maybe given by ArcelorMittal, the Contractor shall be liable for any loss or damage to the Products resulting from defects or damage or other factors caused by handling methods or equipment of the Contractor or Contractor Employees.
- 16.4 The Contractor shall be responsible for any delays or damages whatsoever incurred due to the inability of the Contractor or Contractor Employees to perform in terms of this Agreement.
- 16.5 ArcelorMittal shall not be liable for, or in respect of, or in consequence of, any accident or damage caused to any property belonging to the Contractor or Contractor Employees and the Contractor indemnifies ArcelorMittal against all such damages and compensation against all claims, demands, proceedings, costs, charges and expenses, whatsoever, in respect thereof or in relation thereto. The Contractor is obliged to inform the Contractor Employees of the foregoing as any such claim shall be referred to the Contractor in terms of this clause.
- 16.6 ArcelorMittal reserves the right to subject all vehicles and personnel of the Contractor or Contractor Employees to a security check whilst entering or leaving the property of ArcelorMittal which security check may, with due observance of all statutory provisions, include a vehicle search, body search, and breathalyser test of any employee of the Contractor or Contractor Employees.

## **17 CUSTOMER COMPLAINTS**

- 17.1 Any damage to the Products in transit must be brought to ArcelorMittal's attention in writing within 12 (twelve) hours of becoming aware of the damage so that it can be registered in ArcelorMittal's Customer Complaints System. Failure to report any such complaint shall render the Contractor liable for damages to the Products in accordance with clause 17.2.
- 17.2 One of ArcelorMittal's representatives shall together with the Contractor investigate the complaint to determine the cause of the damage. If it is found that the Contractor is responsible for damages to the Products then the Contractor shall be responsible to compensate ArcelorMittal at the invoiced value of the Products or part thereof which has been damaged as well as for the onward and return transport cost of the affected Products to the Works by the Contractor.
- 17.3 The Contractor shall compensate ArcelorMittal at the invoice value of the Products lost, damaged, stolen or hi-jacked whilst under the custody or control of the Contractor and payment in respect of the damaged product is due 60 (sixty) days from date of being invoiced for the damaged products.

17.4 Once the Products are accepted by the Contractor and put into their area of responsibility, then the Contractor shall be responsible for any Customer complaints that are not related to ArcelorMittal's production process.

## **18 BROAD BASED BLACK ECONOMIC EMPOWERMENT (BBBEE)**

18.1 The Contractor must be BBBEE compliant and must be at least a level 5 for the purposes of this Agreement. The Contractor further undertakes to comply with the BBBEE policies of ArcelorMittal from time to time and is required to improve its BBBEE compliance status by at least one contribution level every year for the duration of the Agreement until such time as a BBBEE compliance level 3 is reached. After reaching BBBEE compliance level 3, it must be maintained for the remainder of the Agreement.

18.2 ArcelorMittal reserves the right to audit the Contractor's BBBEE status on a regular basis and the Contractor shall afford ArcelorMittal reasonable access to all documents and other information necessary to conduct such audit(s).

18.3 The Contractor will supply ArcelorMittal with their valid BBBEE certificate on an annual basis.

## **19 INTELLECTUAL PROPERTY**

19.1 Neither Party shall have any claim to the copyright, patent, trademarks, designs or any other intellectual property rights of the other merely as a result of this Agreement.

19.2 Nothing in this Agreement shall entitle either Party to use the other's name, logo, trademarks, designs, copyrights or any other intellectual property rights in any manner whatsoever without the concerned Party's prior written consent.

19.3 Any copyright, trademarks, patents, designs or other intellectual property rights (including the development of any hardware, software, know-how, techniques or the like) developed by a Party during the course of this Agreement shall remain the property of such Party and that jointly developed by the parties shall jointly belong to the Parties.

## **20 CONFIDENTIALITY**

20.1 Except as otherwise provided in this clause, the terms and conditions of this Agreement, all data, reports, records and other information of any kind whatsoever developed or acquired by any Party in connection with this Agreement ("the Confidential Information") shall be treated by the Parties as confidential. No Party shall reveal or otherwise disclose such Confidential Information to any third party without the prior written consent of the other Party. The foregoing restrictions shall not apply to the disclosure of necessary Confidential Information to employees and advisors of the Parties. Any third party that may become privy to such information must undertake in writing to protect the confidential nature thereof.



20.2 The confidentiality undertakings in this Agreement shall not apply in respect of Confidential Information within the public domain or a Party's knowledge at the commencement of this Agreement or to disclosure required to satisfy the order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time.

## **21 ANTI-BRIBERY AND ANTI-FRAUD**

21.1 The Contractor undertakes:

to comply with applicable ArcelorMittal's anti-fraud or anti-corruption guidelines and policies as amended from time to time and available upon request at any time from ArcelorMittal, which constitute, *inter alia*, the applicable provisions of the U.S. Foreign Corrupt Practices Act ("FCPA"), the United Nations Anti-bribery Conventions and the laws of the Republic of South Africa relating to fraud and corruption, and in particular but not limited to, the Prevention and Combatting of Corrupt Activities Act of 2004, all together hereinafter referred to as ("Anti-Fraud Guidelines") which the contractor by virtue of its signature hereto warrants that they are familiar with and that they have read and understood them;

21.1.1 not to make any payments on behalf of ArcelorMittal to any person and in particular to a government official, employee or department without obtaining prior written approval from ArcelorMittal. A written accounting must be kept of all payments made by the Contractor on behalf of ArcelorMittal, or out of funds provided by ArcelorMittal. A copy of this accounting must be provided to ArcelorMittal upon request. At no time shall any payment be made by the Contractor or its authorized agents or employees and officers on behalf of ArcelorMittal to any undisclosed third party; and

21.1.2 not to make, or attempt to make, any payment, loan, giving of a gift, service, favour or advantage to an employee, family member, contractor, sub-contractor, consultant, agent and/or advisor of ArcelorMittal.

21.1.3 to further ensure that any agreements entered into with its contractors, sub-contractors, consultants, agents, advisors or any other party responsible for the execution of this Agreement, contain anti-fraud and anti-corruption provisions, are broadly in line with this Agreement and particularly this clause 21 and that all such contractors, subcontractors, consultants, employees, agents and advisors comply with those provisions.

21.2 The Contractor represents and warrants that no money paid to it as compensation or otherwise for the conveying of the Products has been or will be used to pay any bribe or kickback in violation of the Anti-Fraud Guidelines.

- 21.3 The Contractor or the Contractor's Employees' failure to comply with this clause 21, or any act/s of bribery and/or acts constituting fraudulent activities by them, as determined by ArcelorMittal in its sole discretion, in contravention of this clause 21 and/or the Anti-Fraud Guidelines, shall be deemed to be a material breach of the Agreement entitling ArcelorMittal in its sole discretion, without prejudice to any of the remedies available to it in law, including but not limited to, the remedies set out below or a combination of the remedies as are set out below, to:
- 21.3.1 immediately terminate the Agreement and in so doing bar the Contractor access to the Works, and in that event, the Contractor shall notwithstanding anything contained in the Agreement to the contrary, also be precluded from making any claim for payment under this Agreement including payment for services previously performed;
  - 21.3.2 suspend the Agreement and in so doing bar the Contractor access to the Works, pending the outcome of an internal investigation into the matter; and ArcelorMittal's final and binding decision in regard thereto;
  - 21.3.3 set off, or withhold payment under the Agreement; and/or
  - 21.3.4 blacklist the Contractor permanently or for certain period from doing further business with ArcelorMittal.
- 21.4 The onus will be on the Contractor to prove that it has not committed or attempted to commit fraud and/or violated, or attempted to violate, and/or has not caused a violation of any Anti-Fraud Guidelines.
- 21.5 ArcelorMittal shall not be liable for any claims, losses or damages arising from fraud or related to failure by the Contractor or Contractor Employees to comply with this clause 21 and the Contractor indemnifies and holds ArcelorMittal harmless against any such claims, losses or damages.
- 21.6 ArcelorMittal reserves the right at any time to audit the Contractor's compliance with the terms of this clause 21 and the Contractor hereby agrees to co-operate with such audit requirements and provide documentation that may be requested by ArcelorMittal.
- 21.7 The Contractor agrees to provide prompt certification of its continuing compliance with the Anti Fraud Guidelines whenever so requested by ArcelorMittal.

## **22 INDEMNITY**

- 22.1 The Contractor hereby indemnifies and agrees to defend, keep indemnified and hold harmless ArcelorMittal, its parent company, affiliated and associated companies, in respect of all losses (including attorneys' fees and costs on a scale as between attorney and client), liability, damage or expense, suffered or incurred by ArcelorMittal or any person arising –
- 22.1.1 out of the performance of the Contractor's obligations under or by the Contractor and Contractor Employees of any of the terms of this Agreement;

- 22.1.2 from any alleged defamation, or any similar delict, or breach of any contractual right of a third party, or infringement of any Intellectual Property right of a third party, including rights under patents, trademarks, copyright, trade secret, or confidentiality obligations, or rights of privacy and publicity resulting from, relating to or arising out of the performance of the Agreement, except where any such claim relates to or arises out of any material furnished by ArcelorMittal;
- 22.1.3 any breach of the provisions of the Agreement documents or agreement between the Contractor and the Contractor Employees.
- 22.1.4 injury or death of the Contractor Employees for any reason;
- 22.1.5 any loss to or caused by the Contractor and the Contractor Employees; and
- 22.1.6 any acts or omissions including fraud and criminal acts of the Contractor and the Contractor's Employees; and/or
- 22.1.7 damage to property or equipment by the Contractor and the Contractor's Employees;
- 22.2 ArcelorMittal's use or approval of any materials must not be construed as ArcelorMittal's waiver of its rights under this clause 22.
- 22.3 ArcelorMittal will co-operate with the Contractor in the conduct of any proceedings arising pursuant to this clause 22 and shall have the right (but not the obligation) to participate in such proceedings, provided that the cost thereof shall be borne by the Contractor.
- 22.4 The Contractor will not enter into any settlement or compromise, or make any settlement or compromise offer, without the prior written approval of ArcelorMittal. ArcelorMittal will be entitled to give or withhold approval for itself and its officers, agents, employees, directors and affiliated entities, with respect to any settlement or compromise, or settlement or compromise offers made by the Contractor.
- 22.5 The indemnification under this clause 22 shall survive termination of this Agreement for any reason whatsoever.

## **23 CONFLICT OF INTEREST**

23.1 The Contractor agrees and undertakes to declare to ArcelorMittal in the form attached hereto as Annexure "B" any personal or business relationship with any employee or supplier of ArcelorMittal (whether arising as a result of a financial interest or investment or other business engagements with such employee or supplier) that might represent a Conflict of Interest.

23.2 For purposes of the Contract, a Conflict of Interest arises:

- 23.2.1 when the personal or business relationships between an employee of ArcelorMittal and a supplier interfere or appear to interfere, with ability of the employee dealing with such supplier to act in the best interest of ArcelorMittal; and/or
- 23.2.2 when an activity detrimentally affects the contractual relationship between the Parties and will have a negative impact on the business relationships of ArcelorMittal as a whole.
- 23.3The Contractor shall not and furthermore ensure that none of the Contractor Employees engage in business relationships or engagements or activity which reasonably determined conflict with the interests of ArcelorMittal under the Agreement without declaration contemplated in 23.1 and the prior written consent of ArcelorMittal.
- 23.4Any breach of this clause 23 shall entitle ArcelorMittal in its sole discretion to immediately cancel this Agreement without prejudice to any other remedies it may have herein or in law.

## **24 INSPECTION AND AUDITING OF RECORDS**

- 24.1**Inspection and Auditing.** At any time during the term of the Agreement and within a 2 (two) year period after the expiration or termination of this Agreement, ArcelorMittal or its third-party auditor may conduct an audit of the Contractor's business records, operations, and facilities, including business processes in relation to this Agreement.
- 24.2The Contractor shall permit ArcelorMittal or its third-party auditor to audit, inspect and copy the Contractor's books, records, accounts, timesheets, underlying and backup records and accounting materials, delivery receipts, methods and controls as may pertain (in the reasonable determination of ArcelorMittal) to any costs, expenses, and fees incurred for or charged to ArcelorMittal either directly or indirectly under this Agreement. ArcelorMittal will be entitled to the personnel records of the Contractor's Employees and to salary information regarding sub-contractors on an individual basis if such salary is charged to ArcelorMittal as an expense. ArcelorMittal will provide at least 30 (thirty) days' notice to the Contractor prior to the audit, and the Contractor shall fully cooperate with ArcelorMittal or its third-party auditor by inter alia making the required records, information and personnel available. ArcelorMittal's right to audit is limited to no more than once in a 12 (twelve) month period, however ArcelorMittal shall have the right to re-audit more frequently if material irregularities are discovered in the initial audit. The audits will be conducted during normal business hours and will be at the sole cost of ArcelorMittal. Notwithstanding the foregoing, the Contractor shall be responsible for all costs related to any additional audits performed during a 12 (twelve) month period due to irregularities reported in the initial audit.
- 24.3**Retention of Records.** The Contractor shall at its own cost make and retain, during the term of the Contract and for a period of 2 (two) years thereafter, records in form and substance consistent with Generally Accepted Accounting Principles (GAAP), of all services performed by Contractor and all costs and expenses related thereto.

**24.4 Changes in Accounting Procedures.** The Contractor shall notify ArcelorMittal 90 (ninety) days in advance of any changes in its accounting methods if the change will affect the Contractor's charges to ArcelorMittal.

24.5 If ArcelorMittal elects to perform an inspection and audit on the Contractor's records in accordance with this clause 24, ArcelorMittal agrees to enter into a confidentiality agreement with the Contractor in a form mutually agreed to by the Parties with regarding confidential information of the Contractor that maybe disclosed during such inspection and audit.

## **25 BREACH**

25.1 Either Party may at any time give notice in writing to make good any failure or default should it appear that:

25.1.1 the other Party is not executing its obligations in accordance with this Agreement;

25.1.2 the other Party is refusing or delaying to carry out its obligations in accordance with this Agreement;

25.1.3 the other Party is in breach of the terms or conditions of this Agreement and/or is responsible for any other failure or default with regard to its obligations.

25.2 Should the defaulting Party fail to take positive steps which are acceptable to the aggrieved Party to remedy the failure or default complained of within 14 (fourteen) days from the date of receipt of written notice calling for remedy of such complaint, the aggrieved Party shall, without prejudice to any of its rights under common law and particularly its rights under this Agreement hereof be at liberty to, inter alia:

25.2.1 claim specific performance; and/or

25.2.2 immediately and without further notice cancel the Agreement forthwith and claim damages;

25.3 For avoidance of doubt, a breach of clause 14, is a material breach which shall entitle ArcelorMittal South Africa to terminate the Agreement immediately and claim specific performance and/or damages in terms of clause 25.2 above

## **26 TERMINATION**

26.1 Either Party will have the right, in addition to any other rights that it may have in Law, to terminate this Agreement immediately forthwith by written notice in any of the following events, if:

26.1.1 any of the Parties commits an act of which fraud and/or bribery is a component as contemplated in clause 21 above;

- 26.1.2 any of the Parties become commercially insolvent or commits any act of insolvency; or
- 26.1.3 any of the Parties is placed in provisional or final liquidation; or
- 26.1.4 any of the Parties is placed under provisional or final judicial management business rescue; or
- 26.1.5 any of the Parties commences a procedure with a view to the winding-up or re-organisation, save that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction upon prior written consent of the other Party; or
- 26.1.6 any procedure is commenced with a view to the appointment of business rescue practitioner, receiver, administrative receiver or trustee in bankruptcy of all or substantially all of the assets of the other Party;
- 26.1.7 either Party or its board passes or cause to be passed any resolution for the Commencement of Business Rescue Proceedings as contemplated in Chapter 6 of the Companies Act No. 71 of 2008, as amended;
- 26.1.8 anything analogous to any of the events described in clauses 26.1.1 to 26.1.7 occurs in relation to either Party.
- 26.1.9 any of the parties fail to adhere to safety, health, and environmental laws, regulations and policies, which failure to adhere places persons and/or property at such risk, and that such risk, in the sole discretion of ArcelorMittal, warrants immediate termination of the Agreement.
- 26.1.10 the Contractor, after written notice in respect of this clause 26 has been received from ArcelorMittal, fails, to the satisfaction of ArcelorMittal, to adequately remedy repeated similar offences from occurring, notwithstanding that the offences may, when viewed in isolation, not be considered serious offences, from re-occurring.
- 26.2 Notwithstanding anything contained in this Agreement which is to the contrary, termination or expiry of this Agreement shall not affect any rights of either Party in respect of any antecedent breach of this Agreement by the other Party nor shall it affect any accrued rights or liabilities (or the coming into force of any accrued rights or liabilities) of either Party.

## **27 PERMITS**

The Contractor shall at its own cost obtain the necessary authorization, licences and road transport permits from the relevant authorities as well as all the necessary licensing of the vehicles and drivers and shall provide proof thereof to ArcelorMittal's satisfaction whenever called upon to do so.

Any failure to adhere to the relevant licencing and permitting legislation, policies, by-laws, notices and any other lawful requirement will be viewed as a transgression of the necessary safety, health and environmental obligations of the Contractor which may in the sole discretion of ArcelorMittal warrant immediate termination under clause 26.

## **28 LAWS AND REGULATIONS TO BE COMPLIED WITH**

- 28.1 The Law, which is to apply to this Agreement and according to which this Agreement is to be construed, shall be the Law of the Republic of South Africa unless otherwise stated. The Contractor shall in respect of all matters arising from the fulfilment of this Agreement, comply and ensure that the Contractor Employees comply with all laws, regulations, by-laws and/or requirements of local or other authorities which are applicable to this Agreement.
- 28.2 In this regard special reference is *inter alia* made to the following Acts that do not constitute an exhaustive list:
- Road Traffic Act, Act 93 of 1996;
  - Occupational Health and Safety Act No 85 of 1993. (Also refer to Annexure A);
  - Hazardous Substances Act; and
  - Dangerous Goods Act.
- 28.3 The Contractor further undertakes to ensure that its agreements with its Employees and sub-contractors shall *mutatis mutandis* contain the same stipulations as provided for above and shall submit written proof to ArcelorMittal that it has complied with this stipulation.
- 28.4 In the event of the Contractor failing to comply with the abovementioned, such failure shall amount to a breach of the terms and conditions of this Agreement and shall entitle ArcelorMittal to act in accordance with clause 25 and 26 above.

## **29 FORCE MAJEURE**

- 29.1 Notwithstanding anything to the contrary herein contained, neither party shall be liable in respect of failure to fulfil its obligations under this Agreement when the reason for such failure is caused by or arising from force majeure.
- 29.2 Force majeure means any circumstances or conditions beyond the control of a party or any circumstances or conditions, which is not reasonably practicable for a party to control or alleviate and shall include, but shall not be limited to:
- an act of God, storm, tempest or flood;
  - fire, spontaneous combustion, explosion, smoke, ionising, radiation, radio-active contamination;
  - war, revolution, riot, civil commotion or political disturbance;
  - major Production breakdowns of Production facilities of ArcelorMittal, if due to unforeseen circumstances;

- production stoppages or losses resulting from the failure of ArcelorMittal's customers of materials or services due to factors beyond the reasonable control of the relevant party;
- restrictions imposed directly or indirectly by Government or any person, corporation or body acting under statutory power; and
- abnormal economic recessions.

29.3 The Party claiming a suspension of its obligations shall immediately notify the other in writing of the circumstances relating thereto, and shall estimate in good faith the period during which the said circumstances are likely to prevail and shall thereafter do everything reasonably necessary to reduce or terminate the period of suspension and to restore performance of its obligations.

### **30 CONTRACTOR'S EMPLOYEES**

30.1 The Contractor shall at all times employ only fully competent and reliable Employees. ArcelorMittal shall be at liberty to object to any workman or person employed by the Contractor in the execution of the work to be performed, who in the opinion of ArcelorMittal misconducts himself, or is incompetent or negligent or otherwise unsatisfactory, and the Contractor shall, subject to industrial relations practices, immediately replace the person so objected to, upon receipt from ArcelorMittal of notice in writing requiring it to do so.

30.2 The Contractor shall insure under the Compensation for Occupational Injuries and Diseases Act no 130 of 1993, or any amendments thereto, or any Act passed in substitution thereof, against all claims by workmen employed by it and also under the Common Law, with an Insurance Company to be approved by ArcelorMittal, for an amount or amounts sufficient to satisfy any and all claims for compensation which any of its workmen or their dependants may make under the said Act or Common Law and shall continue such insurance uninterruptedly for the duration of this Agreement, provided always that in the event of the Contractor employing any sub-contractor, the Contractor's obligations to insure as aforesaid under this sub-clause shall be deemed to have been satisfied if the sub-contractor shall have insured as provided for in this sub-clause in such a manner that ArcelorMittal shall be indemnified.

30.3 In addition, the Contractor shall at its own expense insure and keep insured all persons employed by it, who do not fall within the ambit of the provisions of the Compensation for Occupational Injuries and Diseases Act, against all risks arising out of their employment.

30.4 The Contractor shall from time to time, when so required by ArcelorMittal, submit to ArcelorMittal all policies required in terms of this Agreement, as well as proof that all premiums have been paid.

30.5 ArcelorMittal shall not be liable for, or in respect of, or in consequence of, any accident or injury to any employee of the Contractor or any sub-contractor and the Contractor shall indemnify ArcelorMittal against all damages and compensation against all claims, demands, proceedings, costs, charges and expenses, whatsoever, in respect thereof or in relation thereto.



### **31 LIMITATION OF LIABILITY**

- 31.1 Notwithstanding anything to the contrary contained in this Agreement, neither party shall be liable to each other or any person for any indirect or consequential loss or damage, including without limitation, loss of profit, revenue, anticipated savings, business transactions or goodwill or other contracts whether arising from negligence or breach of contract by any person.
- 31.2 Any claim by a Contractor Employee arising out of this Agreement for any reason whatsoever shall be directed to the Contractor and the Contractor hereby and for avoidance of doubt indemnifies ArcelorMittal against such claims.

### **32 CONTRACTOR TO INFORM AND SATISFY ITSELF FULLY AS TO ALL CONDITIONS AFFECTING THE AGREEMENT TARIFFS**

The Contractor shall be deemed to have satisfied itself as to all the conditions and circumstances affecting the Agreement tariffs, as to the possibility of effectively fulfilling its obligations under this Agreement and to have fixed its tender tariffs according to its own view of these as no additional allowance, except as otherwise herein expressly provided, will afterwards be made beyond the Agreement tariffs.

### **33 NON-EXCLUSIVITY**

This Agreement does not confer on the Contractor any exclusive right to transport the Products or obligation on the part of ArcelorMittal to hire the Contractor to render the same or similar services from time to time. ArcelorMittal shall be entitled to contract with any other party to render a similar type of service, during the term of this Agreement or after its expiration.

### **34 RELATIONSHIP BETWEEN PARTIES**

This Agreement does not create a partnership or joint venture in any shape or form between the Parties and neither Party shall be liable for the debts of the other Party, howsoever incurred.

### **35 ASSIGNMENT OF AGREEMENT**

- 35.1 The Contractor shall not assign or make over this Agreement or any part thereof, or any share or interest therein, to any other person or company without the written consent of ArcelorMittal that may be refused without any reason being assigned therefore. This condition also applies to the use of sub-contractors by the Contractor.
- 35.2 This Agreement, or any part thereof, which part may be determined by ArcelorMittal in its sole discretion, may be ceded, assigned and/or transferred to any third party without the consent of the Contractor.

**36 DISPUTE RESOLUTION**

- 36.1 Any dispute, which arises between the Parties, shall be referred to a joint committee of a director or partner of each Party, who will use their best endeavours to resolve the dispute within 14 (fourteen) days of the dispute having been referred to them.
- 36.2 Should the joint committee be unable to resolve a dispute in accordance with the foregoing such dispute will be submitted to and decided by arbitration in terms of this clause 36, or, upon agreement between the parties, to a court of competent jurisdiction. Should the Parties fail to agree to refer the matter to court, the dispute shall be decided by arbitration in the manner set out in this clause 36.
- 36.3 Any dispute arising from or in connection with the interpretation of, the effect of, the Parties' respective rights and obligations under, a breach of, the termination of or any matter arising out of the termination of this Agreement shall be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator who is agreed to between the Parties, or failing agreement within 7 (seven) Business Days of the dispute arising, an arbitrator or arbitrators appointed by the President of AFSA.
- 36.4 Nothing in this clause shall prevent any Party from obtaining interim relief in a court pending the outcome of the arbitration.
- 36.5 Any such negotiation, mediation or arbitration shall be held in Johannesburg.

**37 NOTICES AND DOMICILLIUM**

- 37.1 The parties choose as their respective domicillium citandi et executandi for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this Agreement, the following addresses -

**Contractor**

<u>Physical Address</u>	<u>Postal Address</u>	<u>Tel. and Fax No's</u>
XXXXXXXXXX	XXXXXXXX	XXXXXXXX
XXXXXXXXXX	XXXXXXXX	XXXXXXXX

**ArcelorMittal**

<u>Physical Address</u>	<u>Postal Address</u>	<u>Tel. and Fax No's</u>
Vanderbijlpark Steel	PO Box 2	Tel: 016 889 4167
Room N3-5, Main Building	VANDEBBIJLPARK	Fax: 016 889 3643
Delfos Boulevard	1900	
VANDEBBIJLPARK		

Provided that a party may change its domicillium to any other physical address, postal address or telefax number by written notice to the other party to that effect. Such change of address will be effective seven days after receipt of notice of the change of domicillium.

- 37.2 All notices to be given in terms of this Agreement will -
- 37.2.1 be given in writing or by telefax;
  - 37.2.2 be delivered or sent by prepaid registered post or by telefax;
  - 37.2.3 if delivered, be presumed to have been received on the date of delivery;
  - 37.2.4 if sent by prepaid registered post, be presumed to have been received within 7 (seven)-business days of posting unless the contrary is proved; and
  - 37.2.5 if sent by telefax, be presumed to have been received on the first business day following the date of sending of the telefax unless the contrary is proved.

### **38 WHOLE AGREEMENT AND VARIATION**

- 38.1 This Agreement constitutes the whole of the agreement between the parties hereto relating to the subject matter hereof and save as otherwise provided herein no amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the parties hereto or their duly authorised representatives.
- 38.2 The Parties agree that no other terms or conditions, whether oral or written, and whether express or implied will apply hereto, except as provided for in clause 38.1.

### **39 WAIVER**

No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

### **40 LIENS**

No lien shall be established over the Products. The Contractor shall not in any way permit any lien to arise in respect of the Products and hereby waives any right of retention which it may have over the Products pursuant to this Agreement or as a consequence of any legal enactment or trade usage or by operation of common law.

### **41 SUPERSESSION**

This Agreement cancels and supersedes all prior negotiations and agreements entered into between the Parties relating to the matters set forth herein.

**42 GOVERNING LAW**

The laws of the Republic of South Africa shall govern the validity, interpretation and performance of this Agreement and the courts of South Africa shall have sole jurisdiction.

**43 AUTHORITY**

Each person signing this Agreement on behalf of a Party warrants that he or she is duly authorized by such Party to do so.

THUS DONE AND SIGNED BY ARCELORMITTAL SOUTH AFRICA LIMITED AT VANDERBIJLPARK ON THIS..... DAY OF ..... 2014

AS WITNESSES: .....

For: ARCELORMITTAL SOUTH AFRICA LIMITED

.....  
SENIOR PROCUREMENT  
SPECIALIST, LOGISTICS

.....  
MANAGER LOGISTICS,  
GROUP CONTRACTS

THUS DONE AND SIGNED BY XXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXX AT ..... ON THIS ..... DAY OF ..... 2014

AS WITNESSES:

1 .....

2 .....

.....  
For: XXXXXXXXXXXXXXXXXXXX

Date: .....

**ANNEXURE A - OCCUPATIONAL HEALTH AND SAFETY ACT, ACT NO 85 OF 1993**

This Annexure is incorporated in and forms part of the Conditions of the Agreement, setting out the arrangements and procedures agreed to in order to ensure that the Contractor complies with the Occupational Health and Safety Act, Act No 85 of 1993, (herein referred to as the Act) as amended from time to time.

- 1 Should the Chief Inspector give a direction in terms of section 7 of the Act to the Contractor to prepare a health and safety policy as contemplated in that section, the Contractor shall within 30 days from the date of Instructions forward a copy of such a policy document to ArcelorMittal and hereby undertakes to display a copy as contemplated in section 7(3) of the Act.
- 2 The Contractor shall throughout the duration of the Agreement, provide ArcelorMittal with the necessary information to enable ArcelorMittal to establish the Contractor's compliance with the Act.
- 3 The Contractor shall as far as is reasonably practicable comply with the following in the execution of this Agreement:
  - (a) provide and maintain, systems of work, plant and machinery that are safe and without risks to health and safety;
  - (b) institute precautionary measures necessary to eliminate or mitigate any hazard or potential hazard to the safety and health of employees, before resorting to protective equipment;
  - (c) make arrangements to ensure the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transportation of articles and substances, where applicable;
  - (d) establish the hazards to the health or safety of persons attached to any work which is performed in terms of this Agreement, any article or substance which is used, handled, stored or transported. In any plant or any machinery which is used in the Agreement the Contractor shall further establish precautionary measures to be taken in respect of such work, article, plant or machinery as is applicable in order to protect the health and safety of persons involved during the execution of the Agreement. The Contractor shall further provide the necessary means to apply such precautionary measures;
  - (e) provide such information, instructions, training and supervision as may be necessary to ensure the health and safety of his'-, ArcelorMittal's-, and any sub-Contractor's employees involved during the execution of the Agreement;
  - (f) not permit any employee to do any work or to produce, process, use, handle, store or transport any article or substance, where applicable, nor to operate any plant or machinery, unless the necessary precautionary measures contemplated in clause 3 of this Annexure or prescribed by the Chief Inspector, have been taken;

- (g) implement all the necessary measures to ensure that the requirements of the Act are complied with by every person in his employment or on site of the Agreement Customers where plant or machinery is used;
- (h) enforce such measures as may be necessary, in the promotion of health and safety;
- (i) ensure that work is performed and that plant, machinery or equipment is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by ArcelorMittal and the Contractor are implemented;
- (j) ensure that all employees are informed regarding the scope of their authority in the execution of the Agreement and in terms of the Act;
- (k) execute the Agreement in such a manner as to ensure that no person other than those in his or her employment who may be directly affected by the Contractor's activities, is exposed to hazards to health and safety;
- (l) ensure that nothing about the manner in which any plant, article, machinery or equipment for use at ArcelorMittal or on ArcelorMittal's premises is erected or installed makes it unsafe or creates a risk to health and safety when properly used;
- (m) ensure that every employee is conversant with the hazards to such employee's health and safety attached to the work to be performed at ArcelorMittal, as well as with the precautionary measures which should be taken and observed in respect to those hazards;
- (n) inform ArcelorMittal beforehand of any inspections, investigations or formal inquiries of which he has been notified by an inspector in terms of the Act and of any application for exemption made by him in terms of the Act;
- (o) inform ArcelorMittal of the occurrence of an incident in the work place or section of the work place where the Contractor is performing work in terms of the Agreement.

4 The Contractor shall ensure that its employees and any sub-Contractor's employees comply with the following:

- (a) take reasonable care for the health and safety of any employee and of other persons who may be affected by the employee's acts or omissions;
- (b) co-operate with ArcelorMittal or any person designated for this purpose by ArcelorMittal to enable ArcelorMittal to comply with any obligation or requirement to be performed or complied with in terms of the Act;
- (c) carry out any lawful order given to him or her and obey the health and safety rules and procedures laid down by ArcelorMittal or any person authorised thereto by ArcelorMittal or the Contractor in the interest of health and safety;
- (d) if any situation which is unsafe or unhealthy comes to the employee's attention, as soon as reasonably practicable, report such situation to the Contractor as well as to ArcelorMittal;

- (e) if an employee is involved in any accident which may affect his or her health or which has caused an injury to him or her, report such incident to the Contractor as well as ArcelorMittal or anyone authorised thereto by ArcelorMittal as soon as reasonably practicable;
  - (f) not to intentionally or recklessly interfere with, damage or misuse anything which is provided for in the interest of promoting health or safety.
- 5 The Contractor hereby confirms that its Chief Executive Officer, as defined in the Act, has as far as is reasonably practicable ensured that the duties of the Contractor in the execution of the Agreement and as contemplated in the Act, have been properly discharged.
- 6 If the number of employees employed by the Contractor in terms of the Agreement exceeds 20 (twenty), the Contractor shall within 14 (fourteen) days of the commencement of the Agreement provide ArcelorMittal with full particulars of the safety representatives at the Agreement Customers. The Contractor shall simultaneously confirm that it complies with section 17 (2) of the Act in the appointment of the safety representatives and that such health and safety representatives received the necessary facilities, assistance and training to fulfill their duties and functions as health and safety representatives.
- 7 If two or more health and safety representatives are involved in the work covered by the Agreement, the Contractor shall, within 7 (seven) days from the date of a meeting between such health and safety representatives, send a copy of the minutes of such a meeting, as well as a copy of any recommendation made by the Health and Safety Committee to ArcelorMittal.
- 8 The Contractor shall not make any deduction from any employee's remuneration- or require- or permit any employee to contribute towards any payment to him or her or any other person in respect of anything which the Contractor is in terms of this Agreement, or in terms of the Act required to provide or to do in the interest of the health and safety of any employee covered by the Agreement.
- 9 The Contractor shall immediately report to ArcelorMittal any incidents occurring at the place or places where the Contractor performs any work in terms of the Agreement, in which or in consequence of which :
  - (a) any person dies, becomes unconscious, suffers the loss of a limb or part of a limb or is otherwise injured or becomes ill to such a degree that he or she is likely either to die or to suffer a permanent physical defect or is likely to be unfit for a period of at least 14 (fourteen) days either to work or to continue with the activity for which such employee was employed or is usually employed;
  - (b) an occurrence of catastrophic proportions, as defined in the Act resulting from the use of plant or machinery or from any activity in the performance of this Agreement has taken place; or
  - (c) the health or safety of any person was endangered and where:
    - (i) the uncontrolled release of any substance or pressure took place;

- (ii) machinery or any part thereof fractured or failed, resulting in flying, falling or uncontrolled moving objects; or
  - (iii) machinery ran out of control.
- 10 The Contractor or any of the Contractor's employees shall not without the consent of an inspector disturb the site at which any incident occurred in which a person died or was injured to such an extent that that person is likely to die or suffer the loss of a limb or part of a limb, provided that such action as is necessary may be taken to prevent a further incident, or to remove the injured or dead or to rescue a person from danger.
- 11 The Contractor shall in no way whatsoever victimise any of its employees because the Contractor suspects or believes, whether or not the suspicion or belief is justified or correct, that one of his employees has given information to ArcelorMittal in respect of any matter concerning the health and safety of employees.
- 12 If an inspector of the Department of Labour wishes to perform any of his or her duties in terms of the Act at the Agreement Customers, the Contractor shall at all times provide such facilities as are reasonably required by the inspector to enable him or her and his or her assistant (if any) to perform effectively and safely his or her function under the Act.
- 13 The Contractor or any of its employees shall not interfere with or remove any blocking, bar, barricade or fence placed on the instruction of an inspector in terms of the Act.
- 14 The Contractor shall forthwith bring to the attention of ArcelorMittal the contents of any prohibition, direction or notice given by an inspector to the Contractor or a sub-Contractor or any of the Contractor's or sub-Contractor's employees in terms of the Act.
- 15 The Contractor shall fully co-operate in respect of any investigation or inquiry by an inspector and provide all necessary assistance, as envisaged in section 34 of the Act in the event of such an inspector investigating or inquiring into any matter related to the Contractor's or sub-Contractor's execution of the Agreement.
- 16 The Contractor shall not disclose any information concerning the affairs of ArcelorMittal without the prior approval of ArcelorMittal, which shall not be unreasonably withheld.
- 17 The Contractor shall not :
  - (a) in any record, application, statement or other document, referred to in the Act, wilfully furnish information or make a statement which is false in any material respect;
  - (b) hinder or obstruct an inspector in the performance of his or her functions;
  - (c) refuse or fail to comply to the best of his or her ability, with any requirement or request made by an inspector in terms of the Act;



- (d) refuse or fail to answer to the best of his or her ability to any question which an inspector in the performance of his or her functions in terms of the Act, put to him or her;
- (e) give himself out as an inspector;
- (f) tamper with or discourage, threaten, deceive or in any way unduly influence any person with regard to evidence to be given in respect of any investigation in terms of the Act;
- (g) prejudice, influence or anticipate the proceedings of any finding or inquiry in terms of the Act;
- (h) tamper with or misuse any safety equipment installed or provided to any person by ArcelorMittal or the Contractor;
- (i) fail to use safety equipment at any work place in terms of the Agreement or in the cause of his or her employment or in connection with the use of plant or machinery;
- (j) wilfully or recklessly do anything at a work place in connection with the use of plant or machinery in terms of the Agreement which shall threaten the health or safety of any person.

18 Words used in this Annexure shall have the same meaning as words defined in the Agreement.

**ANNEXURE B - DECLARATION OF CONFLICT OF INTEREST**

**TO: ARCELORMITTAL SOUTH AFRICA LIMITED**  
**FROM: .....**  
**DATE: .....**

**SUBJECT: DECLARATION OF CONFLICT OF INTEREST**

The Contractor agrees and undertakes to declare to ArcelorMittal any personal or business relationship with any employee or supplier of ArcelorMittal (whether arising as a result of a financial interest or investment or other business engagements with such employee or supplier) that might represent a Conflict of Interest.

Accordingly, I, the undersigned, ..... (name of authorized representative of Contractor), acting in my capacity as ..... of the above named Contractor declare that neither I, nor the Contractor or any of its officers, directors, employees and authorized representative have any relationship with any employee or supplier of ArcelorMittal that raises a real or potential Conflict of Interest. Further, we undertake to disclose to ArcelorMittal any relationships that might exist for the duration of the Agreement that raises a Conflict of Interest.

Or

I, the undersigned, ..... (name of authorized representative of Contractor), acting in my capacity as..... of the above named Contractor wish to declare and disclose the following relationships involving the Contractor and/or any of its officers, directors, employees and authorized representative that raise a real or potential Conflict of Interest.

.....  
.....

For and on behalf of XXXXXXXXXXXXXXXXXXXX:

..... Date: .....  
(Authorised Signatory)

ANNEXURE C – TARIFFS