

Schedule B:



GENERAL TERMS AND CONDITIONS

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1. INTERPRETATION AND DEFINITIONS

In this Agreement:

- 1.1. the clause headings are for convenience and shall be disregarded in construing this Agreement;
- 1.2. unless the context indicates a contrary intention, the singular shall include the plural and vice versa;
- 1.3. a gender shall include the other genders;
- 1.4. a natural person includes an artificial or juristic person and vice versa;
- 1.5. unless the context clearly indicates a contrary intention, the following expressions shall bear the meanings set opposite them below and cognate expressions shall bear corresponding meanings –
 - 1.5.1. "**Agreement**" shall bear the meaning assigned to this term in the Specific Terms;
 - 1.5.2. "**AMSA**" means ArcelorMittal South Africa Limited, a company duly registered in the Republic of South Africa with registration number 1989/002164/06;
 - 1.5.3. "**AMSA Premises**" shall bear the meaning assigned to such term in the Specific Terms;
 - 1.5.4. "**BBBEE**" means broad-based black economic empowerment as defined in the BBBEE Act;
 - 1.5.5. "**BBBEE Act**" means the Broad-Based Black Economic Empowerment Act 53 of 2003, as amended, and any BBBEE regulations, industry charters and sector codes published;

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- 1.5.6. **“Business Days”** means any day other than a Saturday, Sunday or official public holiday in South Africa;
- 1.5.7. **“Commencement Date”** shall be the commencement date as specified in the Specific Terms;
- 1.5.8. **“Contractor”** shall mean the contractor specified in the Specific Terms;
- 1.5.9. **“Contractor’s Personnel”** includes, but is not limited to, the Contractor’s employees, directors, members, officers and/or any third parties, contractors and/or other persons who have a contractual relationship (in writing or otherwise) with the Contractor;
- 1.5.10. **“Deliverables”** means any **“Goods”**, **“Services”** or **“Material”**, if applicable, referred to in the Specific Terms that are to be provided by the Contractor to AMSA in terms of this Agreement;
- 1.5.11. **“Environmental Law”** means any law concerning the environment including, without limitation, the common law, legislation, ordinances or by-laws concerning land use, water use, conservation, biodiversity, heritage, human health, safety or well-being, pollution or environmental degradation and shall include, without being limited to, the National Environmental Management Act 107 of 1998, Nuclear Energy Act 46 of 1999, National Nuclear Regulator Act 47 of 1999, Atmospheric Pollution Prevention Act 45 of 1965, Hazardous Substances Act 15 of 1973, Minerals Act 50 of 1991, Mineral and Petroleum Resources Development Act 28 of 2002, Environment Conservation Act 73 of 1989, National Water Act 36 of 1998, National Heritage Resources Act 25 of 1999, National Road Traffic Act 93 of 1996, Conservation of Agricultural Resources Act 43 of 1983, all as amended from time to time;

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- 1.5.12. "**General Terms**" means this document, which sets out the general terms and conditions that shall apply to the Agreement;
- 1.5.13. "**Initial Level**" means the BBBEE compliance level of the Contractor, as at the Commencement Date, specified in the Specific Terms;
- 1.5.14. "**Parties**" means AMSA and the Contractor, and "**Party**" means any of them, as the context requires;
- 1.5.15. "**Personal Information**" means Personal Information as defined in the Protection of Personal Information Act 4 of 2013 as amended from time to time;
- 1.5.16. "**POPI**" means the Protection of Personal Information Act 4 of 2013, as amended from time to time;
- 1.5.17. "**Price**" means the price for the Deliverables, as specified in the Specific Terms;
- 1.5.18. "**Price Adjustment**" shall mean an adjustment of the Price in accordance with the provisions of the Specific Terms, if applicable;
- 1.5.19. "**Purchase Order**" means each written order placed by AMSA, in which it requests the Contractor to provide the Deliverables in terms of this Agreement;
- 1.5.20. "**Purchase Order Number**" means the unique number allocated by AMSA to a specific Purchase Order;
- 1.5.21. "**RFP**" means a request for proposal (including an enquiry document and any other schedules and/or annexures thereto) issued by AMSA in respect of a tender;

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- 1.5.22. **“Signature Date”** means the date of signature of the Specific Terms by the Party signing last;
- 1.5.23. **“Specific Terms”** means the signed document containing the specific terms and conditions of this Agreement, to which this General Terms is attached as a schedule;
- 1.5.24. **“Targeted Level”** means the targeted BBBEE compliance level specified in the Specific Terms; and
- 1.5.25. **“Termination Date”** means the termination date specified in the Specific Terms;
- 1.6. if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Party then notwithstanding that it is in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Agreement;
- 1.7. where any term is defined within a particular clause other than this clause 1, the term so defined shall bear the meaning ascribed to it in that clause wherever it is used in this Agreement unless it is clear from the clause in question that such a defined term has limited application to the relevant clause;
- 1.8. any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as:
- 1.8.1. at the Signature Date; and
- 1.8.2. amended or substituted from time to time;
- 1.9. where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention;

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- 1.10. the rule of construction that this Agreement shall be interpreted against the party responsible for the drafting of this Agreement shall not apply;
 - 1.11. the use of any expression in this Agreement which refers to a South African legal concept or process such as for example, winding-up or business rescue shall be deemed to include a reference to the equivalent or analogous concept or process in any other jurisdiction in which this Agreement may apply or to the laws of which a Party may be or become subject;
 - 1.12. the words "**include**" and "**including**" followed by a specific example or examples shall not be construed as limiting the meaning of the general word preceding it;
 - 1.13. where any number of days is to be calculated from a particular day, such number shall be calculated as excluding such particular day and commencing on the next day. If the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the next succeeding day which is a Business Day;
 - 1.14. no provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement; and
 - 1.15. any reference to days (other than Business Days), months or years shall be a reference to calendar days, months or years as the case may be.

2. **CONFLICT**

- 2.1. In the event of any irreconcilable conflict between the provisions of this General Terms and:
 - 2.1.1. the Specific Terms; or
 - 2.1.2. any other schedule and/or annexure,

the provisions of the General Terms shall prevail.

- 2.2. Notwithstanding the foregoing, it is agreed that the Parties shall be entitled, in the Specific Terms, to select by agreement certain clauses of the General Terms that shall not apply to the Agreement.
- 2.3. In the event of any irreconcilable conflict between the Specific Terms and any other schedule or annexure, the provisions of the Specific Terms shall prevail.

3. **TENDER DOCUMENTS**

- 3.1. To the extent that this Agreement arises pursuant to the Contractor's submission of a response (the "**Contractor Proposal**") to a RFP issued by AMSA, the Contractor acknowledges that it has represented to AMSA that it has the expertise, personnel, products, services, certifications and skills required to meet the requirements of AMSA as reflected in the RFP, which representations shall be deemed to be incorporated under this Agreement, unless expressly amended or otherwise agreed. In addition, the Contractor hereby warrants and represents that it will be bound by any oral and written representations made by the Contractor to AMSA regarding any goods and/or services supplied by it, unless expressly excluded in writing.
- 3.2. Notwithstanding the provisions of clause 2, the Parties agree that if any provisions conflict between the provisions of this Agreement and the RFP, the provisions of the Agreement shall prevail.

4. **BBBEE**

- 4.1. It is hereby recorded that, as at the Commencement Date, the Contractor's BBBEE rating is at the Initial Level specified in the Specific Terms.

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- 4.2. The Contractor must be BBBEE compliant and maintain at least the Initial Level for the purposes of this Agreement.
 - 4.3. The Contractor further hereby undertakes to:
 - 4.3.1. comply with the BBBEE policies of AMSA, to the extent that such policies apply to the Contractor; and
 - 4.3.2. unless otherwise agreed in terms of clause 4.5, improve its BBBEE compliance status by at least one contribution level every year for the duration of the Agreement until such time as BBBEE compliance at the Targeted Level is reached.
 - 4.4. After reaching BBBEE compliance at the Targeted Level, the Contractor must maintain at least the Targeted Level for the remainder of the Agreement.
 - 4.5. The Contractor shall submit a transformation plan to AMSA, which clearly demonstrates the steps that shall be taken by the Contractor to comply with clauses 4.2 and 4.4 including the proposed time frames by which the Contractor shall satisfy each contribution level and the Targeted Level.
 - 4.6. The transformation plan referred to in clause 4.5 must be acceptable to AMSA, at its sole and absolute discretion, and recorded in writing by the Parties in the Specific Terms (or any amendments thereto).
 - 4.7. The Contractor shall, upon or before the expiry date of its existing valid BBBEE certificate, supply AMSA with its subsequent or renewed and valid BBBEE certificate and/or other information that AMSA, at its sole discretion, requires as being satisfactory proof of the Contractor's BBBEE status.
 - 4.8. Without limiting any other remedy available to AMSA, in terms of this Agreement or otherwise, if the Contractor:
 - 4.8.1. breaches any of the provisions of this clause 4;

4.8.2. commits a fronting practice, as defined in the BBBEE Act; and/or

4.8.3. otherwise misrepresents its BBBEE status in any manner whatsoever, such conduct shall be deemed to be a material breach under clause 24, entitling AMSA to have recourse to the remedies contained thereunder.

5. **PRICE**

5.1. Subject to the provisions of clause 6 relating to AMSA benchmarking the Price and the provisions of the Specific Terms, AMSA shall pay the Contractor the Price for the Deliverables concerned that are delivered and accepted by AMSA at the Point of Delivery or which are otherwise provided to AMSA in accordance with the provisions of this Agreement. Such Price shall be set out in the Purchase Order concerned, read with the Specific Terms.

5.2. Such Price shall, to the extent applicable, include all the Contractor's costs including, but not limited to transportation, delivery, storage, insurance, all taxes (except VAT), duties, clearance charges and royalties, to the extent applicable.

5.3. The Prices will be the prevailing Prices, unless otherwise agreed to by the Parties in writing, as at the date on which the Purchase Order was placed by AMSA on the Contractor.

5.4. The Price may be subject to a Price Adjustment in accordance with the Specific Terms.

6. **MARKET RELATED PRICES/BENCHMARKING**

6.1. The Parties agree that AMSA will have the right, on a continuous basis to benchmark the Prices.

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- 6.2. If AMSA at any time, in its sole discretion, determines that the Prices charged by the Contractor for the Deliverables is not market related, AMSA will notify the Contractor in writing of:
- 6.2.1. the market related price, which it believes it should be charged for the Deliverables; and
 - 6.2.2. afford the Contractor a period of 21 (twenty one) days from date of notification to match the market related price, failing which AMSA shall be entitled to immediately cancel the Agreement or part thereof on written notice to the Contractor.
- 6.3. Upon cancellation, AMSA will have no further obligation or liabilities, which include payment for damages towards the Contractor for cancellation of the Agreement, save for those that accrued prior to date of cancellation.

7. MOST FAVOURED PROVISION

- 7.1. If during the currency of this Agreement, the Contractor or Contractor's Personnel deliver Deliverables of a similar nature to a third party customer at prices lower than those stated in the Agreement then AMSA shall be entitled to a corresponding reduction in the Prices applicable to this Agreement. Any such reduction in the Prices made in terms of this clause shall apply to all Deliverables supplied on or after the date on which the Deliverables of a similar nature were supplied, or offered to be supplied at prices lower than those in the Agreement.
- 7.2. Should AMSA find that the quality and/or price of any goods, services or material (that are of a same or similar nature to the Deliverables) are made available by a third party supplier and such goods, services or materials are more favourable than the quality and/or Price of the Deliverables purchased within the Agreement, it will be expected of the Contractor to substitute the same or better quality Deliverables at the same or better price that is acceptable to AMSA. If the Contractor fails to provide the

Deliverables of the same or better quality and/or at the same or better price that is acceptable to AMSA, then AMSA has the right to remove the Deliverables from the Agreement or terminate this Agreement after 21 (twenty one) days written notice.

8. METHOD OF ORDERING

8.1. If AMSA, from time to time, requires Deliverables to be provided to it, it shall place a Purchase Order in accordance with this clause 8. The Purchase Order shall include all relevant information relating to the Deliverables required by AMSA, including:

8.1.1. a full description of the Deliverables being ordered by AMSA including, the quantity thereof;

8.1.2. the Price payable for the Deliverables;

8.1.3. the Purchase Order Number;

8.1.4. the Delivery Date for the Deliverables;

8.1.5. the Point of Delivery and the AMSA Premises at which the Deliverables are to be delivered; and

8.1.6. any other relevant information that AMSA may, from time to time, require to be included in the Purchase Order.

8.2. AMSA shall, from time to time, place the Purchase Order through the auto-purchasing process adopted by AMSA via fax, e-mail or designated printer as registered by AMSA's Vendor Management Department. The order placement process will be deemed completed upon receipt by AMSA of electronic proof of the successful dispatch of the Purchase Order to the Contractor.

8.3. The Purchase Orders under this Agreement will be placed with the Contractor at the Contractor's ordering details set out in the Specific Terms.

9. **GENERAL INVOICING AND PAYMENT TERMS**

9.1. AMSA shall not be liable for any costs incurred by the Contractor as a result of late payments nor shall it be liable for any interest on such late payments occasioned by the Contractor's failure to comply with any provision of the Agreement.

9.2. The Contractor shall, upon request by AMSA, provide the necessary documentary proof to substantiate any invoice or portion thereof.

9.3. It is expressly noted that if a Purchase Order is not received by the Contractor, but the Deliverables are provided to AMSA, the invoice for such provision of the Deliverables shall not be paid to the Contractor by AMSA.

9.4. If a Purchase Order is subject to an early settlement discount, such discount shall be deductible from the invoice value.

9.5. AMSA shall be entitled, in its sole and absolute discretion, to allow an early settlement discount subject to any conditions imposed by AMSA being satisfied. For purposes of the foregoing, it is agreed that:

9.5.1. the Contractor shall have no entitlement to an early settlement discount unless AMSA has agreed in writing to such settlement discount; and

9.5.2. the aforesaid conditions have, to the satisfaction of AMSA, been satisfied.

9.6. Incorrect or incomplete Contractor invoices:

Payment may be refused by AMSA *inter alia* on account of:

- 9.6.1. the Prices as stated in the Contractor's invoice being incorrect;
 - 9.6.2. the failure by the Contractor to deliver the correct quantity or quality of the Deliverables ordered in terms of the Purchase Order or Specifications; and/or
 - 9.6.3. if the Contractor is in breach of any term of the Agreement.
- 9.7. The Contractor hereby authorises AMSA to offset any damages, costs or expenses for which the Contractor is liable to pay over to AMSA and such offset amount must be reflected on AMSA's remittance advice.
- 9.8. All original invoices and statements of account, detailing, *inter alia*, AMSA's VAT number 4920114990 and the Purchase Order Number, must be forwarded to the following address:

ArcelorMittal South Africa Limited
Shared Service Centre
Accounts Payable
P O Box 2
Postal Point 10114
Vanderbijlpark
1900
Gauteng
Republic of South Africa

- 9.9. The Contractor shall comply in all instances with the Value Added Tax Act 89 of 1991, any modifications thereto or acts passed in substitution thereof.
- 9.10. Subject to clause 9.6, all payments shall be made by means of an electronic funds transfer to the bank account stated on the Contractor registration form, or any other account specified by the Contractor in writing.

9.11. Any payment made by AMSA into the bank account referred to in clause 9.10 shall constitute a complete discharge of AMSA's obligations in respect of the amount so paid.

10. MODIFICATIONS

10.1. AMSA shall be entitled at any time, by notice in writing ("**Modification Notice**"), to the Contractor, to alter, amend, omit from, modify, add to, or otherwise vary any portion (the "**Variations**") of the Purchase Order. Variations shall only apply in respect of the Purchase Order and shall not otherwise invalidate or have any effect whatsoever on any provision of this Agreement and/or any other Purchase Order.

10.2. Upon the receipt of a Modification Notice from AMSA by the Contractor:

10.2.1. the Contractor shall carry out such modifications and continue to be bound by the terms and conditions of this Agreement;

10.2.2. if, in the opinion of the Contractor any such modifications :

10.2.2.1. involve a claim for additional payment;

10.2.2.2. require an extension of time; or

10.2.2.3. prevent it from fulfilling any of its obligations under the Agreement,

then the Contractor shall, within 48 (forty eight) hours of receipt of the Modification Notice and before proceeding with any modification, notify AMSA of the effect thereof in writing. AMSA shall then decide whether or not the modification shall be carried out and confirm same in writing ("**Agreement Modification**").

10.3. Any risk or expense of proceeding with any modifications without a valid Agreement Modification shall be for the Contractor's account.

11. COMMUNICATION

- 11.1. The Purchase Order Number shall appear on all documents, such as but not limited to delivery notes and invoices, related to the Purchase Order.
- 11.2. All communication related to a specific Purchase Order shall be addressed and forwarded to the AMSA Contract Representative.
- 11.3. AMSA shall be entitled to inspect and test or to arrange for inspection or testing of any Deliverables before dispatch from the Contractor. The aforementioned inspection or testing shall not relieve the Contractor from any responsibility for liability or guarantee and shall in no way prejudice AMSA's right to reject the Deliverables at a later stage should they be found defective, unsatisfactory and/or not in accordance with Specifications.

12. INSURANCE

- 12.1. 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 or commercial general liability insurance and all risk insurance, including fire, theft, loss or damage to the Deliverables and any other insurance cover that may be specified in the Specific Terms ("**Insurance Cover**") from a reputable insurance company approved by AMSA in writing and shall list AMSA as an additional insured party.
- 12.2. This Insurance Cover shall *inter alia*, provide insurance in the amount not less than R 5 000 000.00 (five million Rand) which shall specifically provide cover for its indemnity obligations in terms of clause 18 and any liability whether bodily injury, product liability, goods in transit, public liability and/or contractual liability which may arise as a result of the Deliverables, any cause whatsoever arising out of the Deliverables or the Contractor's and Contractor's Personnel's wilful misconduct, negligent acts and/or

omissions. The Contractor shall ensure that it has adequate insurance in place to cover any damage or loss of or to the Deliverables immediately upon the passing of the risk in respect of such Deliverables. The Insurance Cover must be sufficient to recover the replacement value of the Deliverables to be calculated at a rate approved by AMSA.

- 12.3. The Insurance Cover shall not be cancelled and/or amended in any manner which restricts the existing coverage or renewed without the Contractor giving AMSA at least 30 (thirty) days prior written notice to that effect.
- 12.4. 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 underlying insurance policy relating to the said Insurance Cover.
- 12.5. The Contractor shall furnish AMSA with a certificate of insurance evidencing the Insurance Cover prior to the Signature Date.
- 12.6. Compliance by the Contractor with this insurance provision shall not relieve the Contractor from liability under the indemnity provisions of this Agreement.
- 12.7. The Contractor shall furnish proof that it is registered with the Compensation Commissioner by submitting its registration number as well as a good standing certificate issued by the Compensation Commissioner to AMSA on the Signature Date and full proof thereof every 12 (twelve) months thereafter.
- 12.8. The Contractor shall register and timeously pay assessments under the Compensation for Occupational Injuries and Diseases Act 130 of 1993, or any amendments thereto, or any Act passed in substitution thereof.

12.9. 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 130 of 1993, against all risks arising out of their employment.

13. RULES, SAFETY AND SECURITY

13.1. By virtue of this Agreement, the Contractor and the Contractor's Personnel shall be granted permission to enter the AMSA Premises, subject to such precautionary measures as may be deemed necessary or be determined, for the protection of life and assets on such premises.

13.2. The admission of the Contractor and the Contractor's Personnel to the AMSA Premises is subject to the provisions of the applicable safety legislation and regulations which will apply to the Contractor and the Contractor's Personnel, the contents of which they warrant knowledge of and adherence to.

13.3. The Contractor shall comply and ensure that all the Contractor's Personnel comply with AMSA's health, environment, safety, standard procedures, applicable policies, security requirements and fire protection regulations in existence and relevant at each of AMSA's Premises from time to time.

13.4. The Parties further agree to be bound by the terms set out in the Written Contract on Occupation Health and Safety in **Schedule B** which forms an integral part of the Agreement and contains the written contract on occupational health and safety which has been executed in terms of section 37(2) of the Occupational Health and Safety Act 85 of 1993.

13.5. In the event of AMSA rendering emergency medical services to the Contractor or Contractor's Personnel the cost involved in rendering such services will be for the account of the Contractor. The Contractor will then have to initiate all claims with the Compensation Commissioner, insurance companies or other bodies as the case may be.

13.6. The Contractor shall report any accident or incident which it may be involved in or see at the AMSA Premises to AMSA within 24 (twenty four) hours of its occurrence and shall furnish AMSA with 2 (two) copies of all reports of accidents within 7 (seven) days.

13.7. The Contractor shall:

13.7.1. adhere to the environmental management system (including any environmental policy, procedures and work instructions) which are adequate to ensure that the Contractor and the Contractor's Personnel take all reasonable measures to avoid and, when it is unavoidable, minimise pollution and degradation of the environment and is aware of and monitors compliance with all applicable Environmental Laws; and

13.7.2. notify AMSA immediately of any pollution or degradation of the environment caused by the Contractor as a result of performing its obligations in terms of the Agreement.

13.8. The Contractor hereby indemnifies and protects AMSA and its directors, managers, agents and employees, against all actions, claims, demands, losses, liabilities, costs, damages and expenses arising from or in connection with:

13.8.1. pollution of the environment as a result of the Contractor's Personnel and Contractor's actions or omissions or performance of its obligations in terms of the Agreement; and/or

13.8.2. a directive or order from any lawful authority to take measures in order to evaluate the impacts or risks associated with an incident or to prevent, mitigate or remedy any actual or potential environmental impact that has arisen or may arise in connection with performance of its obligations hereunder by the Contractor.

13.9. For the avoidance of any doubt, any breach of the provisions of this clause 13 shall be regarded as a material breach under the Agreement entitling AMSA to terminate the Agreement, accordingly.

14. LAWS AND REGULATIONS

14.1. The Contractor shall in respect of all matters arising from the fulfilment of this Agreement, conform at its own expense with all laws, regulations, by-laws and any legal requirements of local and other authorities which are applicable to this Agreement and shall, in the execution of this Agreement, provide for the safety and due convenience of any person including the public, employees and the Contractor's Personnel.

14.2. In regard to clause 14.1, special reference is *inter alia* made to the following Acts (as amended or replaced) although these do not constitute an exhaustive list:

14.2.1. Labour Relations Act 66 of 1995;

14.2.2. Consumer Protection Act 68 of 2008;

14.2.3. Occupational Health and Safety Act 85 of 1993;

14.2.4. Hazardous Chemical Substances Act 15 of 1973;

14.2.5. Compensation for Occupational Injuries and Diseases Act 30 of 1993;

14.2.6. any Environmental Laws; and

14.2.7. the provisions of Section 37(2) of the Occupational Health and Safety Act 85 of 1993, with the Contractor being deemed to be an employer in its own right while on the AMSA Premises. In terms of Section 16(1) of the Occupational Health and Safety Act 85 of 1993, the Contractor shall accordingly ensure that the requirements of

the Occupational Health and Safety Act 85 of 1993 are complied with by itself and/or its nominated Chief Executive Officers.

14.3. Any failure by the Contractor to comply with any applicable legislation in relation to the performance of its obligations under this Agreement shall for avoidance of doubt amount to a breach of the terms of this Agreement, deemed to be material, and entitle AMSA to act in accordance with the breach clause 24. The Contractor hereby indemnifies AMSA against any loss or damage or claim arising out of the Contractor's failure to comply with such requirements.

15. CONFIDENTIALITY

15.1. For the purpose of this Agreement, "**Confidential Information**" shall include but not be limited to:

15.1.1. all information marked (in any legible form) confidential, restricted or proprietary by AMSA;

15.1.2. AMSA's customer lists, customer information, goods, services, accounting information, strategic information, and information regarding business planning and operations;

15.1.3. AMSA's administrative, training, financial or marketing activities;

15.1.4. data concerning business relationships and demonstrations of AMSA;

15.1.5. information concerning faults or defects in AMSA's systems, hardware and/or software or the incidence of such faults or defects;

15.1.6. information contained in AMSA's software and associated material documentation;

- 15.1.7. plans, designs, drawings, functional and technical requirements and specifications;
 - 15.1.8. technical, scientific, commercial, financial and market information, know-how and trade secrets; and
 - 15.1.9. any other commercially sensitive information, such as names of suppliers, customers, manufacturing processes and business strategies.
- 15.2. The Contractor shall keep confidential all Confidential Information and not divulge such Confidential Information to any person including its employees, agents or sub-contractors save for the employees, agents or sub-contractors directly involved with the execution of this Agreement, without the prior written consent of AMSA, which consent may be withheld in the sole and absolute discretion of AMSA.
- 15.3. The Contractor may disclose Confidential Information to the extent required by law, or order of a court, or governmental agency, provided, however, that the Contractor must give AMSA prompt notice and shall reasonably endeavour to obtain a protective order or otherwise protect the confidentiality of such information, all at the Contractor's cost and expense.
- 15.4. With respect to all Confidential Information, the Contractor will use the same care to prevent disclosure to third parties of such Confidential Information as it employs to avoid disclosure, publication or dissemination of its own information of a similar nature.
- 15.5. The Contractor will not publicly disclose the terms of this Agreement without the prior written consent of AMSA.

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- 15.6. The obligations of the Parties under this clause 15 will apply indefinitely, notwithstanding the termination of this Agreement, for any reason whatsoever.
- 15.7. Notwithstanding the foregoing, this clause will not apply to any Confidential Information which the Contractor, can demonstrate was:
- 15.7.1. at the time of disclosure to it, in the public domain; or
 - 15.7.2. after disclosure to it, published or otherwise, becomes part of the public domain through no fault of the Contractor; or
 - 15.7.3. in the possession of the Contractor at the time of disclosure to it; or
 - 15.7.4. received after disclosure to it from a third party who had a lawful right to disclose such information to it; or
 - 15.7.5. independently developed by the Contractor without reference to the Confidential Information of AMSA.
- 15.8. At the request of AMSA, at any time, the Contractor shall promptly deliver to AMSA all written, printed and copied Confidential Information including Confidential Information electronically stored and drawings, sketches or diagrams of whatever nature disclosed to it without retaining any copies thereof and shall either so deliver or destroy any written material based on the Confidential Information.
- 15.9. The Contractor agrees to use the Confidential Information for the sole purpose of this Agreement only, unless otherwise agreed to in writing by AMSA.
- 15.10. Should there be a dispute between the Parties as to whether the Contractor complied with the provisions of this clause 15 or not, the onus shall be on the Contractor to show that it took all reasonable steps to comply with this clause and the Contractor shall take all reasonable steps

to assist AMSA in establishing the source from which such Confidential Information was made known.

15.11. The Contractor shall take all reasonable steps to ensure that the Contractor's Personnel or other third parties appointed at the instance of the Contractor, comply with the provisions of this clause 15 and that none of them discloses or uses any Confidential Information except as contemplated in this clause 15.

16. INTELLECTUAL PROPERTY

16.1. In this Agreement, "**Intellectual Property**" means any know-how (not in the public domain), invention (whether or not patented), design, trademark, or copyright material (whether or not registered), goodwill, processes, process methodology and all other identical or similar intellectual property as may exist anywhere in the world and any applications for registration of such intellectual property, which specifically includes all copyright, design rights and any other proprietary rights in and to any business plans and proposals, business processes and functional and technical specifications and any related material.

16.2. The Contractor acknowledges and agrees that all copyright in and ownership of all Intellectual Property made available to it by AMSA and that which is conceived and/or created by the Contractor, and/or Contractor's Personnel in connection with this Agreement vests and shall remain vested in AMSA.

16.3. The Contractor hereby assigns to AMSA all worldwide rights, title and interest in and to the Intellectual Property created, made, conceived or authored by the Contractor, or any person employed by the Contractor either solely or jointly with others, in connection with the performance of this Agreement or with the use of information, materials or facilities of AMSA received by the Contractor during the currency of the Agreement. AMSA

will be free to make, have made, use, offer for sale, sell, modify, translate, and import goods utilising the Intellectual Property assigned to it.

- 16.4. Intellectual Property of the Contractor that is proprietary to its business model/process and created by the Contractor prior to the execution of or after this Agreement, but not related to this Agreement will remain solely under the ownership of the Contractor. The Contractor will promptly disclose to AMSA all Intellectual Property created by the Contractor during the currency of this Agreement.
- 16.5. The Contractor shall execute or cause to be executed all documents and perform such acts as may be necessary, useful or convenient to secure or enforce for AMSA statutory protection including, patent, trade mark, trade secret or copyright protection throughout the world in respect of all Intellectual Property assigned to AMSA pursuant to this clause 16.
- 16.6. This Agreement does not constitute a license to or extend on the Contractor the right to use any of the Intellectual Property rights of AMSA in any manner whatsoever, without the prior written approval of AMSA.

17. ANTI-BRIBERY AND FRAUD

17.1. The Contractor warrants and undertakes:

- 17.1.1. to comply, where applicable, with AMSA's anti-fraud or corruption guidelines and policies as amended from time to time and available at <http://southafrica.arcelormittal.com/Sustainability/Ethics.aspx> or upon request at any time from AMSA, applicable provisions of the U.S. Foreign Corrupt Practices Act, United Nations Anti-bribery Conventions and the laws of the Republic of South Africa relating to fraud and corruption, in particular, the Prevention and Combatting of Corrupt Activities Act of 2004, all together hereinafter referred to as ("**Fraud Guidelines**");

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- 17.1.2. not to make any payments on behalf of AMSA to any person, in particular, any government official, employee or department, without obtaining the prior written approval of AMSA. A written accounting must be kept of all payments made by the Contractor on behalf of AMSA, or out of funds provided by AMSA. A copy of this accounting must be provided to AMSA upon request. At no time shall any payment be made by the Contractor or its authorized agents or employees and officers on behalf of AMSA to any undisclosed third party; and
- 17.1.3. 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 fraud and anti-corruption provisions, broadly in line with this Agreement particularly this clause 17 and that they all comply with same.
- 17.2. The Contractor shall notify AMSA immediately if it has reason to suspect that any fraud or corruption activities have occurred or are likely to occur in contravention of this clause 17.
- 17.3. The Contractor represents and warrants that no money paid to it as compensation or otherwise for the performance of its obligations under this Agreement has been or will be used to pay any bribe or kickback in violation of the Fraud Guidelines.
- 17.4. The Contractor's or the Contractor's Personnel's failure to comply with this clause 17 or them committing any fraudulent activities in breach of the Fraud Guidelines, as determined by AMSA shall be deemed to be a material breach of the Agreement entitling AMSA, without prejudice, to claim damages or any other remedies it may have, including:

- 17.4.1. to terminate the Agreement and in that event, the Contractor shall notwithstanding anything contained in the Agreement to the contrary, also surrender any claim for payment under this Agreement including payment for services previously performed;
 - 17.4.2. to suspend the Agreement from proceeding;
 - 17.4.3. set off, or withhold payment under the Agreement; and/or
 - 17.4.4. blacklist the Contractor permanently or for a certain period from doing further business with AMSA.
- 17.5. The onus will be on the Contractor to prove that it has not committed fraud or violated, intends to violate, or has caused a violation of any Fraud Guidelines.
- 17.6. AMSA shall not be liable for any claims, losses or damages arising from fraud or related to failure by the Contractor or Contractor's Personnel to comply with this clause 17 and the Contractor indemnifies and holds AMSA harmless against any such claims, losses or damages.
- 17.7. AMSA reserves the right at any time to audit the Contractor's compliance with the terms of this clause 17 and the Contractor hereby agrees to cooperate with such audit requirements and provide documentation that maybe requested by AMSA.
- 17.8. The Contractor agrees to provide prompt certification of its continuing compliance with the Fraud Guidelines whenever so requested by AMSA.

18. INDEMNITY

- 18.1. The Contractor hereby indemnifies and agrees to defend, keep indemnified and hold harmless AMSA, 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 AMSA or any person including third parties arising –

18.1.1. out of any Deliverables or the supply and/or provision of any Deliverables, if applicable;

18.1.2. the performance of the Contractor's obligations under or breach by the Contractor and Contractor's Personnel of any of the terms of this Agreement;

18.1.3. 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 AMSA;

18.1.4. any breach of the provisions of the contract documents or agreement between the Contractor and the Contractor's Personnel;

18.1.5. injury or death of the Contractor's Personnel for any reason;

18.1.6. any loss to or caused by the Contractor and the Contractor's Personnel;

18.1.7. any acts or omissions including fraud and criminal activities of the Contractor and the Contractor's Personnel; and/or

18.1.8. damage to property or equipment by the Contractor and the Contractor's Personnel.

18.2. AMSA's use or approval of any Deliverables provided must not be construed as AMSA's waiver of its rights under this clause 18.

- 18.3. AMSA will co-operate with the Contractor in the conduct of any proceedings arising pursuant to this clause 18 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.
- 18.4. The Contractor will not enter into any settlement or compromise, or make any settlement or compromise offer, without the prior written approval of AMSA. AMSA 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.
- 18.5. The indemnification under this clause 18 shall survive termination of this Agreement for any reason whatsoever.

19. CONFLICT OF INTEREST

- 19.1. The Contractor agrees and undertakes to declare in the declaration of conflict of interest form attached hereto as **Schedule C** to AMSA any personal or business relationship with any employee or supplier of AMSA (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.
- 19.2. For purposes of the Agreement, a Conflict of Interest arises:
- 19.2.1. when the personal or business relationships between an employee of AMSA and a supplier interfere or appear to interfere, with the ability of the employee dealing with such supplier to act in the best interest of AMSA; and/or
 - 19.2.2. when an activity detrimentally affects the contractual relationship between the Parties and will have a negative impact on the business relationships of AMSA as a whole.

19.3. The Contractor shall not and shall furthermore ensure that none of the Contractor's Personnel engage in business relationships or engagements or activity which reasonably determined conflict with the interests of AMSA under the Agreement without declaration contemplated in 19.1 and the prior written consent of AMSA.

19.4. Any breach, which shall be deemed to be material, of this clause 19, shall entitle AMSA to immediately cancel this Agreement without prejudice to any other remedies it may have herein or in law.

20. INSPECTION AND AUDITING OF RECORDS

20.1. Inspection and Auditing. At any time during the term and within a 2 (two) year period after the expiration or termination of this Agreement, AMSA 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. The Contractor shall permit AMSA 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 AMSA) to any costs, expenses, and fees incurred for or charged to AMSA either directly or indirectly under this Agreement.

20.2. Salary information of the Contractor's employees will be accepted by AMSA on an aggregated basis characterized by function, provided that the Contractor furnishes AMSA 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. AMSA will be entitled to the personnel records of the Contractor's Personnel and to salary information regarding sub-contractors on an individual basis if such salary is charged to AMSA as an expense.

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- 20.3. AMSA will provide at least 30 (thirty) days' notice to the Contractor prior to the audit, and the Contractor shall fully cooperate with AMSA or its third-party auditor by *inter alia* making the required records, information and personnel available.
- 20.4. AMSA's right to audit is limited to no more than once in a 12 (twelve) month period, however AMSA 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 AMSA. 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.
- 20.5. Retention of Records. The Contractor shall at its own cost make and retain, during the term of the Agreement and for a period of 2 (two) years thereafter, records, in form and substance consistent with the International Financial Reporting Standards and or any other applicable standards, of all services performed by the Contractor and all costs and expenses related thereto.
- 20.6. Changes in Accounting Procedures. The Contractor shall notify AMSA, 90 (ninety) days in advance of any changes in its accounting methods, if the change will have a material effect on the terms and conditions of this Agreement, including but not limited to, any change of banking details and/or any other matter that AMSA may, from time to time, require notification of in terms of this clause 20.6
- 20.7. If AMSA elects to perform an inspection and audit on the Contractor's records in accordance with this clause 20, AMSA agrees to enter into a confidentiality agreement with the Contractor in a form mutually agreed by the Parties with regards to confidential information of the Contractor that may be disclosed during such inspection and audit.

21. PERSONAL INFORMATION

To the extent required, the Contractor hereby consents or undertakes that it will procure the necessary consents for the processing of Personal Information that may be provided to AMSA from time to time, as is required in terms of POPI. The Contractor shall ensure that any consents obtained shall include the right to transfer such Personal Information to third parties in relation to the supply and/or provision of any Deliverables and this Agreement generally, including to third parties located in foreign jurisdictions.

22. FORCE MAJEURE

22.1. Neither Party shall be held liable in respect of any failure to fulfil its obligations or commitments in terms of this Agreement, when such failure is caused by or arises from Force Majeure.

22.2. For the purposes of this Agreement the expression "**Force Majeure**" means, in respect of a Party, any event or circumstance, or combination of events or circumstances, occurring on or after the Commencement Date hereof, the occurrence of which is beyond the reasonable control (direct or indirectly) of, and could not have been avoided by steps which might reasonably be expected to have been taken by, such Party acting as a reasonable and prudent operator. Without prejudice to the generality of the foregoing, such events or circumstances shall include:

22.2.1. an act of God, act of public enemy, act or threat of terrorism, war, revolution, riot, insurrection, civil commotion, public demonstration, sabotage, strikes (to the extent that it has a material effect on a Party), act of vandalism, explosions, lightning, fire, flood, storm, drought, earthquake or extreme weather;

22.2.2. material plant breakdown or any material breakdown of machinery or equipment or accidents, which could not have been prevented by a reasonable and prudent operator;

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- 22.2.3. governmental restraint, an Act of Parliament or other legislation, by-law, regulation or directive (such restraint, Act, other legislation, by-law or directive arising or coming into effect after the Effective Date) of any authority having jurisdiction over such Party or any inability to obtain or cancellation of any consent, approval or license rendering it unlawful for such Party to comply with its obligations hereunder; and
- 22.2.4. any restriction in the output of AMSA on account of a serious trade recession with accompanying decrease in the demand in the Republic of South Africa, and/or any other country, for AMSA's goods, if applicable.
- 22.3. During the continuance of a Force Majeure event:
- 22.3.1. the Party affected by the Force Majeure shall as soon as practicable give written notice of the occurrence of the Force Majeure to the other Party, the likely duration of such circumstances (if known), the extent to which the Party giving such notice will be prevented from or impeded in carrying out any of its obligations under this Agreement and in its opinion, the steps necessary to remedy the Force Majeure; and
- 22.3.2. the Party affected by the Force Majeure event shall take all reasonable steps to remedy the Force Majeure and to minimise the effect of such circumstances upon the performance of its obligations under this Agreement.
- 22.4. In the event that a Force Majeure event continues for a consecutive period of at least 30 (thirty) days, the Party who receives the notice pursuant to clause 22.3.1 shall be entitled to thereafter terminate this Agreement, by giving at least 30 (thirty) days' notice in writing to the other Party.

22.5. Each Party shall bear the costs and expenses that it engaged from the starting point of the Force Majeure event up to its ending point or the termination of this Agreement, whichever is earlier.

23. DISPUTE RESOLUTION

23.1. Introduction

23.1.1. The Parties shall, in the Specific Terms, agree on whether clause 23.2 or clause 23.3 shall apply to disputes in terms of this Agreement.

23.1.2. If the Parties either do not agree on a clause in terms of clause 23.1.1, clause 23.2 shall be deemed to have been selected by the Parties only.

23.2. Arbitration

23.2.1. Any dispute, which arises between the Parties, shall be referred to a joint committee of duly appointed representatives of each Party, who will use their best endeavours to resolve the dispute by negotiations within 14 (fourteen) days of the dispute having been referred to the joint committee.

23.2.2. Should the joint committee be unable to resolve a dispute in accordance with clause 23.1, such dispute will be submitted to and decided by arbitration in terms of this clause 23, or, upon agreement between the Parties, to a court of competent jurisdiction in accordance with clause 34. 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 23.

23.2.3. 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.

23.2.4. Nothing in this clause shall prevent any Party from obtaining urgent and/or interim relief in a court pending the outcome of the arbitration and, in such event, the provisions of clause 34 shall apply *mutatis mutandis*.

23.2.5. Any such negotiation or arbitration shall be held in Johannesburg.

23.2.6. This clause will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

23.2.7. Any award that may be made by the arbitrator:

23.2.7.1. shall be final and binding;

23.2.7.2. will be carried into effect; and

23.2.7.3. may be made an order of any court to whose jurisdiction the Parties to the dispute are subject.

23.3. Courts

23.3.1. Any dispute, which arises between the Parties, shall be referred to a joint committee of duly appointed representatives of each Party, who will use their best endeavours to resolve the dispute by negotiations within 14 (fourteen) days of the dispute having been referred to the joint committee.

23.3.2. Should the joint committee be unable to resolve a dispute in accordance with clause 23.3.1, such dispute will be submitted to a court of competent jurisdiction in accordance with clause 34.

23.3.3. Nothing in this clause shall prevent any Party from obtaining urgent and/or interim relief in a court pending the outcome of the arbitration and, in such event, the provisions of clause 34 shall apply *mutatis mutandis*.

23.3.4. This clause will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.

24. BREACH AND TERMINATION

24.1. If any of the Parties commits a material breach of any provision of this Agreement, and the breach is capable of remedy, the other Party may call in writing on the Party in breach to remedy the breach within a period of 14 (fourteen) days. If the breach remains un-remedied after the aforesaid notice period has expired, the Party calling on the breach will be entitled at its discretion and without prejudice to other remedies it may have in law to:

24.1.1. terminate this Agreement with immediate effect or as soon as reasonably practicable after the said 14 (fourteen) day remedy period has lapsed;

24.1.2. re-contract with any other person or persons or to employ other labour to provide any deliverables, if applicable, as it may think fit to make good such default; and/or

24.1.3. claim specific performance and/or damages.

24.2. For purposes of clause 24.1, any breach by the Contractor shall be deemed to be material.

24.3. In addition, any Party may terminate this Agreement with immediate effect on written notice to the other Party in the event that:

24.3.1. any of the Parties commits an act of which fraud is a component;
or

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

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

24.3.4. 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 with the prior written consent of the other Party; or

24.3.5. any procedure is commenced with a view to the appointment of an administrator, receiver, administrative receiver or trustee in bankruptcy or all or substantially all of the assets of the other Party are attached pursuant to a court order; or

24.3.6. either Party or its board passes or causes to be passed any resolution for the commencement of business rescue proceedings, or an application is made to court by an affected person (as defined in the Companies Act 71 of 2008) to place such Party under business rescue, as contemplated in Chapter 6 of the Companies Act 71 of 2008, as amended; or

24.3.7. anything analogous to any of the events described in clauses 24.3.1 to 24.3.6 occurs in relation to either Party.

24.4. The provisions of this clause 24 will not affect the rights of the Parties to claim damages provided however, under no circumstances shall consequential or indirect damages be claimed by either Party, and such

rights to any consequential damages are hereby expressly waived by the Parties.

24.5. 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. For the avoidance of doubt, termination shall not affect the obligation on the part of the Contractor to supply any Deliverables already ordered and/or requested and the validity of those provisions, *inter alia*, on interpretation in clause 1 and confidentiality in clause 15.

25. DOMICILIUM AND NOTICES

25.1. Any notice, request, order, statement or other communication required or permitted to be given hereunder shall be in writing and may be given by delivery to either Party or by mailing the same by prepaid registered post, addressed to the other Party at its chosen domicilium citandi et executandi ("*Domicilium*") which:

25.1.1. in the case of AMSA:

ArcelorMittal South Africa Limited

Physical : Delfos Boulevard

Vanderbijlpark

1911

Gauteng

Republic of South Africa

Postal : PO Box 2

Vanderbijlpark

1900

Gauteng

Republic of South Africa

Telefacsimile: [•]

Email : Willem.Nel@arcelormittal.com

For attention: Willem Nel, General Manager: Procurement and Logistics

- 25.1.2. in the case of the Contractor, its contact details specified in the definition of the Contractor in the Specific Terms.
- 25.2. Any notice or communication required or permitted to be given in terms of the Agreement will be valid and effective only if it is in writing, but, where, in terms of this Agreement, any communication is required to be in writing, the term “**writing**” will include communications by facsimile and e-mail.
- 25.3. Any Party may by written notice to the other Party, change its fax number, e-mail address or the address chosen as its *Domicilium*, to another fax number, e-mail address or address which is not constituted exclusively by a post office box address. The change will become effective on the 5th (fifth) day from the deemed receipt of the notice by the addressee.
- 25.4. Any notice to a Party sent by prepaid registered post (by air mail if appropriate) in a correctly addressed envelope to it at its *Domicilium* will be deemed to have been received on the 5th (fifth) day after posting (unless the contrary is proved).

25.5. Any notice to a Party delivered by hand during ordinary business hours at its *Domicilium* will be deemed to have been received on the day of delivery (unless the contrary is proved).

25.6. Any notice to a Party sent by facsimile or e-mail to its chosen *Domicilium*, will be deemed to have been received, unless the contrary is proved, immediately upon the issuance, by the transmitting fax machine or transmitting computer, of a report confirming correct transmission of all the pages of the document containing the notice.

25.7. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party will be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *Domicilium*.

26. RELATIONSHIP BETWEEN PARTIES

The Parties agree that this Agreement does not found a partnership, joint venture, agency or employment agreement between them. There is no joint and several liabilities on the part of either Party and each Party shall be liable for those obligations provided for in this Agreement. Neither Party shall bind the other Party or represent that their relationship is a partnership or other legal entity.

27. NON-EXCLUSIVITY

This Agreement does not confer on the Contractor any exclusive right to provide any Deliverables to AMSA nor any obligation on the part of AMSA to hire the Contractor to render the same or similar services and/or to supply the same or similar goods and/or material from time to time. AMSA shall be entitled to contract with any other party to render the same or similar type of service and/or to supply the same or similar goods and/or material, during the term of this Agreement or after its expiry.

28. CESSION AND ASSIGNMENT

28.1. The Contractor shall not cede or assign the Agreement, any right, title, interest, remedy, obligation or liability arising hereunder or by reason hereof to any person without the prior written approval of AMSA.

28.2. AMSA shall be entitled to cede and assign all of its right, title and interest in and to this Agreement to any third party, without the prior notification or consent of the Contractor.

29. SEVERABILITY

29.1. If any of the provisions of this Agreement are found to be illegal, invalid, unlawful or unenforceable for any reason, such provision shall be deemed to be *pro non scripto* but without affecting, impairing or invalidating any of the remaining provisions of this Agreement, which will continue to be valid and enforceable.

29.2. The Parties agree to meet and review the terms of this Agreement found to be illegal, invalid, unlawful or unenforceable and the option to replace it if any valid and enforceable means are reasonably available to achieve the same object as the unenforceable terms.

30. VARIATION

No variation of or addition to this Agreement will be of any force or effect unless reduced to writing and signed by or on behalf of the Parties.

31. WAIVER

Failure by AMSA to enforce strict performance of any of the terms and conditions of the Agreement or any legal remedy shall not release the Contractor of such obligation and shall not be a waiver of any of AMSA's rights under the Agreement.

32. WARRANTIES

32.1. The Contractor hereby warrants that;

32.1.1. it 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

32.1.2. no Deliverables 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.

32.2. Subject to clause 32.1, no Party has given any warranty or made any representation to the other Party, other than any warranty or representation, which may be expressly set out in this Agreement including the Specific Terms.

33. ENTIRE AGREEMENT

33.1. This Agreement constitutes the entire Agreement between the Parties hereto regarding the subject matter.

33.2. This Agreement supersedes and cancels all previous communications, negotiations and contracts between the Parties in this regard.

33.3. The Parties hereto hereby acknowledge and agree that there are and were no statements, representations or undertakings, which induced them to enter into this Agreement, that are not recorded therein.

34. GOVERNING LAW AND JURISDICTION

34.1. This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

34.2. The Parties hereby consent to the jurisdiction of the High Court of South Africa (or any successor to that division) in regard to all matters arising from this Agreement that are permitted to be resolved in court.