



Standard Terms and Conditions in terms of Goods and Services

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In the operation of its business, PPC enters into various contractual arrangements with its suppliers. These relationships are regulated by agreements with the relevant parties and are subject to these Standard Terms and Conditions of purchasing Goods and/or Services which must be considered to form an indivisible part of PPC's contractual nexus. All parties agree to comply with all PPC policies which will be made available upon successful advancement of the transaction.

1. DEFINITIONS

- 1.1 In this document, the following terms have the meanings assigned to them below, namely –
- 1.1.1 **“Agreement”** means
 - 1.1.1.1 the Formal Instrument of Agreement (including the Agreement Particulars);
 - 1.1.1.2 the Special Conditions (if any) in Part A (‘Part A’);
 - 1.1.1.3 the General Conditions in this Part B (‘Part B’);
 - 1.1.1.4 the Appendices in Part C (‘Part C’); and
 - 1.1.1.5 all Purchase Orders and any other documents stated in a Purchase Order to be part of the Agreement,and unless otherwise agreed in writing by the Parties, the Agreement does not include tender documents or correspondence, including letters of offer or acceptance exchanged between the Parties prior to the Commencement Date of this Agreement.
 - 1.1.2 **“Agreement Particulars”** means the details specified in the Formal Instrument of Agreement;
 - 1.1.3 **“Business Day”** means a calendar day ending at 5pm, other than a Saturday, Sunday or official public holiday in the Republic of South Africa.
 - 1.1.4 **“Consent”** as defined in section 1 of POPI means any voluntary, specific and informed expression of will in terms of which permission is given for the processing of Personal Information;
 - 1.1.5 **“CPA”** means the Consumer Protection Act 68 of 2008, as amended and any regulations promulgated in respect thereof;
 - 1.1.6 **“Deliverables”** means all documents, products and materials developed by the Seller or its agents, subcontractors, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
 - 1.1.7 **“Goods”** means the product or goods or equipment specified in the Agreement Particulars, Purchase Order or the Appendices (if any).
 - 1.1.8 **‘Government Agency’** means a government or any ministry, department, court, tribunal, competition authority, commission, board, agency, institution or similar entity of such government;
 - 1.1.9 **‘Government Consent’** means an approval, consent, waiver, authorisation, permit, clearance, licence or other precondition required under Relevant Law or from a Government Agency in relation to the supply of the Goods and/or Services;
 - 1.1.10 **“Harm”** means harm, as described in section 61(5) of the CPA;

- 1.1.11 **'Losses'** includes losses, damages, costs, charges, expenses, penalties, interest, levies and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person;
- 1.1.12 **"Party"** means either PPC or the Seller, as the context may require, and **"Parties"** means both PPC and Seller;
- 1.1.13 **'Personnel'** includes permanent, fixed term and temporary employees, directors, partners, agents, independent contractors, consultants, authorised representatives, subcontractors and subcontractors' personnel;
- 1.1.14 **"Personal Information"** means information as defined in Section 1 of POPI, relating to any person, including but not limited to: (i) information relating to the race, gender, sex, marital status, national, ethnic or social origin, colour, age, disability, language and birth of the person; (ii) information relating to the education or the medical, financial, criminal or employment history of the person; (iii) information relating to the financial affairs of the person; (iv) credit card details and transactional data; (v) any identifying number, symbol, e-mail address, physical address, telephone number or other particular assignment to the person; (vi) correspondence sent by the person that is implicitly or explicitly of a private or confidential nature or further correspondence that would reveal the contents of the original correspondence; (vii) the views or opinions of another individual about the person; (viii) the name of the person if it appears with other personal information relating to the person or if the disclosure of the name itself would reveal information about the person; and (ix) any other information which may be treated or defined as "personal information" in terms of any applicable Laws, including any applicable Data Protection Legislation;
- 1.1.15 **"POPI"** means the Protection of Personal Information Act 4 of 2013;
- 1.1.16 **"Processing"** as defined in section 1 of POPI means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including -
 - (a) the collection, receipt, recording, organisation, collation, storage, updating or modification, retrieval, alteration, consultation or use;
 - (b) dissemination by means of transmission, distribution or making available in any other form;
- 1.1.17 **"PPC"** means the PPC entity, being a member of the PPC group of companies, as specifically referred to in the Agreement Particulars;
- 1.1.18 **'Relevant Law'** includes statutes, ordinances, regulations, by-laws, orders and awards of any Government Agency and proclamations applicable to the Parties, the supply of Goods and/or Services and/or the performance by the parties of their respective obligations under this Agreement;
- 1.1.19 **"Receiving Party"** means the Party receiving Confidential Information;
- 1.1.20 **"Responsible Party"** as defined in section 1 of POPI means a public or private body or any other person which, alone or in conjunction with others, determines the purpose of and means for processing Personal Information;
- 1.1.21 **"Seller's Equipment"** means all plant, tools and equipment used by the Seller performing its obligations under this Agreement, and includes cranes, tools, machinery and temporary buildings.
- 1.1.22 **"Seller"** shall mean the party that sells and supplies the Goods and/or Services to PPC, and which has been identified as such in the Agreement Particulars.
- 1.1.23 **"Services"** means the services to be provided by the Supplier to PPC in accordance with this Agreement as more specifically described in an appendix

, and any incidental work that can be reasonably inferred as necessary or appropriate to perform the Services as described.

- 1.2 Unless a contrary intention clearly appears, the terms used in this document shall have the meanings assigned to them in section 1, section 53 or any other section, as the case may be, of the CPA.
- 1.3 The provisions of POPI shall be applicable to these Standard Terms and Conditions.

2. PURPOSE OF STANDARD TERMS AND CONDITIONS

- 2.1 These Standard Terms and Conditions for the purchase of goods are designed to provide certainty and uniformity across PPC's contractual relationships. They seek to regulate the terms on which PPC relies on during the course of the operation of its business. These are blanket provisions which shall govern generally any contract entered into by PPC to which these Standard Terms and Conditions relate.
- 2.2 The Seller and PPC agree that these Terms and Conditions shall apply to any contract, whether that contract arises out of:
 - 2.2.1 any offer made by the Seller and accepted by PPC, including a credit application form or other underlying agreement as the case may be.
- 2.3 The Seller and PPC agree that no alteration or variation of this Agreement shall apply, either at the time that the contract is concluded or at any time afterwards, unless the alteration or variation in question is expressly agreed to in writing by way of an amendment or addendum to the Agreement and signed by an authorised representative of PPC and the Seller at the time in question. Where time is of the essence, electronic agreements may be validly concluded, provided that the written amendment or addendum is concluded within 7 (seven) days thereafter.

3. DURATION

- 3.1 This Agreement shall commence on the Commencement Date and endure until the Completion Date, unless terminated earlier in accordance with the provisions of this Agreement.
- 3.2 If this Agreement has expired and the Parties have not expressly extended the Term, then, if the Parties continue to act as if this Agreement is in force:
 - 3.2.1 this Agreement shall be deemed to have been extended on a rolling monthly basis on the same terms; and
 - 3.2.2 either Party may terminate this Agreement by serving not less than 30 (thirty) days' written notice on the other Party.

4. PRICE

The Seller and PPC agree that –

- 4.1 The price shall:
 - 4.1.1 Exclude Value Added Tax;
 - 4.1.2 Include all delivery cost to destination, if applicable, irrespective of the manner of time thereof, including the cost of off-loading unless stipulated otherwise in Part C hereof;
 - 4.1.3 Include all packaging and/or container expenses, if applicable.
- 4.2 Modifications of the price shall only be allowed if PPC consents thereto in writing.

5. QUOTATIONS / ORDERS

- 5.1 Any quotation given by the Seller constitutes an offer to PPC which shall be open for acceptance by PPC for the validity period stated on the quotation, failing which it shall automatically lapse. No acceptance of a quotation by PPC shall be valid unless a Purchase Order which is duly approved by PPC is issued to the Seller in writing, and acknowledgement of receipt by the Seller is received by PPC in writing within the validity period.
- 5.2 The quotation is based on the quantities, specifications and other information supplied by PPC to the Seller, If the Seller requires any modification or addition to any of the foregoing at any time after the quotation is given, PPC shall have the sole and absolute discretion to accept or reject such proposed modification or addition. Any proposed modification or addition by the Seller must be furnished to PPC in writing and must be approved by PPC.
- 5.3 All orders placed by PPC shall be in writing to the Seller via e-mail to the relevant person/s at the Seller.
- 5.4 Orders placed by PPC shall not be binding until accepted by the Seller and shall not be effective unless confirmed by the issuance of a valid Purchase Order.

6. DELIVERY

- 6.1 Unless otherwise stipulated, the Seller shall deliver the Goods and/or Services to PPC –
 - 6.1.1 at the address specified in Part C hereof and to no other address;
 - 6.1.2 during normal working hours unless stipulated otherwise in Part C hereof
 - 6.1.3 at the time and date specified in Part C hereof, and where such time is not specified, during normal working hours from Monday to Friday.
- 6.2 The Goods and/or Services delivered by the Seller to PPC shall be accompanied by a timesheet and separate delivery note and, where applicable, an itemised waybill.
- 6.3 The Seller shall supply the exact Services, product or Goods required by PPC in terms of the Part C hereof, unless PPC consents in writing to other Services or a replacement Product.
- 6.4 The Seller acknowledges that the time and place of delivery are of the essence and in the event that the Seller fails to deliver the Goods and/or Services timeously and/or to the correct address, PPC may, without prejudice to any other rights which it may have in law or in terms of this agreement, cancel the agreement and recover all damages, including financial consequential damages which may directly or indirectly be sustained by or as a result of such failure. Should PPC in its sole and absolute discretion choose not to cancel this agreement, it shall nevertheless be entitled to recover such damages (including direct or indirect financial consequential damages) as it may have suffered as a result of such failure by the Seller.
- 6.5 If the delivery is to be made in separate consignments, then the provisions of this clause 5 shall apply to each consignment.
- 6.6 PPC reserves the right to prohibit the Seller's vehicles, and/or vehicles delivering the Seller's Goods and/or Services, entry to PPC's premises or off-loading point should PPC, in its sole and absolute discretion, deem the Goods and/or Services or those vehicles or its occupants to pose any safety risk to PPC and/or its employees, representatives, agents or property. Should PPC fail to accept any Goods and/or Services when exercising this discretion, PPC shall not be liable to the Seller for any cost or damages of any nature.

- 6.7 PPC reserves the right to search the Seller's vehicles, and/or vehicles delivering the Seller's product or Goods before it enters or leaves PPC's premises or the off-loading point, and in addition, reserves the right to search any Seller's personnel or any sub-contractor, representative or agent of the Seller and the vehicles of those persons. It shall be the responsibility of the Seller to ensure that such persons are aware of this provision.
- 6.8 The Seller shall be responsible for the off-loading or discharge of the Goods and/or Services in the manner specified by PPC, unless otherwise stipulated in Part C hereof
- 6.9 The Seller is to ensure that the delivery note is signed by a properly authorised person employed by PPC. Such signature shall, however, not be deemed to confirm the accuracy of the contents of the delivery note.
- 6.10 Notwithstanding any other provision of this agreement, should PPC wish to test the product or Goods, the Seller agrees that delivery of the product will only be deemed to have taken place after testing of the product or Goods has, to the satisfaction of PPC, been completed.
- 6.11 If a discrepancy of 5% (five percent) exists, PPC shall have the right, at its option, to determine the net mass of the product or Goods by whatever means required, including the use of its own weighbridges. Should the Seller dispute the mass of the product or Goods delivered, the Seller must furnish PPC with the reasons for such dispute in writing within 4 (four) days of the date PPC communicated the mass of the product or Goods to the Seller, failing which the rights of the Seller regarding the mass of the product or Goods shall be deemed to be waived.
- 6.12 Should a dispute arise between PPC and the Seller regarding the quality of Goods and/or Services the quantity delivered, or any specifications relating to the product or Goods, a notice of dispute must be formerly lodged with the other party in writing within a reasonable time period given the circumstances, and shall be resolved as follows:
 - 6.12.1 PPC and the Seller shall use their reasonable endeavours to settle the disputed matter, and for this purpose a member of management of the Seller and PPC respectively shall attend at least one meeting with each other within 5 (five) business days of the notice of dispute being lodged;
 - 6.12.2 If the dispute is not resolved and settled in writing between the Seller and PPC within 10 (ten) business days of the notice of dispute being lodged, the dispute shall be referred to a suitable and appropriate independent professional body, who shall appoint a suitably qualified person to hear the matter informally and as soon as possible, and make a final and binding determination on the proper outcome of the dispute;
 - 6.12.3 To this end, the parties agree that they should use their commercially reasonable endeavours to procure that this independent person may make their determination within 20 (twenty) business days after the date upon which the matter was referred to the suitable and appropriate independent professional body;
 - 6.12.4 In the event that the parties are unable to agree on a suitable and appropriate independent professional body, the matter shall be referred to the Arbitration Foundation of Southern Africa who shall appoint such suitable person.
- 6.13 All size, weights and other specifications given by the Seller shall be accurate, and comply at a minimum with the Legal Metrology Act, 2014, as amended.
- 6.14 The quantity of the Goods and/or Services delivered must be reflected by the Seller on all documents pertaining to the Goods and/or Services, including, without limitation, all statements of accounts invoices. and waybills. In the case of part-delivery, this provision shall apply to each part.

7. QUALITY OF WORKMANSHIP

- 7.1 In addition to any other warranties contained in this Agreement, the Seller further warrants and undertakes that:
- 7.1.1 it will at all times provide adequate and suitably qualified and experienced Personnel to perform the Seller's obligations under this Agreement;
 - 7.1.2 it will at all times remain responsible for determining the means, manner and method for performing the Services;
 - 7.1.3 its obligations will be performed in accordance with this Agreement and in accordance with Good Industry Practice;
 - 7.1.4 it waives the right to, and will not, place any liens and/or encumbrances against any property of PPC, including the Materials, Company Supplied Materials and Company Equipment, for any reason whatsoever. The Seller further warrants that all subcontractors will be obliged to waive and abandon any subcontractor's lien or any other right of retention;
 - 7.1.5 the Services will comply with the specifications and standards for performance of the Services set out in Part E of this Agreement;
 - 7.1.6 the Materials will be new, of satisfactory quality, fit for all the purposes for which the materials of the kind in question are commonly used, are free from defects, safe and durable and comply with the specifications set out in Part E of this Agreement; and
 - 7.1.7 the Materials will be free from all Defects and imperfections affecting performance.
- 7.2 Subcontractors' warranties
- 7.2.1 Without limiting the Seller's obligations under this Agreement, all guarantees and warranties obtained by the Seller from its subcontractors must be extended to PPC to the full extent of their terms.
 - 7.2.2 If required by PPC, the Seller must procure the assignment of these guarantees and/or warranties to PPC.
- 7.3 Warranty period
- 7.3.1 Without prejudice to PPC's other rights and remedies, the Seller:
 - 7.3.1.1 is responsible for any damage to the property of PPC resulting directly or indirectly from any Defect during the relevant Warranty Period;
 - 7.3.1.2 must at its expense rectify any Defect and/or re-perform any Services which are discovered within the Warranty Period to be Defective; and
 - 7.3.1.3 is responsible for any damage to the property of PPC resulting directly or indirectly from the re-performance of Services during the relevant Warranty Period.
 - 7.3.2 All rectification of Defects, replacement of parts, and re-performance of any Services referred to in this clause shall be executed at the risk and cost of the Seller and must be exercised in a manner so as to minimise, to the extent reasonably possible, interference with the operation of the Services and having full regard to PPC's operational safety and environmental requirements applicable to the Site.
- 7.4 If the Seller fails to rectify a Defect and/or re-perform the Services within the reasonable time period specified in PPC's notice of the Defect, PPC may, without prejudice to its other rights, rectify the Defect or perform the relevant Service itself or by engaging others, the Seller shall reimburse to PPC the cost incurred by PPC in

rectifying the Defect or re-performing the relevant Service pursuant to this clause 7.4 and such costs shall be recoverable as a debt due from the Seller to PPC.

8. OWNERSHIP AND RISK

- 8.1 Notwithstanding any other provisions contained in the agreement, ownership in the Goods and the risk of loss, damage or destruction of the Goods shall pass to PPC once the Goods are delivered, off-loaded, or discharged at the off-loading point referred to in clause 5 above.
- 8.2 No provision contained in this agreement shall be constructed so as to limit in any manner whatsoever PPC's right to institute a claim based on the existence of a defect in the Goods, including, without limitation, a claim for the replacement of the defective Goods and any consequential damages flowing from the defect.
- 8.3 In addition to any other rights which PPC may have in law or in terms of this agreement, any defects in the Goods shall, at PPC's option either immediately be made good by the Seller free of charge or the Seller shall be obliged immediately to supply replacement Goods to PPC at the Seller's expense. Should PPC in its sole and absolute discretion deem the instance in question to be one of emergency, it shall be entitled to purchase replacement Goods from any other supplier thereof or repair the defects itself or employ any other person to do so at the Seller's expense.
- 8.4 Should the Seller use any facilities, equipment containers, silos or bins of PPC, the Seller shall be responsible for such property by endorsing the order with the details thereof.
- 8.5 PPC shall not be liable under any circumstances whatsoever for any damages, loss of profit, demurrage, whether direct or indirect, consequential or otherwise, alleged to be sustained by the Seller.
- 8.6 Risk of loss or damage to the Goods during delivery remains with the Seller.
- 8.7 PPC will, as soon as practically possible, record in writing and report to the Seller any shortage of, or damage to any of the Goods discovered. The Seller will be responsible for any such shortage or damage.

9. SELLER'S EQUIPMENT

- 9.1 Except as otherwise provided in this Agreement, the Seller is responsible for the provision of all the Seller's Equipment as may be necessary for the performance of the Services. Without prejudice to the generality of the foregoing, the Seller shall:
 - 9.1.1 remain responsible for all risk in the Seller's Equipment at all times;
 - 9.1.2 ensure that all the Seller's Equipment is fitted with an inspector's tag or uniquely identified by a stamp or an engine, chassis or serial number; and
 - 9.1.3 if requested by the PPC, certify that all the Seller's Equipment to be used at the Site complies with the requirements of this Agreement, Relevant Laws, Government Consents, SHE Requirements and PPC's Corporate Policies.
- 9.2 PPC may:
 - 9.2.1 inspect any Seller's Equipment located on-Site from time to time during the performance of the Services; and
 - 9.2.2 prohibit the use of any Seller's Equipment that the PPC considers does not meet the Relevant Laws, SHE Requirements, Government Consents and PPC's Corporate Policies and the Seller:

9.2.2.1 must bear the costs associated with the removal and replacement of that Seller's Equipment; and

9.2.2.2 is not entitled to a Variation, extension of time or compensation as a result of that prohibition, removal or replacement.

9.3 As soon as practicable after the completion of the Services, the Seller must remove all Seller's Equipment and waste created in the course of the performance of the Services from the Site and leave the Site in a clean and tidy condition. If the Seller fails to do so, the PPC may take any action considered necessary to clean and tidy the Site and the Seller shall reimburse the PPC for the costs incurred.

10. SELLER'S INSURANCE

10.1 The Seller undertakes and warrants that it has and will continue to maintain for the duration of the agreement, adequate insurance policies (with an independent and reputable insurer) to cover its risks in terms of this agreement, including and without limitation, insurance against loss and/or accidental damage to the Goods and death or injury to any person resulting from the Services, use, consumption, supply, packaging and transportation of the Goods.

10.2 The Seller shall –

10.2.1 ensure that at all times, it is registered in terms of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993 and Regulations in relation to its employees and that all assessments are paid when due.

10.2.2 provide proof to PPC's satisfaction, on request by PPC, that adequate insurance has been obtained in accordance with the provisions of this agreement, and should it be that this is not to PPC's satisfaction, then PPC may require the Seller to insure with a reputable insurer approved by PPC and for an amount as may be prescribed by PPC;

10.2.3 promptly pay all premiums and duties in respect of such insurance and on request provide proof to PPC's satisfaction that all such premiums and duties have been paid;

10.2.4 if so requested by PPC, note PPC as a beneficiary under such insurance policy/policies and PPC shall be entitled to claim and receive all monies payable under the aforementioned insurance policy/policies and to sign all documents on the Seller's behalf as may be necessary to recover all amounts payable under the insurance policies; and

10.2.5 not permit or do anything which might prejudice any such insurance.

11. PAYMENT

11.1 PPC shall pay the undisputed amounts on or before the 30th day of the month following the rendering of a true and correct tax invoice and statement of account by the Seller to PPC.

11.2 The Seller's statement of account shall be rendered in duplicate on the 30th day of a calendar month, or on the closest following business day, in respect of deliveries made during the preceding 30-day period.

11.3 On request by PPC, the Seller shall furnish PPC with the appropriate delivery note to any statement of account.

11.4 The date of payment will be deemed to be the date when the electronic transfer has been effected, or actual payment has been made.

- 11.5 To the extent that the credit terms have been agreed to in writing between PPC and the Seller, those terms shall apply.
- 11.6 PPC shall be entitled to deduct or set off any amounts owing by the Seller to PPC.
- 11.7 PPC shall not be liable for the payment of any amount of money which appears on an order which purports to be issued in the name of PPC where such an order was issued without the appropriate authority. It shall be incumbent on the Seller to make due enquiry regarding authority. The Seller will have no claim for damages of any nature due to the cancellation of the agreement on account of lack of authority.

12. SELLER'S OBLIGATIONS IN TERMS OF LABELLING AND NOTICES

- 12.1 The Seller shall ensure that the labelling and packaging of the Goods complies with all applicable laws. The products or Goods (as contemplated in terms of the CPA) must display, on or in association with the packaging of the products or Goods, a notice in the prescribed manner and form that discloses the presence of any genetically modified ingredients or components of the products or Goods in accordance with any applicable law.
- 12.2 The Seller shall comply with all applicable law and is responsible for the correct indication of quantity and/or volume on all packaging within the tolerances provided for by law and undertakes to have all measuring equipment regularly calibrated and to have such calibration certificates available for inspection at all times.
- 12.3 The Seller shall supply the products or Goods with adequate instructions or warnings pertaining to any hazard arising or associated with the use of any products or Goods and for the safe handling and use thereof. Such notice shall comply with the provisions of Section 22 of the CPA and any other applicable standards.

13. GOVERNING LAW

- 13.1 These Standard Terms and Conditions shall be governed by and interpreted in accordance with the law of South Africa in all respects.

14. JURISDICTION

- 14.1 The Seller consents to the jurisdiction of the Magistrate's Court as required by Section 45 of Act 32 of 1944, as amended, in respect of any action or proceedings which may be brought against it by PPC, provided that PPC shall be entitled to bring proceedings in the High Court, in PPC's discretion.
- 14.2 If the Seller is not a resident of and does not carry on business in South Africa, then the Seller consents and submits to the jurisdiction of either –
 - 14.2.1 the division of the High Court of South Africa in which PPC or a company in the group has its registered address or principal place of business; or
 - 14.2.2 the South Gauteng High Court, Johannesburg; and all courts of appeal therefrom for all purposes arising out of this agreement.

15. DOMICILIUM AND NOTICES

- 15.1 The Parties hereto choose domicilia citandi et executandi for all purposes of and in connection with this Agreement as may be set out in the Agreement Particulars.
- 15.2 Any Party hereto shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall be a street address and any such change

shall only be effective upon receipt of notice in writing by the other Parties of such change.

- 15.3 All notices, demands, communications or payments intended for any Party shall be made or given in writing at such Party's domicilium for the time being. A notice sent by one Party to another Party shall be deemed to be received:
- 15.3.1 on the date of delivery, if delivered by hand;
 - 15.3.2 on the fourth day after posting, if sent by prepaid registered mail;
 - 15.3.3 on the day after emailing, if sent by email transmission.
- 15.4 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

16. FORCE MAJEURE

- 16.1 If PPC is prevented or restricted directly or indirectly from carrying out any of its obligations under this agreement by any cause beyond the reasonable control of PPC, including but not restricted to war, civil commotion, riot, insurrection, strikes, lockouts, pandemic or epidemic, fire, explosion, flood, earthquake, bad weather, acts of God and acts of State, PPC shall be relieved of such obligations during the period that such cause continues, whether directly or indirectly.
- 16.2 Should the force majeure continue for a period in excess of 1 (one) month, PPC shall be entitled to terminate the agreement in its sole and absolute discretion.

17. SUSPENSION OF PPC'S OBLIGATIONS

- 17.1 Where the Seller has not met any of its obligations, for whatsoever reason, without prejudice to any rights which PPC may have, PPC may, until the obligations are met by the Seller, suspend the carrying out of its obligations to the Seller.

18. BREACH

- 18.1 In the event of either party ("the defaulting party") to this agreement breaching any term or clause hereof, the other party ("the aggrieved party") may call upon the defaulting party by way of written notice, to remedy its breach within a period of 7 (seven) days from the date of receipt of such notice, failing which the aggrieved party shall be entitled to cancel the agreement and seek whatever recourse it deems necessary, including but not limited to, a claim for damages.
- 18.2 Where PPC is the defaulting party, the aggrieved party shall not be entitled to cancel this agreement for any breach by the defaulting party unless such breach is a material breach going to the root of this agreement and is incapable of being remedied by payment in money or, if it is capable of being remedied by payment in money, the defaulting party fails to pay the amount concerned within 14 (fourteen) calendar days after such amount has finally been determined.

19. CANCELLATION

- 19.1 Notwithstanding the provisions of clause 15 above, PPC may cancel the contract or uncompleted part of it with immediate effect if the Seller-

- 19.1.1 being an individual, dies or is provisionally or finally sequestered or surrenders his estate; or
- 19.1.2 being a partnership, the partnership is terminated; or
- 19.1.3 being a company or close corporation is placed under provisional or final order of liquidation or judicial management; or
- 19.1.4 compromises or attempts to compromise generally with any of its creditors; or
- 19.1.5 commits a criminal act, is involved in criminal activity, or commits an act of fraud.
- 19.1.6 the Seller has breached any provision of this Agreement or failed to perform or comply with any obligation under the Agreement, PPC has given the Seller written notice of that breach or failure and the Seller has committed a breach or failure of the same provision or obligation within 6 (six) months from the date of the Seller's first breach or failure.
- 19.2 PPC's rights in terms of clause 16.1 above shall not be exhaustive and shall be in addition to any other rights it may have whether under the agreement or otherwise.
- 19.3 Notwithstanding anything contained in this clause 16, PPC is unilaterally entitled to terminate any agreement to which it is a party on 30 (thirty) calendar days' written notice, without prejudice to PPC and without charge.
- 19.4 If the Agreement is terminated under clause 15 or 16, then subject to PPC's rights under the Agreement to deduct and withhold amounts owing to the Seller, PPC must pay the Seller all amounts due and unpaid for the supply of the Goods and/or Services at the date of termination.
- 19.5 At the termination or expiry of this Agreement, the Seller must:
 - 19.5.1 at PPC's option, return or destroy PPC's Confidential Information in its possession or control and if requested by PPC to provide a certificate confirming that the Seller has complied with this requirement; and
 - 19.5.2 furnish to PPC, within a reasonable time after this Agreement is terminated, copies of all drawings, data sheets and other documentation and information relating to the Goods and/or Services.
- 19.6 Termination or expiry of this Agreement shall not affect either Party's accrued rights or liabilities.

20. WARRANTIES

- 20.1 The Seller undertakes in favour of and warrants to PPC that –
 - 20.1.1 it has the full power and authority to enter into this Agreement and to grant the rights granted in this Agreement to PPC;
 - 20.1.2 it will remain responsible for its Personnel's remuneration, workers' compensation, employment benefits and taxes;
 - 20.1.3 none of its employees are PPC's employees (as defined in terms of Relevant Laws relating to employment) and the Seller's employees have valid and enforceable employment contracts with the Seller. The Seller indemnifies and holds PPC harmless against all Losses arising in connection with breach of this warranty.
 - 20.1.4 it has access to the appropriate number of properly trained and qualified personnel in order to ensure that it is able to provide the Services and deal with Goods in a safe, professional and timely manner and in accordance with the terms and conditions set out in this agreement;
 - 20.1.5 the Goods transported by the Seller to PPC will be supplied in accordance with any safety standards and all applicable laws and statutes, free of defects and hazards, whether patent or latent and fit for the purpose of their intended

- use and, in particular, that the products or Goods comply with the requirements and standards of Section 55 of the CPA with which the Seller declares itself to be fully acquainted;
- 20.1.6 it shall, at all times, comply fully and timeously with all obligations imposed on it in terms of this agreement and applicable law;
 - 20.1.7 all Goods transported and delivered to PPC have been properly and lawfully cleared by the relevant authorities and that customs and any other taxes or duties have been duly paid to the correct classification; and
 - 20.1.8 the Goods will neither be counterfeit goods, infringe upon the rights of any third party under any trademark, trade name, patent, design or any other intellectual property rights nor will the Goods constitute grey market goods.
 - 20.1.9 Seller represents that it has taken all reasonable steps to determine, has determined and represents, that there is no relationship in respect of PPC, the Seller or either of their Personnel that gives rise to an actual or potential conflict of interest. The Seller must immediately notify PPC upon becoming aware that any such relationship exists. The Seller must take reasonable steps to eliminate or overcome the conflict of interest without in any way adversely affecting its continued performance of its obligations under this Agreement.
 - 20.1.10 Without limiting any other warranty given by the Seller under this Agreement, the Seller warrants that during the tender process and until the conclusion of this Agreement, it did not engage in any collusive activities with any other entity involved in the tender process, or any conduct or have any arrangement or arrive at any understanding with any other entity involved in the tender process.

21. INDEMNITY

- 21.1 The parties acknowledge that in terms of section 61 of CPA, the producer, importer, distributor, retailer, and/or Seller, may be jointly and severally liable for any harm caused wholly or partly as a consequence of–
 - 21.1.1 supplying unsafe Goods and/or Services;
 - 21.1.2 a products failure, defect or hazard in any Goods and/or Services; or
 - 21.1.3 inadequate instructions or warning provided to the consumer pertaining to any hazard arising from or associated with the use of any Goods and/or Services, irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor, retailer or supplier, as the case may be.
- 21.2 The Seller shall be liable for and hereby indemnifies PPC and their directors against all loss, liability, damage or expense of whatever nature which PPC, any company in the group, Consumers or any third party may suffer as a result of or which may be attributable to the failure by the Seller to perform any of its obligations in terms of this agreement including, without limitations, any loss or damage caused by or arising from –
 - 21.2.1 any damage to the Site, facilities or utilities located on the Site, the Goods and/or Services or any property owned, operated or otherwise used by PPC, its Affiliates or their respective Personnel arising as a result of any act, error or omission of the Seller, its Personnel or assigns;
 - 21.2.2 death or injury to any person arising as a result of any act, error or omission of the Seller, its Personnel or assigns;

- 21.2.3 a fine or penalty imposed on PPC arising from or in connection with a breach of any Government Consent or Relevant Law, including the costs incurred by PPC in complying with any order or direction by a Government Agency arising out of or in connection with the breach arising as a result of any act, error or omission of the Seller, its Personnel or assigns;
 - 21.2.4 any loss of the Goods and/or Services or damage to the Goods and/or Services while at the risk of the Seller;
 - 21.2.5 any failure to transport and deliver the Goods and/or Services timeously, adequately or at all, or to the correct off-loading point;
 - 21.2.6 any Goods and/or Services returned or recalled pursuant to the provisions of the CPA;
 - 21.2.7 any damage or injury suffered or sustained by PPC, Consumer or any third party in relation to the products or Goods and/or Services;
 - 21.2.8 the acts or omissions of the Seller's agents, representatives and/or subcontractors;
 - 21.2.9 any breach by the Seller of any of the warranties given by or obligations imposed on the Seller in terms of this agreement, including an order issued under it; and/or
 - 21.2.10 any harm that is described under Section 61(5) of the CPA caused wholly or partly as a consequence of the supply or delivery of any unsafe Goods, product or goods failure, defect or hazard in any goods or inadequate instructions or warnings provided to a Consumer pertaining to any hazard arising from or associated with the use of any goods as contemplated in Section 61(1) of the CPA, irrespective of whether the harm resulted from any negligence on the part of the Seller or the subcontractor of the Seller.
- 21.3 PPC and the PPC group shall not under any circumstances be liable to a Seller for any indirect or consequential loss or damage, including without limitation, loss or profit, revenue, anticipated savings, business transactions or goodwill or other contracts.
- 21.4 The Seller will indemnify PPC for any liability as a result of any misuse or breach or loss of any personal information.
- 21.5 Acceptance by PPC of any delivery of the Goods and/or Services shall not release the Seller from any of its obligations, warranties or undertakings in terms of this agreement or otherwise.
- 21.6 The Seller shall be liable to PPC and/or any other person for all damages, including direct and/or indirect financial loss, which may directly or indirectly be sustained by PPC and/or any other person from any defects in the Goods and/or Services or any other breach of the Seller's obligations, warranties and undertakings in terms of this agreement.
- 21.7 The Seller indemnifies PPC against any claim for infringement or unauthorised use of any patent rights, trademarks or other protected rights which may occur in the manufacture, supply, acceptance or other use of the Goods and/or Services in terms of this agreement. All royalties and expenses of whatsoever nature arising out of any patent right, trademark or other protected rights shall be payable by the Seller.

22. INTELLECTUAL PROPERTY

- 22.1 The ownership of any Background IP of a Party is unchanged by this Agreement.
- 22.2 In respect of any Deliverables, or any part of them, that are transferred to the Seller as part of the Services under this Agreement, the Seller warrants that it has full clear and unencumbered title to all such items, and that at the Scheduled Delivery Date of

such items to PPC, it will have full and unrestricted rights to sell and transfer all such items to PPC.

22.3 The Seller warrants that:

22.3.1 the supply and performance of the Services; and

22.3.2 the receipt and use and onward supply of the Deliverables, if applicable, by PPC;

shall not infringe the rights, including the Intellectual Property Rights, of any third party.

22.4 Ownership of any and all Intellectual Property Rights created by or in the supply and delivery of the Services shall vest in PPC (save for any Seller's Background IP incorporated into such Services, which will be licensed in accordance with the provisions of this Agreement). To the extent applicable, the Seller hereby assigns to PPC, and shall procure that all its Personnel shall take all such steps as are necessary to assign, with full title guarantee and free from all third party rights, all Intellectual Property Rights (including for the avoidance of doubt, all Intellectual Property Rights in the Deliverables) arising, created or resulting from the Services with effect from the date when such rights arise. The Seller shall, and shall procure that all its Personnel, at PPC's request and expense, promptly do (or procure to be done) all such acts and things and the execution of all such documents as PPC may from time to time require for the purpose of securing for PPC the full benefit of this Agreement, including all right, title and interest in and to the Intellectual Property Rights assigned to PPC in accordance with clause.20.4.

22.5 The Seller shall, to the extent permitted by law, procure waivers from all its Personnel of any moral rights and any similar or corresponding rights existing anywhere in the world that any of its Personnel might have in the Intellectual Property Rights, including for the avoidance of doubt the Deliverables, arising from the supply or delivery of Services.

22.6 The Seller hereby grants PPC and PPC Affiliates an irrevocable, perpetual, non-exclusive, assignable and royalty-free licence to use, copy and modify the Seller's Background IP for:

- (a) the receipt and benefit of the Services; and
- (b) to the extent that the Seller's Background IP is incorporated into any Deliverable, the use and the exploitation of the Deliverables for the purposes of the operation and management of the business carried out by PPC or any of its Affiliates from time to time.

PPC and PPC Affiliates shall be entitled to sub-license the rights granted to them.

22.7 If PPC is prevented from receiving or using the Services or any part thereof (including without limitation the Deliverables) as a result of any actual or alleged infringement of Intellectual Property Rights, the Seller must, at its own cost, take all reasonable steps necessary to procure for PPC the right to receive and use the Services or the relevant part thereof for its intended purpose.

22.8 If the Seller fails to procure the necessary rights in accordance with clause 20.7 within a reasonable time, PPC may direct the Seller, at the Seller's cost, to promptly:

- (c) modify the Deliverables and/or Services or the relevant part thereof to avoid the infringement of Intellectual Property Rights; or
- (d) replace the Deliverables and/or Services or the relevant part thereof with Deliverables or Services that do not infringe Intellectual Property Rights,

and any action taken by PPC under this clause 20.8 will be without prejudice to PPC's other rights under this Agreement or at law.

23. PLANS, SPECIFICATIONS AND DRAWINGS

- 23.1 In this section, the terms "defect", "failure", "hazard" and "unsafe" or any derivatives thereof shall have the same meaning as that ascribed to them in terms of Section 53 of the CPA which the Seller declares itself to be fully acquainted with.
- 23.2 The Seller warrants that none of the Services provided or Goods to be transported to PPC shall, as the result of its doing, be defective, prone to failure, constitute a hazard or be unsafe.
- 23.3 The Parties take cognisance of the provision of Section 55 of the CPA that every Consumer has right to receive goods that –
- 23.3.1 are reasonably suitable for the purposes for which they are generally intended;
 - 23.3.2 are of good quality, good working order and free of any defects;
 - 23.3.3 will be usable and durable for a reasonable period of time having regard to the use to which they would normally be put and to all the surrounding circumstances of their supply; and
 - 23.3.4 comply with all applicable standards set out in the Standards Act, Act No. 29 of 1993 (or any substituting Act) or any other public regulation.
- 23.4 Furthermore, the Parties take cognisance of the provision of Section 56 of the CPA, and acknowledge that it is impliedly warranted that the goods supplied or transported by the Seller comply with the requirements of the provisions of Section 55 of the CPA.
- 23.5 Without any prejudice to any other rights reserved in its favour in terms of this agreement, PPC shall be entitled to return the Goods to the Seller should any of the Goods not comply with the provisions of this agreement or be returned by a consumer to PPC if the Goods fail to satisfy the requirements of Section 55 of the CPA or if it is so claimed by a consumer. The Seller shall forthwith compensate PPC in respect of the returned Goods.
- 23.6 Where applicable, the Seller warrants, and must ensure, that the Goods and/or Services conforms with the exact requirements and stipulations of PPC and the plans, specifications, drawings and other data supplied by PPC to the Seller.
- 23.7 All plans, specifications, drawings and other data supplied by PPC in respect of, or in connection with, the Goods and/or Services shall at all times –
- 23.7.1 remain the sole and absolute property of PPC;
 - 23.7.2 be maintained in good condition by the Seller;
 - 23.7.3 be returned to PPC by the Seller as and when demanded by PPC; and
 - 23.7.4 be used by the Seller only, who shall only use such plans, specifications, drawings and other data for the purpose of this agreement and for no other purposes whatsoever.
- 23.8 All plans, specifications, drawings, samples and other data supplied or to be supplied by PPC in respect of, or in connection with, the Goods and/or Services, shall not be copied or handed to or come into the possession of any person without a Seller having obtained the prior written authority of PPC to do so, and shall be returned to PPC on delivery of the Goods and/or Services or upon demand by PPC.
- 23.9 All Goods manufactured in accordance with the plans, specifications, drawings, samples and/or other data supplied to or otherwise come into the possession of any other person other than PPC, then in addition to any other rights which PPC may have

in law or in terms of this agreement, PPC shall be entitled to cancel this agreement and claim any damages.

24. PPC'S RIGHT TO STOP SERVICES OF OR RETURN PRODUCTS TO SELLER

- 24.1 Notwithstanding anything to the contrary contained in this agreement, PPC shall, at its election be entitled to stop the loading or offloading of the Goods, alternatively, reject the Goods concerned after the delivery thereof –
- 24.1.1 if the product or Goods supplied by the Seller does not meet the safety standards and any additional requirements stipulated in the Part C hereof;
 - 24.1.2 in the event of non-compliance by the Seller of any of its obligations in terms of this agreement;
 - 24.1.3 as a result of a product recall under the circumstances envisaged in clause 25 below.

25. PRODUCT RECALL

- 25.1 On the occurrence of any of the events stipulated in clauses 23.5 and 24.1 above and at the election of PPC, the Seller shall –
- 25.1.1 replace at no extra cost to PPC, the rejected Goods with goods meeting the specification and requirements set out in the Part C hereof, it being agreed that the Seller will reimburse PPC with costs, taxes, expenses incurred as a result of the supply of defective Goods; or
 - 25.1.2 issue PPC with a credit note in respect of the rejected Goods; and
 - 25.1.3 reimburse PPC with its applicable standard handling fee, if so charged.
- 25.2 Save to the extent specifically prescribed in terms of the Part C hereof, it is agreed that the responsibility of the entire stock shall remain with the Seller and in consequence of which PPC shall be entitled to return the Goods to the Seller under the following circumstances:
- 25.2.1 overstock, that is when the available Goods are in excess of PPC's demand;
 - 25.2.2 stored stock damage or destruction (including damage to packaging);
 - 25.2.3 goods returned by a consumer that do not comply with Section 55 of the CPA or which the consumer claims do not so comply or returned for any other legitimate reason;
 - 25.2.4 discontinuation of the brand; and
 - 25.2.5 generally, if PPC is entitled to do so for any other legitimate reason.
- 25.3 The Seller shall, under the circumstances referred to in clause 21.2 above, cause the Goods concerned to be collected from PPC's premises at the sole expense of the Seller and shall issue PPC with a credit note in respect of the returned Goods, save that PPC reserves the right to reimburse a Seller if it is a one-time supplier and a credit note finds no practical application. The Seller shall forthwith remove any trade marks and/or own brands of PPC from the Goods so returned.
- 25.4 Notwithstanding anything contained in the agreement to the contrary, should PPC have a right to return the Goods to the Seller, but is unable to do so by virtue of the fact that the Goods have been used as a raw material in the manufacture of cement or any other product produced by PPC and the cement or such other product is returned to PPC by a consumer, then PPC shall be entitled to demand from the Seller the full value of the cost of the cement or such other product that is returned by the consumer to PPC, and the Seller agrees to pay PPC the cost of the returned cement or such other product.

- 25.5 PPC may, at any time, require the Seller to conduct a product recall if, in its sole discretion, the product or Goods do not conform to applicable safety standards or that it may otherwise pose a safety or health issue. Such a recall may be initiated if PPC has become aware or suspects that a product or Goods does not conform with the foregoing requirements or as a result of consumer complaints or reports on product failures, defects, hazards or personal injury, illness or damages to property.
- 25.6 The Seller is also under an obligation to inform PPC and to initiate a product recall should it become aware of any of the circumstances referred to in clause 22.1 above. In addition to the foregoing, it also acknowledges that the National Consumer Commission may, in terms of the provisions of Section 60 of the CPA, carry out the recall programme on any terms required by it.
- 25.7 In the event of a product recall under the abovementioned circumstances, PPC shall be entitled to return all recalled Goods to the Seller which shall be collected by the Seller at its own expense from PPC's premises and forthwith issue a credit note to PPC in respect thereof. The Seller shall forthwith remove any trade names and/or own brands of PPC from the goods so returned.

26. INSPECTION

- 26.1 PPC or its representative or any inspector nominated by PPC shall at all times have access to the site, works, workshops or places where any product or Goods or portion thereof is being manufactured or stored, and shall have the right to inspect and /or test any portion of the product or Goods and/or give such directions in writing as may be deemed desirable in connection with the manufacture or design of the Goods, or the materials used in the manufacture thereof. Failure by a Seller to comply with any directions, shall entitle PPC to cancel this agreement and claim any damages.

27. SELLER'S RIGHT TO SUBCONTRACT

- 27.1 The Seller will be entitled to make use of the services of any subcontractor or agent for the purpose of complying with its obligations in terms of this agreement, with prior written consent from PPC, and by applying no less stringent controls than the Seller has been bound to in terms of this agreement.
- 27.2 The Seller warrants to PPC that any such contractor, subcontractor or agent appointed by it, possess the necessary skills, expertise and experience needed to comply with the Seller's obligations in terms of this agreement and will comply with all laws that regulate the supply, packaging and transportation of the Goods or the Services.
- 27.3 The appointment of a subcontractor under this agreement shall not absolve the Seller of any responsibilities which it has under this agreement, and the Seller shall remain liable to PPC in respect of this agreement regardless of the performance of any contractor, subcontractor or agent that has been appointed.

28. CONTAINERS

- 28.1 PPC shall not be liable for damage for any reason caused to any container or package of whatsoever nature in which the Goods are delivered to PPC.
- 28.2 All containers or packages, of whatsoever nature, in which the Seller delivers the Goods, shall be marked clearly with the reference or order number which appears on the order.

- 28.3 Any container or package in which the Goods are delivered, shall be removed from PPC's premises, unless stipulated otherwise on the order or in writing by PPC, within a period of 14 (fourteen) days, failing which PPC shall be entitled to either –
- 28.3.1 sell such containers or packages so as to meet any cost associated with the storage thereof on PPC's premises; and
 - 28.3.2 attend to the removal of such containers or packages from PPC's premises and claim the cost of such removal from the Seller, notwithstanding the amount of such costs.

29. PROTECTION OF PERSONAL INFORMATION

- 29.1 In the course of the Seller's dealings with PPC, PPC will obtain Personal Information of the Seller and the Seller undertakes to do the following:
- 29.1.1 The Seller consents to PPC collecting, recording and thereby processing its Personal Information as reflected on PPC's quotation forms, invoices and any other annexures reflecting the Seller's Personal Information, to give effect to this Agreement, and consents to such information being safeguarded by PPC for this purpose.
 - 29.1.2 The Seller hereby consents to PPC collecting and processing the Seller's Personal Information for the aforementioned purposes.
 - 29.1.3 The Seller acknowledges that PPC may need to share Personal Information to third parties to perform functions on PPC's behalf or to provide services to PPC. Such service providers do not collect, use or disclose the Personal Information for any purpose other than to perform such functions or to provide services to PPC or as otherwise required by law. The Seller hereby consents to such disclosure.
 - 29.1.4 PPC will take all reasonably practicable steps to ensure that the Seller's Personal Information is kept secure and confidential and retained and processed only in accordance with the provisions of and subject to the conditions set out in POPI. is not distributed to unauthorised third parties.

30. INFORMATION MANAGEMENT SECURITY

- 30.1 Without prejudice to its other obligations under this Agreement, the Seller shall, during the Term of this Agreement and in the course of performing the Services, provide all measures necessary to prevent:
- 30.1.1 unauthorised access to any PPC computer systems, software and data, and
 - 30.1.2 the introduction of known Viruses.
- 30.2 The Seller shall provide the capability to restore the systems, software and data in the event that the loss of the systems, software or data arises directly or indirectly from any act or omission of the Seller (including the Seller's Personnel) or whilst such systems, software or data is in the custody, control or otherwise interfaced with or accessed by the Seller.

31. COMPLIANCE OBLIGATIONS

- 31.1 The Seller:
- 31.1.1 must acquaint itself, and when performing its obligations under the Agreement comply, with PPC's Corporate Policies;

- 31.1.2 must on a regular basis ensure that it is in possession of the latest and up to date PPC Corporate Policies; and
- 31.1.3 acknowledges that without prejudice to any other remedy that PPC have in respect of the Seller's failure to comply with PPC's Corporate Policies, the Seller's compliance with PPC's Corporate Policies during the Term may be a factor taken into account by PPC when determining whether PPC will:
 - 31.1.3.1 extend or vary the Term of the Agreement;
 - 31.1.3.2 invite the Seller to tender or offer to supply to PPC in the future; or
 - 31.1.3.3 enter further arrangements, agreements or relationships with the Seller, after the end of the Term of the Agreement.
- 31.1.4 must, prior to going on Site, obtain, acquaint itself and at all times for the term fully comply, and ensure that its Personnel fully comply when on Site, with the SHE Requirements;
- 31.1.5 must on a regular basis ensure that it is in possession of the latest and up to date SHE Policies;
- 31.1.6 must ensure that it and its Personnel:
 - 31.1.6.1 do not do anything or fail to do anything that would cause PPC to be in breach of the SHE Requirements;
 - 31.1.6.2 do all things reasonably required by PPC to assist PPC in discharging any obligations PPC may have under any SHE Requirements in connection with the Site and the performance of this Agreement; and
 - 31.1.6.3 strictly comply with all lawful directions relating to health, safety and environment given by PPC;
- 31.1.7 acknowledges the importance that PPC places on establishing and maintaining high standards in relation to workplace health and safety, the protection of the environment and positive stakeholder relationships;
- 31.1.8 will use reasonable endeavours to assist PPC in reducing PPC's environmental impacts, including through the provision of information upon PPC's request, including in relation to carbon and energy reduction;
- 31.1.9 must report any incident relating to workplace health and safety or the environment or which impacts on stakeholder relationships (which is reportable under the SHE Requirements) to PPC as soon as reasonably possible and in any event, within a time period that ensures PPC can comply with relevant law;
- 31.1.10 must provide PPC with reasonable assistance (including access to relevant documents and the Seller's Personnel) in investigating such incident;
- 31.1.11 must notify PPC of any significant safety incidents involving the same Goods and/or Services provided to any other customers of the Seller and advise PPC of preventative measures which may be implemented, whether by PPC or the Seller, to prevent similar incidents in connection with the Goods and/or Services provided in terms of the Agreement.
- 31.1.12 acknowledges that certain relevant laws (including the MHSWA and, where applicable, OHSWA) impose obligations on PPC which may require the Seller's compliance or assistance whilst on site for PPC to achieve compliance and undertakes to do all such things as shall be necessary to enable PPC to comply with relevant laws
- 31.2 Notwithstanding any other provision contained in this Agreement, if a health, safety or environmental incident occurs on the Site which was caused or contributed to by the Seller, then the Seller must:
 - 31.2.1 to the extent that the incident was caused by the Seller, indemnify PPC; or

- 31.2.2 to the extent that the incident was contributed to by the Seller, indemnify PPC pro-rata to the Seller's contribution to the incident, for all cost and expenses incurred by PPC in investigating the incident, whether or not the investigation is conducted by PPC's Personnel or by third parties engaged by PPC and must further bear all costs and expenses in relation to any investigation that the Seller independently wishes to conduct, unless otherwise agreed with PPC.
- 31.3 The Seller further:
 - 31.3.1 must (and must ensure that the Seller's Personnel), when performing its obligations under this Agreement, comply with all applicable Anti-Corruption Laws.
 - 31.3.2 must not give or receive any commission, fee, rebate, gift or entertainment of significant value to any director, employee or agent of PPC other than in the ordinary and proper course of business.
- 31.4 The Seller warrants that it has read and fully understands
 - 31.4.1 the BBBEE Act and DTI Codes of Good Practice and their implications and follows these where appropriate;
 - 31.4.2 that its value proposition to PPC is to provide the Services as BEE Entity, such that PPC is able to attain recognition of its procurement related contributions to broad-based black economic empowerment;
 - 31.4.3 the implications of Fronting; and
 - 31.4.4 that all representations related to South African transformation requirements, whether made by the Seller or by any other person are material representations, on which PPC relies in entering into this Agreement.
- 31.5 The Seller agrees that PPC may suspend and/or terminate this Agreement immediately by written notice to the Seller if
 - 31.5.1 the Seller, or any of its directors or officers, are convicted of a serious criminal offence, or a law enforcement investigation or prosecution is initiated against them in relation to a serious criminal offence; or
 - 31.5.2 the Seller is, or is accused on reasonable grounds of being, fraudulent in connection with its obligations under its BEE status (in any respect).
- 31.6 Notwithstanding any other provision of the Agreement, a failure of the Seller to comply with any of the above compliance obligations; constitutes a substantial and material breach of the Agreement and without limiting any other right or remedy available to PPC, PPC may in the event of such failure, immediately:
 - 31.6.1 remove the Seller from the Site;
 - 31.6.2 suspend the Parties' performance of this Agreement at the Seller's expense until the failure has been remedied;
 - 31.6.3 deny the Seller access to the Site until the failure has been remedied;

32. CONFIDENTIALITY AND NON-DISCLOSURE

- 32.1 The Parties acknowledge that the details of this Agreement and any communication between the Parties arising out of or in connection with this Agreement, are strictly confidential and undertake not to disclose the same to any third party (whether before or after the termination of this Agreement for any reason whatsoever and notwithstanding any other provision of this Agreement) without the approval of the other Party who shall have the right to grant or refuse such consent in its absolute discretion.
- 32.2 To the extent that this Agreement and the related documents contain proprietary and confidential information belonging to PPC, the Seller commits not to disclose any such

information contained herein except in the context of its business dealings with PPC and any of PPC's group companies.

- 32.3 The Seller agrees to inform present and future employees who view or have access to such confidential information of its confidential nature.
- 32.4 The Seller agrees to instruct each of its employees that they must not disclose any information concerning this Agreement and the related documents to others except to the extent that such matters are generally known to, and available for use by, the public or the industry within which the Seller operates. The Seller agrees not to duplicate or distribute or permit others to duplicate or distribute any material contained herein without PPC's express written consent.
- 32.5 PPC retains all title, ownership and intellectual property rights to both the material and trademarks contained herein, including all supporting documentation, files, marketing material, and multimedia (where appropriate).

33. NO AGENCY OR PARTNERSHIP

- 33.1 The Parties agree that this Agreement does not create a partnership, agency or employment Agreement between them. There are 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.

34. PROHIBITION OF CESSION AND ASSIGNMENT

- 34.1 The Seller shall not be entitled to cede or assign any of its rights, or delegate any of its obligations hereunder without the prior written consent of PPC first being obtained, or as otherwise expressly permitted in this agreement.

35. INTERPRETATION

- 35.1 In this agreement, unless the context requires otherwise –
 - 35.1.1 words importing any one gender shall include the other two genders;
 - 35.1.2 the singular shall include the plural and vice versa;
 - 35.1.3 a reference to natural persons shall include created entities and vice versa.
- 35.2 In these conditions, the headings have been inserted for convenience only and shall not be used for nor assist or affect their interpretation.
- 35.3 In this Agreement, unless the contrary intention appears:
 - 35.3.1 headings are for ease of reference only and do not affect the meaning of the Agreement;
 - 35.3.2 the singular includes the plural and vice versa;
 - 35.3.3 words importing a gender include other genders;
 - 35.3.4 other grammatical forms of defined words or expressions have corresponding meanings;
 - 35.3.5 any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally unless expressly stated to the contrary;
 - 35.3.6 a reference to:
 - 35.3.6.1 a clause, schedule, paragraph, part or appendix is a reference to a clause, schedule, paragraph, part or appendix to or of the

- Agreement and a reference to the Agreement includes any schedules and appendices;
- 35.3.6.2 any legislation, statutory instrument, statutory provision or regulation is a reference to that legislation, statutory instrument, statutory provision or regulation as amended, modified, substituted or re-enacted from time to time and includes any subordinate legislation and regulations made under it;
 - 35.3.6.3 a person includes any individual, firm, body corporate, partnership, unincorporated association, government, state or agency of a state, joint venture or authority;
 - 35.3.6.4 a Party includes its executors, administrators, successors and permitted assigns;
 - 35.3.6.5 a day means a period of 24 (twenty-four) consecutive hours from midnight; and
 - 35.3.6.6 a month means a calendar month;
- 35.3.7 if the due date for anything to be done under the Agreement falls on a day that is not a Business Day, then it must be done on the next Business Day;
- 35.3.8 no provision of this Agreement shall be construed against or interpreted to the disadvantage of a Party by reason of such Party having or being deemed to have structured, drafted or introduced such provision; and
- 35.3.9 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the eiusdem generis rule) shall not apply, and whenever the words 'including' or 'includes' are used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word, term or provision to the examples given.
- 35.4 In the event of any ambiguity, conflict or inconsistency between any document forming part of the Agreement, the following order of precedence shall apply (highest to lowest) for the purpose of resolving that ambiguity, inconsistency or conflict:
- 35.4.1 the Formal Instrument of Agreement;
 - 35.4.2 the Special Conditions in Part A;
 - 35.4.3 the General Conditions in this Part B;
 - 35.4.4 the Appendices in Part C;
 - 35.4.5 any other annexures; and
 - 35.4.6 any Purchase Order.

36. GENERAL

- 36.1 This Agreement, read with the documents referred to therein, contains the entire agreement between the parties, and may be executed on one or more separate counterparts, each of which when so executed shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.
- 36.2 No Party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this document.
- 36.3 No failure by a Party to enforce any provision of these conditions shall constitute a waiver of such provision or affect in any way a party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself. A release or waiver will only be

- effective if made in writing and signed by a duly authorised officer of the Party giving it.
- 36.4 The Seller warrants that it is acting as a principal and not as an agent for an undisclosed principal.
- 36.5 These Standard Terms and Conditions shall override any conflicting terms and conditions which the Seller purports to impose and in the event of any conflict these Standard Terms and Conditions shall prevail.
- 36.6 Should any provision in these Standard Terms and Conditions be found to be in contravention with the CPA, such provision shall be deemed to be severable from these Standard Terms and Conditions.
- 36.7 No alteration or variation of these terms and conditions or this agreement, or any part thereof, shall apply unless the alterations or variation in question is expressly agreed to in writing and signed by an authorised representative of PPC.
- 36.8 The Seller hereby acknowledges that any benefit given to them by PPC is not exclusive until specifically provided otherwise, and that nothing contained in this agreement prohibits PPC from appointing anyone else to perform such functions as the Seller performs.
- 36.9 Unless otherwise specifically provided for, PPC does not provide any guarantee regarding the volume or frequency of orders that may be placed with a Seller.