

AGREEMENT NO. LOG 0520

AGREEMENT

BETWEEN

ARCELORMITTAL SOUTH AFRICA LIMITED

AND

SUCCESSFUL CONTRACTOR

FOR

**ROAD TRANSPORT OF SILICON MANGANESE FROM MOGALE
ALLOYS TO NEWCASTLE AND VANDERBIJLPARK WORKS.**

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; and
- 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”** Successful contractor ;
- 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 “Effective Date”** means **1 September 2014** notwithstanding the Signature Date;
- 1.11.8 “Party”** means ArcelorMittal or the Contractor;
- 1.11.9 “Parties”** means ArcelorMittal and the Contractor;
- 1.11.10 “Products”** means Silicon Manganese;
- 1.11.11 “Suppliers”** means collectively or individually the supplier/s reflected on **Annexure B**;
- 1.11.12 “Signature Date”** means the date of signature of this Agreement by the Party signing last;
- 1.11.13 “Termination Date”** means **31 August 2015**.
- 1.11.14 “VAT”** means value added tax in terms of the Value-Added Tax Act No. 89 of 1991 and as levied in terms of the Income Tax Act No 58 of 1962, both as amended from time to time;
- 1.11.15 “Works”** means ArcelorMittal business unit situated at **Newcastle** and **Vanderbijlpark**.
- 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 Suppliers to the Works.
- 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 transportation 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 and/or damages that may be 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 until the Termination Date.
- 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 Termination Date.
- 3.3 The terms applicable to the renewal period shall be the same as the terms 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 transport vehicles, labour, equipment and other facilities, necessary for the safe transportation of the Products.
- 4.2 The Contractor shall be familiar with the geographical locations of the Suppliers and the Works to enable transport to and from, and will be able and equipped to fully comply with the terms of this Agreement accordingly.

- 4.3 The Contractor undertakes to immediately remove loaded vehicles from the Suppliers' loading bays and determine the Products' mass on the Suppliers' weigh-bridges before delivering the Products to the Works.
- 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 Suppliers.
- 4.5 All risk in and to the Products shall pass to the Contractor once the Product is loaded onto the Contractor's mode of transport, until delivered and signed off as received in good order by ArcelorMittal at the Works.
- 4.6 The Contractor shall deliver the Products 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 total tariffs due to the Contractor in terms of this Agreement, or appoint another person 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 at its own expense, endeavour through the following steps to fulfil the emergency transport needs of ArcelorMittal 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; or
- 4.8.3.3 employing other acceptable carriers to transport the Products for the duration of the strike.
- 4.9 If the Contractor/s fails to fulfil ArcelorMittal's transport needs at any point, ArcelorMittal shall (to the extent of the shortcoming) in its sole discretion be entitled to engage other road carriers to transport the Product without prejudice to any claim for damages and/or costs incurred from the Contractor/s by so doing.
- 4.10 The Contractor shall together with Contractor's Employees comply with all of the provisions of applicable policies of ArcelorMittal in regard to fraud, anti-bribery; conflict of interest declaration and corruption which are available upon request from ArcelorMittal and by signature hereto acknowledge to have read and understood

same.

- 4.11 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.
- 4.12 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 they were when received.
- 4.13 The Contractor shall, where applicable, cover the Products with tarpaulin or similar protective layering during transportation.
- 4.14 The Contractor shall not use drivers without valid driver's licences for the purposes of this Agreement;
- 4.15 The Contractor shall avoid unnecessary delays in the transportation of Products, attend to any breakdowns on route expeditiously and provide sufficient back up transportation to ensure a continuous service and timeous transportation of the Products as anticipated herein.
- 4.16 The Contractor in performance of its obligations in terms of this Agreement, do so in a professional manner and to do all that may be necessary to uphold ArcelorMittal's reputation and image with its Suppliers.
- 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 at all times comply with, *inter alia*, all the safety, health and environmental laws, regulations, policies and specifications including all the procedural and technical requirements of ArcelorMittal regarding the transportation of the Products in terms of this Agreement, which the Contractor shall be obliged to acquaint itself with, failing which, ArcelorMittal shall in its sole and absolute discretion and without prejudice to other remedies it may have in law or in terms of the Agreement without notice, bar the Contractor from entering the Works until all such requirements are met to the satisfaction of ArcelorMittal. The Contractor acknowledges that given the nature of ArcelorMittal's business that Health, Safety and Environmental concerns are of paramount importance and that ArcelorMittal will be entitled to exercise its sole and absolute discretion in that regard in the interest of the other employees on its sites and its business requirements.

4.20 The Contractor hereby agrees to comply with any and all the necessary legal requirements and to obtain all the required and necessary permits and licences, as shall be necessary for the provision of the transport services, and the transport of the product, to maintain all such licences and permits, and to comply with all relevant legislation including, but not limited to:

- The Road Traffic Act, Act 93 of 1996, including Chapter 8 and including the Road Transport Quality System (RTQS)
- The Occupational Health and Safety Act 85 of 1993
- The National Environmental Management Waste Act 59 of 2008
- The National Environmental Management Air Quality Act 39 of 2004
- The National Water Act 36 of 1998
- The National Environmental Management Act 107 of 1998

Reference to these acts shall be deemed to include regulations and other subsidiary legislation promulgated thereunder, as well as any amendments to these acts. In the event of a failure to comply with this clause the ArcelorMittal will be entitled in its sole discretion and without prejudice to other remedies it may have in law or in terms of the Agreement to exercise its rights in terms of clause 4.21 above.

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 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 suit ArcelorMittal's business purposes;
- 5.3 shall advise and assist with respect to all aspects of the conveyance 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 B** hereto.
- 6.2 The tariffs quoted 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 send to the Contractor a letter of adjustment if there be a change or adjustment in tariffs pursuant to clause 7.3 below.

7 PRICE BASIS

- 7.1 The tariffs reflected in Annexure B shall remain fixed for a 12 (twelve) month period except for diesel/petrol price adjustments as contained in clause 7.3.
- 7.2 If the contract is extender for another year tariffs shall be reviewed and negotiated in good faith by the Parties on or before 30 September 2015 and annually thereafter. The negotiated tariffs will be applicable with effect from 1 October 2015 and annually thereafter. If the Parties fail to reach agreement on or before the 15th of September 2015 then the following formula shall be used after the first 1-year term of the Agreement to determine the tariff adjustment.

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

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 SEIFSA Index for Road Freight Costs (Table L2), for the latest available months since August 2014 prior to the date of the tariff adjustment.

BMO = The SEIFSA Index for Road Freight Costs (Table L2) for the month of tender, i.e. August 2014.

- 7.3 In the case of diesel/petrol price adjustments of more than 10%, ArcelorMittal will on receipt of a request from the Contractor, 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/petrol price by the governmental authority concerned. The adjusted tariff will be effective from the 1st calendar day of the month following the month in which the diesel/petrol price adjustment occurred. If the application is received and accepted after the 14 (fourteen) days, the adjusted tariff will be effective from the 1st calendar day of the second month following the month in which the diesel/petrol price change occurred. The portion of the tariff that will be subject to diesel/petrol price adjustments is 28%.
- 7.4 The base date for determination of the diesel price shall be August 2014 (R12.8477 per litre) and the applicable tariff for Gauteng as reflected on the South African Petroleum Industry Associations' website (<http://www.sapia.co.za/stats/diesel.htm>), shall apply to all diesel/petrol price adjustments due to diesel/petrol price changes.
- 7.5 All requests for tariff adjustments shall be submitted to the Logistics Procurement Specialist, Group Logistics, ArcelorMittal. The current designated official is Refilwe Palayi and the request can be e-mailed to refilwe.palayi@ArcelorMittal.com or can be faxed to fax number (016) 889 3603.
- 7.6 If there is a decrease in the price of diesel/petrol, compared to the base price of diesel/petrol, ArcelorMittal shall be entitled in its sole discretion to adjust the tariffs accordingly within 14 (fourteen) days from the date of the official adjustment of that diesel/petrol price by the governmental authority concerned. The adjusted tariffs will be effective from the 1st calendar day of the month following the month in which the diesel/petrol price adjustment occurred.

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 conveyed to the Works, provided monthly statements of account, shall in all instances reach ArcelorMittal's Shared Services, Accounts Payable situated in Vanderbijlpark, not later than the 7 (seventh) day of the month following the month in which the services were rendered.
- 8.2 ArcelorMittal will supply the Contractor with an Order Number and the Contractor must ensure that such Order Number is reflected on all related documentation, i.e. delivery notes, Invoices, etc.
- 8.3 The Contractor shall ensure that ArcelorMittal's and its VAT numbers are reflected on all related invoices. ArcelorMittal's VAT number is **4920114990**.

- 8.4 The Contractor shall ensure that its Vendor number is reflected on all related invoices.' vendor number with ArcelorMittal is
- 8.5 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.
- 8.6 Although the Contractor's vehicles will be weighed at the Works and at the Supplier's weigh-bridges, the nett mass as determined by ArcelorMittal at the Works shall be final and will be used to calculate payment.

9 ESTIMATED TONNAGES, PRODUCT, OFF-LOADING TIMES AND OFF-LOADING METHODS

9.1 Estimated Tonnages

The quantities to be transported as reflected in **Annexure B** 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 to provide same and may as a result vary from time to time. The Contractor shall handle and transport such quantities as may be specified by ArcelorMittal from time to time.

9.2 Loading and off-loading related information

9.2.1 The loading times at Mogale Alloys:

Monday to Thursday 06:00 – 22:00

Friday to Sunday 06:00 – 14:00.

9.2.2 Off-loading times at the Works shall be: 24/7 but preferably during day time for Vanderbijlpark and Monday – Friday: 07:00 – 16:00 for Newcastle Works.

9.2.3 The abovementioned times shall apply to this Agreement unless otherwise agreed to in writing by the Parties.

The Contractor shall be responsible for all tipping of the Products at ArcelorMittal and where required by the ArcelorMittal, the Contractor shall off-load the Products in accordance with ArcelorMittal's instructions. Any damage to the Products as a result of the Contractor's off-loading shall be borne by the Contractor.

10 MANAGEMENT AND PRODUCTIVITY IMPROVEMENT PLAN

10.1 The Contractor shall in co-operation with ArcelorMittal manage all the aspects of this Agreement.

10.2 Without derogating from either Party's contractual obligations, the Contractor shall be responsible in its managerial capacity to implement the following performance standards in relation to this Agreement:

10.2.1 interpret and correctly identify ArcelorMittal's needs and requirements as set out in this Agreement and communicated by ArcelorMittal from time to time and implement them accordingly;

10.2.2 implement appropriate measures relating to operating, maintenance, loading and transportation of the Products in accordance with instructions from ArcelorMittal;

10.2.3 exercise control over the entire quality of required transportation services pursuant to this Agreement; and

10.2.4 ensure that cooperation between the Contractor Employees and employees of ArcelorMittal.

11 REPORTS

The Contractor shall supply on a monthly basis a report specifying the tonnage transported and the amount invoiced for that specific month. This report must be supplied to the Logistics Procurement Team Assistant or to such other person(s) as directed by ArcelorMittal from time to time. The current designated official is Caroline Mc Callum and the report can be sent via e-mail to him/her at Caroline.McCallum@arcelormittal.com or faxed to him/her on fax number (016) 889-3603.

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 approval of ArcelorMittal and 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, ArcelorMittal and the Suppliers, which safety and operating procedures the Contractor by signature hereto warrants they are familiar with, have read and have understood including any updates and/or changes in procedure which it is the duty of the Contractor to keep up to date with. All drivers and any other relevant Contractor Employees must be trained by the Contractor in the workings and application of the Occupational Health Safety Act as well as any ArcelorMittal safety rules, applicable policies and regulations, and where so required, that of the Suppliers.

- 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 and safety glasses, hearing protection, etc.).
- 13.3 All costs related to driver or Contractor Employees' training shall be for the account of the Contractor.
- 13.4 The Contractor shall be obliged to ensure that any spillage during transportation of or whilst the Products are under the control of the Contractor is cleaned within a reasonable time at its own expense failing which ArcelorMittal reserves the right, in its sole discretion, to remedy the spillage to ArcelorMittal's satisfaction, and recover the costs of so doing from the Contractor, by deducting the amount of same from any amount due in respect of an invoice received from 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 Plant 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; and
 - 14.2.2 a description of the SHE Incident; and
 - 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, investigations in this regard as may be required by ArcelorMittal.
- 14.4 Notwithstanding the above ArcelorMittal reserves its right to request from the Contractor an incident report setting out the information contained in clauses 14.2.1 – 14.2.4, in respect of any incident that occurs on the Works, which report must be supplied to ArcelorMittal within three days of the request for same.

15 INSURANCE

- 15.1. The Contractor shall have and maintain at its sole cost and expense throughout the term of the Agreement, comprehensive general liability or commercial general liability insurance and all risk insurance, including goods or Products in transit, fire, theft, equipment or property ("Insurance Cover") from a reputable insurance company acceptable to ArcelorMittal.
- 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 20 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.
- 15.3. The Insurance Cover shall not be cancelled or amended in any manner which restricts the existing coverage or renewed 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 above 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.
- 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 from the Suppliers, 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 from the Suppliers until delivered to the Works.
- 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's 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 BLACK ECONOMIC EMPOWERMENT

- 17.1 The Contractor must be BBBEE compliant and maintain at least a level 5 for the purposes of this Agreement. The Contractor further undertakes to comply with Black Economic Empowerment 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.
- 17.2 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 CONFIDENTIALITY

- 18.1 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 ("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 shall first undertake in writing to protect the confidential nature thereof.
- 18.2 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.

19 ANTI-BRIBERY AND FRAUD

- 19.1 The Contractor undertakes:
- 19.1.1 to comply with ArcelorMittal's anti-fraud or 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 ("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;
- 19.1.2 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 of ArcelorMittal. A written account 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 account 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
- 19.1.3 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.
- 19.1.4 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 Contract contain fraud and anti-corruption provisions, are in line with this Contract and particularly this clause 19 and that all such contractors, subcontractors, consultants, agents, advisors comply with those provisions.

- 19.2 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 Fraud Guidelines.
- 19.3 The Contractor or the Contractor's Employees' failure to comply with this clause 19 or by them committing any act/s of bribery and/or acts constituting fraudulent activities, as determined by ArcelorMittal in its sole discretion, in contravention of this clause 19 and/or the Fraud Guidelines, shall be deemed to be a material breach of the Contract 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:
- 19.3.1 immediately terminate the contract and in so doing bar the contractor access to the works, and in that event the Contractor shall notwithstanding anything contained in the Contract to the contrary, also be precluded from making any claim for payment under this Contract including payment for services previously performed;
- 19.3.2 to suspend the Contract and in so doing bar the Contractor access to the site, pending the outcome of an internal investigation into the matter and ArcelorMittal's final and binding decision in regard thereto;
- 19.3.3 to institute a claim against the Contractor for any and all damages suffered as a result thereof;
- 19.3.4 to set off, or withhold payment due or that may become due under the Contract;
- 19.3.5 to blacklist the Contractor permanently or for certain period from doing further business with ArcelorMittal;
- 19.4 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 Fraud Guidelines.
- 19.5 ArcelorMittal shall not be liable for any claims, losses or damages arising from fraud or related to failure by the Contractor or Contractor's Employees to comply with this clause 19 and the Contractor indemnifies and holds ArcelorMittal harmless against any such claims, losses or damages.
- 19.6 ArcelorMittal reserves the right at any time to audit the Contractor's compliance with the terms of this clause 19 and the Contractor hereby agrees to co-operate with such audit requirements and provide documentation that may be requested by ArcelorMittal.

19.7 The Contractor agrees to provide prompt certification of its continuing compliance with the Fraud Guidelines whenever so requested by ArcelorMittal.

20 INDEMNITY

20.1. 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 including third parties arising –

20.1.1.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;

20.1.2.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;

20.1.3.any breach of the provisions of the contract documents or agreement between the Contractor and the Contractor Employees.

20.1.4. injury or death of the Contractor Employees for any reason;

20.1.5.any loss to or caused by the Contractor and the Contractor Employees; and

20.1.6.any acts or omissions including fraud and criminal acts of the Contractor and the Contractor's Employees; and/or

20.1.7.damage to property or equipment by the Contractor and the Contractor's Employees;

20.2. ArcelorMittal's use or approval of any materials must not be construed as ArcelorMittal's waiver of its rights under this clause 20.

20.3. ArcelorMittal will co-operate with the Contractor in the conduct of any proceedings arising pursuant to this clause 20 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.

20.4. 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.

20.5. The indemnification under this clause 20 shall survive termination of this Agreement for any reason whatsoever.

21 CONFLICT OF INTEREST

21.1. The Contractor agrees and undertakes to declare to ArcelorMittal in the form attached hereto as **Annexure "C"** 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.

21.2. For purposes of the Agreement, a Conflict of Interest arises:

21.2.1. 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

21.2.2. 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.

21.3. The Contractor shall not, and shall furthermore ensure that none of the Contractor's Employees, engage in business relationships or engagements or activities which when reasonably determined conflict with the interests of ArcelorMittal under the Agreement without declaration contemplated in 21.1 and the prior written consent of ArcelorMittal.

21.4. Any breach of this clause 21, shall entitle ArcelorMittal in its sole discretion to immediately cancel this Agreement without prejudice to any other remedies in may have herein or in law.

22 INSPECTION AND AUDITING OF RECORDS

22.1. **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.

22.2 The 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. Salary information of the Contractor's employees will be accepted by ArcelorMittal on an aggregated basis

characterized by function, provided that Contractor furnishes ArcelorMittal with an annual certification, issued by the Contractor's independent auditing firm at its expense, verifying the accuracy of the salary information on an individual and aggregated basis. ArcelorMittal will be entitled to the personnel records of the Contractor's Employees and to salary information regarding subcontractors 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 to 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.

- 22.3 **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.
- 22.4 **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.
- 22.5 If ArcelorMittal elects to perform an inspection and audit on the Contractor's records in accordance with this clause 22, ArcelorMittal agrees to enter into a confidentiality agreement with the Contractor in a form mutually agreed by the Parties with regarding confidential information of the Contractor that maybe disclosed during such inspection and audit.

23 BREACH

- 23.1 Either Party may at any time give notice in writing to make good any failure or default should it appear that:
- 23.1.1 the other Party is not executing its obligations in accordance with this Agreement;
- 23.1.2 the other Party is refusing or delaying to carry out its obligations in accordance with this Agreement;
- 23.1.3 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.

23.2 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*,:

23.2.1 claim specific performance; and/or

23.2.2 immediately and without further notice cancel the Agreement forthwith and claim damages .

24 TERMINATION

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

24.1.1. any of the Parties commits an act of which fraud and/or bribery is a component as contemplated in clause 19 above;

24.1.2. any of the Parties become commercially insolvent or commits any act of insolvency; or

24.1.3. any of the Parties is placed in provisional or final liquidation; or

24.1.4. any of the Parties is placed under business rescue proceedings; or

24.1.5. 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 without the prior written consent of the other Party; or

24.1.6. any procedure is commenced with a view to the appointment of a business rescue practitioner, an administrator, receiver, administrative receiver or trustee in bankruptcy of all or substantially all of the assets of the other Party;

24.1.7. either Party or its board passes or causes 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;

24.1.8. anything analogous to any of the events described in clauses 24.1.1 that occurs in relation to either Party.

- 24.1.9 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.
- 24.1.10 the Contractor, after written notice in that regard 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.
- 24.2 Notwithstanding anything contained in this Agreement which is to the contrary, the 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.

25 PERMITS

The Contractor shall at its own cost obtain the all the necessary authorities, licences and road transport permits from the relevant authorities as well all the necessary licensing for the vehicles and drivers thereof 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 24.

26 LAWS AND REGULATIONS TO BE COMPLIED WITH

- 26.1 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.
- 26.2 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.

26.3 The Contractor further undertakes to ensure that its agreements with its Employee/s shall *mutatis mutandis* contain the same stipulations as provided for above and shall upon request submit written proof to ArcelorMittal that it has complied with this stipulation.

26.4 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 23 and/or 24 above.

27 FORCE MAJEURE

27.1 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.

27.2 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 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.

27.3 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.

28 CONTRACTOR'S EMPLOYEES

28.1 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.

- 28.2 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.
- 28.3 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.
- 28.4 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.
- 28.5 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.

29 LIMITATION OF LIABILITY

- 29.1 Notwithstanding anything to the contrary contained in this Agreement, ArcelorMittal shall not be liable to 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 including the Contractor or Contractor Employees.
- 29.2 Any claim by the 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.

30 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 expiry.

31 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.

32 ASSIGNMENT OF AGREEMENT

- 32.1 The Contractor shall not assign or make over this Agreement or any part thereof, or any share or interest therein, to any other person 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.
- 32.2 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.

33 DISPUTE RESOLUTION

- 33.1 Save as otherwise provided in this Agreement, if any dispute arises between the Parties in relation to any matter pertaining to this Agreement or any cancellation thereof, then such dispute shall be dealt with in the manner hereinafter prescribed.
- 33.2 The aggrieved party must raise the dispute by way of written notice to the other party setting out clearly and concisely the dispute that has been raised.
- 33.3 The dispute shall then be immediately referred by the parties to a joint committee of a director or partner or duly appointed representative 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.
- 33.4 Should the joint committee, be unable to resolve a dispute in accordance with the foregoing, such dispute will in the sole discretion of ArcelorMittal's representative, be submitted to and decided by arbitration in terms of this clause 33, or, before a court of competent jurisdiction.

- 33.5 The dispute shall be decided in accordance with the Rules for Expedited Arbitrations of the Arbitration Foundation of Southern Africa ("AFSA"), unless otherwise agreed between the parties.
- 33.6 The party raising the dispute shall be the claimant in accordance with the AFSA rules and shall comply with all the obligations of a claimant thereunder.
- 33.7 The parties hereby undertake to comply with all the obligations under the AFSA expedited rules and in particular the prompt payment of all the necessary fees required.
- 33.8 The parties will appoint an arbitrator by agreement with 7 days of the joint committee meeting referring the matter to arbitration alternatively and in the event that an arbitrator cannot be agreed upon between the parties, an arbitrator will be appointed in accordance with the Rules for Expedited Arbitrations provided for by AFSA.
- 33.9 Nothing in this clause shall prevent any Party from obtaining interim relief in a court pending the outcome of the arbitration.
- 33.10 In the event that the Contractor raises a dispute, ArcelorMittal in its sole discretion is entitled, notwithstanding that notice may not have been given or that a dispute has been raised by the Contractor, to bar the Contractor from access to the works, where the Contractor has, in the opinion of ArcelorMittal, committed an act that may constitute grounds for immediate termination under clause 24 pending the outcome of the arbitration proceedings.
- 33.11 Any such meeting of the joint committee under clause 33.2, and/or arbitration shall be held in Johannesburg.

34 NOTICES AND DOMICILLIUM

- 34.1 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

Physical Address

Postal Address

Tel. and Fax No's

.....

ArcelorMittal

Physical Address

Postal Address

Vanderbijlpark Steel
Room N3-5 Main Building
Delfos Boulevard

PO Box 2
VANDERBIJLPARK
1900
Tel: (016) 889 2206
Fax: (016) 889 3643

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.

- 34.2 All notices to be given in terms of this Agreement will -
- 34.2.1 be given in writing or by telefax;
 - 34.2.2 be delivered or sent by prepaid registered post or by telefax;
 - 34.2.3 if delivered, be presumed to have been received on the date of delivery;
 - 34.2.4 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
 - 34.2.5 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.

35 SET-OFF

- 35.1 Upon the occurrence of a Breach of the terms of this Agreement by the Contractor, and to the fullest extent permissible in law, any amount due and payable by ArcelorMittal to the Contractor under this Agreement and in respect of any Transactions envisaged under this Agreement may, at the option of ArcelorMittal (and without prior notice to the Contractor) be set-off against any other amount(s) due and payable (whether by acceleration or otherwise) by the Contractor to ArcelorMittal, under any other agreement(s) between ArcelorMittal and the Contractor or instrument(s) or undertaking(s) issued or executed by the Contractor to, or in favour of, ArcelorMittal ("the Other Agreement Amounts").
- 35.2 Any Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off.
- 35.3 ArcelorMittal will give notice to the Contractor of any set-off affected under this clause. However, failure to give notice shall not affect the validity of any set-off affected under this clause.
- 35.4 Notwithstanding the preceding provisions, ArcelorMittal shall not be obliged to pay any amount payable by it to the Contractor under this Agreement until and unless the Contractor has discharged any Other Agreement Amounts to ArcelorMittal in full.

36 TRIALS

- 36.1 The Purchaser reserves the right to conduct trials with alternatively sourced Material during the term of this Agreement. The total volume of trial Material will not exceed 20% of the total annual consumption of The Purchaser.

- 36.2. Should the performance of the Trial Material be better than the performance of The Supplier's material and should the performance of the trial material be sustainable in the long term, The Purchaser shall continue to purchase its requirements from The Supplier for at least a further (sixty) 60 days in order to provide The Supplier the opportunity of improving the performance of its Material so as to be comparable with that of the Trial Material. Should the performance of The Suppliers Material not improve during the (sixty) 60 days period so as to be comparable with that of the trial material in terms of the long term sustainable, then The Purchaser shall have the right to terminate this Agreement by giving The Supplier written notice to this effect

37 WHOLE AGREEMENT AND VARIATION

- 37.1 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 modification, amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.
- 37.2 The Parties agree that no other terms or conditions, whether oral or written, and whether express or implied will apply hereto.

38 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 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.

39 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.

40 SUPERSESION

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

41 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.

42 AUTHORITY

Each person signing this Agreement on behalf of a Party hereto 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:

1

2

.....
For: ARCELORMITTAL SOUTH AFRICA
LIMITED

THUS DONE AND SIGNED BY AT ON
THIS DAY OF 2014

AS WITNESSES:

1

2

.....
For: Successful Contractor

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 ArcelorMittal's employees, its employees and Contractor Employees involved in 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**PRODUCTS, SUPPLIER, VOLUMES AND RATES.**

FROM MOGALE ALLOYS TO:	TRI-AXLE MIN PAYLOAD 28 TONS (RATES PER TON)	LINK MIN PAYLOAD 34 TONS (RATE PER TON)	ESTIMATED MONTHLY VOLUMES
Newcastle Works	R	R	1 300 tons
Vanderbijlpark Works	R	R	550 tons

ANNEXURE C

DECLARATION OF CONFLICT OF INTEREST

TO: ARCELORMITTAL SOUTH AFRICA

FROM:

DATE: _____ 20....

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

CONTRACTOR

(Authorised Signatory)

Date: _____