

General Conditions of Purchase

1. DEFINITIONS:

For the purpose of these General Conditions of Purchase the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them.

- 1.1. **"Conditions"** means these General Conditions of Purchase, as revised or updated from time to time;
- 1.2. **"Contract"** means a valid and binding contract for the sale by the Supplier to the Purchaser of the Goods and/or for the performance of the Services by the Supplier, which shall incorporate the Order and these Conditions;
- 1.3. **"Defect Warranty Period"** means the period for which the Goods and/or Services are warranted to be free from Defect, as detailed in the Order or, failing such detail, for a period of 2(two) years from the date of delivery in accordance with clause 9 of the Conditions;
- 1.4. **"Defect"** means any material condition, characteristic, failure, imperfection or fault of the Goods and/or Services that (i) does not conform to the Specification and/or other material requirements of the Order and these Conditions, (ii) is not of good quality, free from defects or deficiencies in design, manufacture or workmanship, or (iii) would render the Goods and/or Services unfit for the purpose for which they are provided;
- 1.5. **"Delay Liquidated Damages"** means the amount payable by the Supplier in the event of a delay in achieving the Delivery Date, being 2.5% per day of the Price, or such other percentage as may be specified in the Order, to a maximum of 20%;
- 1.6. **"Delivery Date"** shall mean the date stipulated in the Order for delivery of Goods and/or performance of the Services and shall include milestone or key dates, as may be stipulated in the Order;
- 1.7. **"Goods"** means the Goods to be supplied and any work or service to be performed by the Supplier in respect of the Goods, in terms of the Order;
- 1.8. **"Incoterms"** means Incoterms[®] 2020, which is a series of standard trade and delivery terms and definitions used in international sales contracts as devised and published by the International Chamber of Commerce, and as amended or replaced from time to time;
- 1.9. **"Order"** means a written request on the Purchaser's official purchase order issued by the Purchaser to the Supplier to supply the Goods and/or perform the Services, and shall be deemed to include at all times these Conditions and any drawings, Specifications, and schedules attached thereto;
- 1.10. **"Price"** means the price for the Goods and/or Services as stated on the Order;
- 1.11. **"Purchaser"** shall mean Afrimat Limited ("**Afrimat**") or any affiliate of Afrimat which shall include its subsidiaries and associates which operate and/or manage businesses under the "Afrimat" name, including, without limitation, any successor-in-title or variation or addition to Afrimat, and any entity which is managed by or on behalf of Afrimat or for which any affiliate of Afrimat may render support, management or consulting services (or as an agent for and on behalf of a principal). For contracting purposes the Purchaser shall be such Afrimat entity as has been identified on the Order as the Purchaser;
- 1.12. **"Services"** means the services to be performed by the Supplier as detailed in the Order;
- 1.13. **"Specification"** means the specifications for the Goods and packaging of the Goods as set out or referenced in the Order and/or the requirements and specifications applicable to the Services or any other specification agreed in writing between the parties from time to time;
- 1.14. **"Supplier"** means the entity or person to whom the Order is addressed and who has undertaken to supply the Goods and/or perform the Services;
- 1.15. **"Vendor Onboarding Form"** means the official application form to be added to the Supplier vendor list for purposes of onboarding the Supplier as a vendor;
- 1.16. **"Vendor Quotation(s)"** means any document(s) and or terms of conditions, submitted by the Supplier, in response to the Purchaser's request for proposal;
- 1.17. **"Writing/Written"** means any mode of reproducing information or data in physical form and includes hard copy printouts, handwritten documents, information or data in electronic form.

2. FORMATION OF CONTRACT

- 2.1. The Supplier shall supply and the Purchaser shall purchase the Goods and/or Services in accordance with these Conditions, which shall override anything contained in any quotations (including but not limited to any Vendor Quotations), price lists, specifications, invoice, acceptance or acknowledgement of order, receipts, delivery note or any other document delivered by the Supplier to the Purchaser. To the extent that the Order is deemed in any way to be an acceptance of a quotation or other offer by the Supplier (including but not limited to any Vendor Quotations), any such acceptance by the Purchaser is subject to these Conditions, this being the only basis upon which the Purchaser is prepared to do business with the Supplier.
- 2.2. These terms and conditions shall NOT apply where there is an existing executed agreement between the Purchaser and the Supplier pertaining to the Goods and/or Services as set out in the Order, save to the extent that the existing agreement fails to deal with an issue covered in these Conditions.
- 2.3. No Contract shall come into the existence until the earliest of:
 - 2.3.1. the Supplier signing and returning a copy of the Order;
 - 2.3.2. any other Written acceptance by the Supplier; or
 - 2.3.3. the Order being accepted or deemed accepted by the Supplier by the earliest of:
 - 2.3.3.1. commencement with the execution of the Order;
 - 2.3.3.2. delivery of the Goods and/or performance of the Services by the Supplier;
 - 2.3.3.3. informing the Purchaser in any manner of delivery of the Goods and/or performance of the Services or commencement of performance of the Order; or
 - 2.3.3.4. 7 (seven) days following issue of the Order to the Supplier.

- 2.4. Where the Purchaser requests the Supplier to provide a quotation in respect of Goods, the Supplier shall furnish the Purchaser with a detailed Written quotation upon which shall be stated an all inclusive price for such Goods and/or Services, the exact nature and scope and/or Specifications of the Goods and/or Services and the details as to the date until which such quotation shall be open for acceptance by the Purchaser. Where a Written Vendor Quotation does not state a date of expiry, it shall be open for acceptance by the Purchaser for a reasonable period, which period shall not be less than 90 (ninety) days following receipt by the Purchaser of such Vendor Quotation.
- 2.5. In the event of any conflict or discrepancy between the provisions of these Conditions and an Order, the Order shall take precedence.

3. NON-EXCLUSIVE RELATIONSHIP

The Supplier acknowledges and agrees that the Purchaser may engage any other party to supply goods and/or services of a similar nature to the Goods and/or Services being supplied by the Supplier in terms of the Order.

4. ASSIGNMENT, CHANGE IN CONTROL AND VENDOR FORMS

- 4.1. The Order is personal to the Supplier and the Supplier shall not sub-contract, assign/cede or make over the Order or any part thereof, or any share thereof or interest therein, to any other person except with the prior Written consent of the Purchaser and on such conditions as the Purchaser may require.
- 4.2. The Supplier shall complete all details on the Purchaser's Vendor Onboarding Form and submit all documents required to complete the vendor onboarding process as soon as reasonably possible. The Supplier shall ensure that all documents submitted as part of the vendor onboarding process remain valid and in force and shall forthwith notify the Purchaser of any changes in any of these documents.
- 4.3. The Supplier hereby agrees to notify the Purchaser in Writing, within 7 days, of any change of ownership of the Supplier's business or, should the Supplier be a company, any share transaction where the majority shareholding of the Supplier is affected, or where the Supplier effects any other change to its legal identity, structure, management or nature. The Purchaser may, in these circumstances, terminate the Order on 7 days' Written notice to the Supplier. The Supplier shall be liable for all costs incurred by the Purchaser as a result of such termination.

5. DISCREPANCIES AND DELAY

- 5.1. The Supplier warrants that prior to acceptance of the Order in terms of clause 2.3, it carefully perused the Order and that the Supplier is capable of supplying Goods and/or performing the Services in accordance with the descriptions, dimensions, Specifications or quantities specified in the Order. To the extent there is any conflict between or discrepancies in Orders, the Supplier shall refer the Order to the Purchaser for further instructions prior to executing the Order or any part thereof. The Purchaser's decision shall be final and binding.
- 5.2. Any anticipated or actual delay or any circumstances which may result in a delay in the execution of the Order shall immediately be communicated to the Purchaser. The Purchaser shall be entitled to cancel an Order for any delay, at the Purchaser's sole discretion and without incurring any liability to the Supplier as a result of such cancellation.
- 5.3. Without limitation to the Purchaser's right to cancel, in the event of a delay in the Delivery Date, the Purchaser shall be entitled to recover Delay Liquidated Damages from the Supplier. The amount of the Delay Liquidated Damages may be deducted from the Price, on notice to the Supplier.
- 5.4. Should the Supplier be delayed in the execution of the Order due to any act on the part of the Purchaser or in the event of a Force Majeure, the Supplier shall, when providing notice of the delay pursuant to clause 5.2, specify the circumstances giving rise to the delay and inform the Purchaser that it wishes to claim an extension to the Delivery Date. The Supplier shall, within 5 (five) days from the date of the notice, provide detailed particulars of the period of delay and such other information as may be reasonably required to enable the Purchaser to make a determination in relation to the claim for extension of time. Should the Supplier fail to notify its claim and submit detailed particulars to the Purchaser within 14 (fourteen) days from the date on which the event giving rise to the delay occurred, the Supplier's claim for extension of time will be time-barred. The Purchaser shall notify the Supplier within a period of 5 (five) days from receipt of the detailed particulars of the claim whether the claim for extension of time has been approved, in which case the Delivery Date will be extended accordingly.

6. QUALITY

- 6.1. All Goods and/or Services supplied shall comply with the Specifications or to any standards, samples, patterns, drawings and the like, where such are provided.
- 6.2. The Purchaser reserves the right to call for certificates of raw materials and test certificates for materials and equipment used in the manufacture of the Goods.
- 6.3. The Supplier shall not make any changes to the Goods and/or Services that will impact on the performance, safety, quality, appearance or brand image of the Goods and/or Services without the prior written approval of the Purchaser.

7. SITE ASSESSMENTS

The Supplier must permit the Purchaser or its designated internal/external representatives reasonable access to the Supplier's premises for the purpose of conducting an assessment of the Supplier's records and/or processes to the extent necessary to verify the Supplier's compliance with the Order and these terms and conditions.

8. PACKAGING

- 8.1. All relevant Goods shall be crated, packed or battened securely in such manner as to prevent damage during loading, transport and off-loading and furthermore as required in terms of any applicable legislation. The Purchaser shall be entitled to recover from the Supplier all loss and damage which the Purchaser has suffered due to the Supplier's failure to comply with the provisions of this clause.
- 8.2. Unless otherwise specified, packing cases, crates and packing materials are included in the Order price, and shall remain the property of the Purchaser.
- 8.3. The Supplier shall identify each and every package, container, bundle or article, by means of either suitable labels securely attached thereto or indelible painting thereon, with the following information:-
 - 8.3.1. Description of Goods – net mass and volume or quantity;
 - 8.3.2. Name of Supplier;
 - 8.3.3. Order Number.
- 8.4. The Supplier shall comply with all package specifications issued by the Purchaser from time to time.
- 8.5. Should packaging returns apply to the packaging the Supplier shall remove the materials at no cost to the Purchaser.

9. DELIVERY

- 9.1. Delivery of the Goods and, where applicable, performance of any work or service in connection with the Goods and/or the performance of the Services shall be made in terms of the Order. If no Delivery Date is stated the Supplier shall offer its best delivery dates, alternatively accept such delivery dates as may be requested by the Purchaser.
- 9.2. Delivery Dates are warranted by the Supplier and the Purchaser shall not be liable for any additional costs, expenses, increase in the Price or the like where a delay arose due to no act or omission on the part of the Purchaser.
- 9.3. Delivery of the Goods shall be made to and/or Services shall be performed at the premises detailed in the Order.
- 9.4. Delivery of the Goods and/or performance of the Services shall be made during the business hours pertaining to the premises where the Goods are delivered and/or Services performed.
- 9.5. Delivery of the Goods shall not occur in installments unless the Purchaser's prior written consent is obtained, alternatively if the Goods are to be delivered in consignments or according to designated milestones at such milestone or key dates as may be specified in the Order.
- 9.6. Any carrier or transporter contracted by the Supplier to transport the Goods is deemed to be the Supplier's duly authorised sub-contractor.
- 9.7. It shall be incumbent upon the Supplier to ensure that Goods are delivered in accordance with all legislation applicable to such transportation, and the Supplier indemnifies the Purchaser against any loss suffered, including confiscation of the Goods arising from delivery of the Goods by the Supplier or a carrier without such authority.
- 9.8. The Supplier shall be responsible for any loss or damage to property and/or injury to persons caused by the Supplier or any of its agents, servants or contractors when transporting, delivering, loading or unloading the Goods, according to the risk and liability allocated by the applicable Incoterm. To the extent required by the applicable Incoterm, the Supplier shall provide and be responsible for all labour for the unloading of Goods as well as any craning or other equipment required for purposes of unloading, at its cost and risk, as specified in the Order.
- 9.9. Delivery notes shall accompany every delivery to the Purchaser and shall include the following information: Order number, item number, where specified in the Order, volume or quantity and, number of bags, cartons, or other containers.
- 9.10. The Purchaser shall be entitled to cancel any Order to the extent that delivery of the Goods and/or performance of the Services has not yet been effected and in such event the Purchaser shall not be liable for the price of the undelivered Goods and/or unperformed Service or for any direct or consequential loss or damages suffered by the Supplier in consequence of such cancellation.

10. SITE SAFETY

- 10.1. The Supplier shall comply with the Safety Health and Environmental Requirements ("**SHE Requirements**") when on the Purchaser's site. The SHE Requirements will be made available to the Supplier upon request.
- 10.2. The Supplier shall comply with the Purchaser's Corporate Policies. The Purchaser's Corporate Policies will be made available to the Supplier upon request.
- 10.3. The Supplier undertakes to comply with all applicable legislation including (but not limited to) the Occupational Health and Safety Act No 85 of 1993, Mine Health and Safety Act No 29 of 1996, Compensation for Occupational Injuries and Diseases Act No 130 of 1993 and Hazardous Substances Act No 15 of 1973.

11. OWNERSHIP AND RISK

- 11.1. Title to all or any part of the Goods shall pass to the Purchaser on the earlier of:
 - 11.1.1. delivery to the premises detailed in the Order; or
 - 11.1.2. payment for such Goods or part thereof.
- 11.2. Where title to all or any part of the Goods has passed to the Purchaser but the Goods remain in possession of the Supplier, the Supplier shall clearly label the Goods as the property of the Purchaser and store the Goods separately from all other goods.
- 11.3. Where the Order is carried out on premises rented by the Supplier, the landlord shall be informed beforehand by the Supplier which of the items on the premises are the Purchaser's property, and the Supplier shall, at the

request of the Purchaser, submit Written proof to the Purchaser that such notice has been received by the landlord.

- 11.4. Risk in the Goods shall remain with the Supplier until such time as the Goods have been physically delivered and received by the Purchaser, evidenced by signature of a duly authorised representative of the Purchaser on a delivery note.

12. INSPECTION AND REJECTION

- 12.1. The Supplier grants the Purchaser the right to inspect any Goods at any time prior to delivery at Supplier's premises or elsewhere. Inspection by the Purchaser of any Goods shall not relieve the Supplier of responsibility or liability for those Goods and shall not imply acceptance thereof. The Purchaser shall be entitled to waive such right of inspection prior to delivery, without prejudice to its right to reject Goods after delivery. The costs of such an inspection will be for the Purchaser's account.
- 12.2. Goods will be accepted at the place of delivery, only with regard to number and condition of packages, and notwithstanding any receipt that may have been given, the Goods shall remain liable to rejection if not in accordance with the Order.
- 12.3. Without prejudice to any other rights that the Purchaser may have, if the Supplier fails to deliver the Goods in accordance with the terms of the Order and/or by the specified date, the Purchaser shall be entitled to reject the Goods and, at its option, to:
- 12.3.1. require the Supplier to remove such Goods at the cost and expense of the Supplier, which Goods shall be held at the risk of the Supplier;
 - 12.3.2. require the Supplier to repair or replace the undelivered or rejected Goods and/or reperform any services which have been rejected, in each case free of charge and as expeditiously as reasonably practicable;
 - 12.3.3. obtain goods from a third party and be reimbursed by the Supplier for all additional reasonable costs and expenses thereby incurred; and/or
 - 12.3.4. terminate the Order forthwith and refuse to accept any further consignment of Goods under the Order.
- 12.4. The Purchaser shall be entitled to conduct any tests or assessments to verify that the Services rendered comply with the Specification and otherwise are in accordance with the requirement of these Conditions and/or the Order. Should the Purchaser determine that any Service does not comply with the foregoing, the Supplier shall be required to reperform such Service, alternatively the Purchaser may obtain such Service from a third party, at the Supplier's cost.

13. PRICE AND PAYMENT

- 13.1. The Price(s) for the Goods and/or Services shall be specified in the Order. Prices shall remain fixed against upwards movements and shall not be subject to any increase or escalation whatsoever until delivery in accordance with clause 9.
- 13.2. Unless otherwise stated in the Contract, the Price payable for the Goods and/or Services shall be:
- 13.2.1. payable in Rand;
 - 13.2.2. exclusive of value added or other sales tax; and
 - 13.2.3. inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods as specified by the applicable Incoterm and all duties, licenses, permits and taxes (other than VAT) as may be payable in respect of the Goods and/or Services from time to time.
- 13.3. Unless otherwise agreed by the parties and specified in the Order, and provided:
- 13.3.1. the Supplier carries out all its obligations in terms of the Order; and
 - 13.3.2. the Purchaser receives an original valid tax invoice and statement before the 28th of the month, the Purchaser shall make payment to the Supplier 60 (sixty) days from date of statement, unless early settlement discounts have been agreed in Writing. Payment shall be made by card or electronic transfer, into such bank account as the Supplier specified for this purpose. For the avoidance of doubt, no payment shall be made to the Supplier unless an Order has been issued.
- 13.4. The official Order number and the Purchaser VAT number must accompany all invoices, credit notes and statements. Invoices not reflecting an official Order number or an incorrect number shall result in payment delays.
- 13.5. The Purchaser shall be entitled to set off any amount owing to the Purchaser by the Supplier, against any amount owed to the Supplier by the Purchaser. Should the amount which is owed by the Purchaser not have been determined or liquidated, the Purchaser may suspend all further payments to the Supplier and estimate, in good faith, the amount that is owing and set off the estimated amount, subject to adjustment and settlement once the amount has been determined or liquidated by way of arbitration or agreement.

14. IMPORTED GOODS AND/OR SERVICES

- 14.1. This clause applies only in circumstances where the Goods and/or Services are imported from a Supplier outside of the place of origin of the Order.
- 14.2. Imported Goods will be delivered in line with the Incoterm specified in the Order.
- 14.3. Payment will be effected directly to the Supplier, subject to the relevant approval from the central bank located in the place of origin of the Order. Payment to the Supplier will be effected in the relevant foreign currency specified in the Order, by means of electronic funds transfer, not later than 60 (sixty) days after receipt of a correct and original monthly statement, or where statements are not submitted, not later than (60) sixty days from receipt of a correct and original Invoice. Where statements are not submitted, a certificate should be issued to the Purchaser, reconciling the amount outstanding for the month.

- 14.4. The Purchaser shall make all payments to the Supplier's nominated account. The following particulars of the Supplier's banking details must be furnished:
 - 14.4.1. Account name;
 - 14.4.2. Account number;
 - 14.4.3. Routing number (ABA/SWIFT/IBAN no.); and
 - 14.4.4. Bank name and country.
- 14.5. The monthly statements, invoices and all supporting documentation according to the applicable Incoterm must be received before payment can be effected. Should the Supplier's documentation be incomplete or incorrect, payment of these documents will only be effected the month following the month during which the correct documents were received.

15. WARRANTIES

- 15.1. The Supplier warrants that the Goods and any parts or materials used in the performance of any work or services related to the Goods and/or the Services (as applicable) shall:
 - 15.1.1. conform to the Specifications;
 - 15.1.2. be new and unused, of sound materials and workmanship, unless otherwise agreed in Writing;
 - 15.1.3. be free from any Defects for the Defect Warranty Period;
 - 15.1.4. conform to all laws and regulations affecting the manufacture, sale, use, packaging and labeling of the Goods and/or performance of the Services and/or performance, which are in force and effect on the date of delivery of the Goods and/or performance of the Services (as applicable), and that all Goods have attached or are accompanied by appropriate instructions, warnings and/or labeling in relation to transporting, storing, operating, using, consuming or disposing of the Goods.
- 15.2. The Supplier warrants that:
 - 15.2.1. it has the necessary skills, expertise, resources, facilities and personnel to diligently provide the Goods and/or perform the Services and to comply with its obligations under these Conditions;
 - 15.2.2. it shall at all times comply with all laws applicable to the Supplier, its business and the Goods and/or the Services. In particular the Supplier shall at all times comply with the Income Tax Act, the Compensation for Occupational Injuries and Diseases Act and the Unemployment Insurance Act, as amended;
 - 15.2.3. it and its agents, contractors and employees shall, at all times, comply with all rules, regulations, health and safety, security, information technology, privacy and any other relevant policies and procedures of the Purchaser applicable at the Purchaser's premises where the Goods are delivered or the work performed and/or where the Services are rendered;
 - 15.2.4. it shall actively endeavour to prevent accidents, improve safety performance and adhere to sound and safe work standards and practices;
 - 15.2.5. it has full corporate authority to execute, deliver and perform its obligations under these Conditions; and
 - 15.2.6. to its knowledge, there are no actions, claims, proceedings or investigations pending or threatened against the Supplier which may prevent or limit the Supplier from performing its obligations under these Conditions.
- 15.3. In addition the Supplier shall:
 - 15.3.1. specify full details regarding the extent of immediate and long term potential hazards or dangers, including but not limited to, toxicity, flammability, harmful effect due to inhalation or direct contact or due to direct or indirect use thereof;
 - 15.3.2. furnish full details and specifications regarding the most appropriate safety precautions to be taken in respect of the Goods or the use and handling thereof and/or in respect of the Services to be performed;
 - 15.3.3. label all packages/receptacles containing the Goods in order to protect those who handle them or who are exposed to them.
- 15.4. The Supplier agrees to the assignment to any subsequent user or purchaser of any warranty or guarantee to which the Purchaser is entitled hereunder and the Supplier agrees to enter into such documents as may be necessary to achieve this. In addition and to the extent that any warranty or guarantee was provided by a subcontractor or sub-supplier to the Supplier, the Supplier shall procure that such warranty or guarantee is ceded and transferred to the Purchaser in the event of termination of the Order before the Defect Warranty Period.

16. INSURANCE AND INDEMNITY

- 16.1. The Supplier shall hold harmless and indemnify the Purchaser from and against any liability, loss, costs (including legal fees on an attorney and own client scale), expense, damage or a Defect in design, parts or materials or workmanship of Goods and/or Services or any breach by the Supplier of the Order (including any late delivery of Goods and/or late performance of Services) or any negligent, willful or wrongful act or omission of the Supplier, its employees, sub-contractors or agents, save to the extent that such liability, loss, cost, expense, damage or injury is due to the negligence of the Purchaser, limited to direct loss.
- 16.2. Without limiting its responsibilities under these Conditions and/or as may be specified in the Order, the Supplier shall arrange and maintain, at its own cost, all necessary insurance, in particular insurance must be effected for public liability, product liability and professional indemnity insurance with such limits as may be specified by the Purchaser. The Supplier shall produce evidence of these insurances upon request. The procurement of any insurance policy shall not limit the Supplier's obligations under this clause or these Conditions.
- 16.3. Neither party shall be liable for any consequential, indirect or special indirect loss, or damage howsoever same arises.

17. BREACH AND TERMINATION

- 17.1. If in the sole opinion of the Purchaser, the Supplier:
 - 17.1.1. continually fails to execute the Order in accordance with the true meaning and intent thereof; or
 - 17.1.2. is delaying unduly in executing it or is not carrying out the work at such a rate as will ensure delivery of the Goods and/or performance of the Services by the Delivery Date; or
- 17.2. the Supplier:
 - 17.2.1. has committed or is committing a breach of any other provision of the Order and/or any provision of these Conditions, and if (the default being one which is capable of being remedied) the Supplier fails to remedy his default within 7 (seven) days of receipt of a notice in writing from the Purchaser calling upon him to do so; or
 - 17.2.2. has contravened any of the Purchaser's rules, regulations, policies, Code of Conduct, or any other Regulations, laws or safety standards; or
 - 17.2.3. has breached any warranty; or
 - 17.2.4. is placed in liquidation, commenced business rescue proceedings, or if the Supplier's estate is sequestrated, if the Supplier commits any act of insolvency, or if there is a change of control of the Supplier; or
 - 17.2.5. has committed any act of which fraud is a component,then the Purchaser shall be entitled, without prejudice to any other rights which may be available to it, to cancel the Order and to recover from the Supplier all damages, losses and expenses incurred by it in consequence of such default, breach or failure including losses and expenses incurred as a result of the Purchaser having to make other arrangements for the execution of the Order or the supply of the Goods and/or Services in question.

18. INTELLECTUAL PROPERTY AND CONFIDENTIALITY

- 18.1. All intellectual property rights including patents, trademarks, service marks, design rights (whether registered or unregistered), copyright (including any future copyright) and any application for any of the foregoing, arising from work conducted or prepared by the Supplier for the Purchaser shall belong to the Purchaser. To this end, the Supplier hereby cedes and assigns, with effect from the date of creation of the work that forms the subject matter of the intellectual property rights, such intellectual property rights to the Purchaser.
- 18.2. All drawings, specification, goods and materials supplied to the Supplier by or on behalf of the Purchaser, or prepared, manufactured or procured by the Supplier specifically for or in connection with the performance of the Order for the Purchaser shall belong to the Purchaser.
- 18.3. Each party shall treat as confidential all information obtained from the other pursuant to the Contract which is either marked as being confidential or has the necessary quality of confidence about it, and shall not divulge such information to any persons (except to such party's own employees, and then only to those employees who need to know the same) without the other party's prior written consent, provided that this clause 18.3 shall not extend to information which was rightfully in the possession of such party prior to the commencement of the negotiations leading to the Contract, which is already public knowledge or becomes so at a future date otherwise than as a result of a breach of this clause 18.3. Each party shall ensure that its employees are aware of and comply with the provisions of this clause. If the Supplier shall appoint any subcontractor, then the Supplier may disclose confidential information to such subcontractor subject to such subcontractor giving an undertaking in similar terms to the provisions of this clause. The foregoing obligations as to confidentiality shall survive any termination of the Contract.
- 18.4. The provisions of clause 18.3 shall continue in force notwithstanding termination, however caused, or completion, of the Order. The provisions of clause 18.3 above shall not apply to any information or document in the public domain or coming into the public domain other than through the default of the Supplier.
- 18.5. The Supplier warrants that the sale, possession, resale or use of the Goods and/or the performance of the Services do not infringe any third party intellectual property rights and undertakes to indemnify and hold harmless the Purchaser ("the Indemnified Parties") against all royalties or license fees (to the extent not specifically provided for) and against all damages, expenses, losses or costs suffered by the Indemnified Parties or which the Indemnified Parties may be liable in respect of any breach of this warranty.
- 18.6. The Supplier shall make no reference to the Purchaser in its advertising, literature or correspondence without the Purchaser's prior written agreement. Nothing in this Order shall entitle the Supplier to use any name, trademark or logo of the Purchaser.

19. SUBCONTRACTING

The Supplier shall not subcontract the whole or portions of the Order without the prior Written consent of the Purchaser. The Supplier shall be responsible for the acts or defaults of any subcontractor, his agents or employees, as if they were the acts or defaults of the Supplier. Any failure by the Supplier to make timeous payments to its subcontractors shall constitute a breach in terms of the Contract, entitling the Purchaser to the remedies set out in clause 17.

20. ETHICAL PURCHASING

- 20.1. The Supplier shall prohibit any of its employees and agents from offering, soliciting or accepting any advantage as defined in any applicable anti-corruption and bribery laws when conducting business.
- 20.2. The Supplier shall be committed to being a socially responsible corporate citizen, using honest and fair business practices and to act with integrity in the best interests of the Purchaser.
- 20.3. The Supplier is and will remain in compliance with all applicable anticorruption and bribery laws, including the laws of the country in which Goods are produced and/or delivered and/or Services are to be performed.

- 20.4. The Supplier shall indemnify and keep indemnified the Purchaser against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever that the Purchaser may suffer, sustain or incur, whether direct or consequential, arising out of or in connection with any breach of the aforesaid anti-corruption and bribery laws by the Supplier or his employees, agents or sub-contractors.
- 20.5. The Purchaser shall have the right to terminate its business relationship and any associated agreements, including the Contract, with the Supplier if the Supplier is in material breach of the Code of Conduct and, in the case of breaches which are capable of remedy, the Supplier fails to remedy such breach, after Written notification by the Purchaser of such breach.

21. BBBEE AND MINING CHARTER COMPLIANCE

- 21.1. The Supplier shall:
- 21.1.1. for the duration of the Contract, retain and/or improve its Broad Based Black Economic Empowerment (“BBBEE”) rating;
 - 21.1.2. provide the Purchaser with annual updates on its status in respect of BBBEE compliance requirements and confirmation that it has improved its rating, if applicable;
 - 21.1.3. advise the Purchaser immediately if its BBBEE rating changes materially from the BBBEE rating as at the date of the Order, as well as the steps taken or to be taken to improve or restore the BBBEE rating.
- 21.2. Failure to take the necessary steps in assisting the Purchaser to comply with the procurement provisions of the BBBEE Codes of Good Practice and/or the Mining Charter, as applicable, shall constitute a material breach of the provisions of these Conditions and the Purchase may terminate the Contract in terms of clause 17.

22. DATA PROTECTION

23. The parties shall at all times in the performance of the Contract comply with all applicable laws concerning the protection of personal data.

24. RESTRAINT

The Supplier or any of its representatives will not, for a period of 12 (twelve) months after termination of the Contract and/or completion of the Order either for itself or its representatives, or as the agent of anyone else, persuade, induce, solicit, encourage or procure (or endeavour to do any of the foregoing), any of Afrimat’s employees to become employed by or interested in any manner whatsoever in any business, firm, undertaking or company (collectively referred to herein as “any concern”) directly or indirectly in competition with Afrimat, or to terminate their employment with Afrimat. The Supplier or any of its representatives will not furnish any information or advice acquired by it as a result of its association with the Purchaser, to any person whomsoever, which results or may result in any of Afrimat’s employees becoming employed by or interested in any manner whatsoever, whether directly or indirectly, in any concern.

25. INCOME TAX ACT

- 25.1. The Supplier warrants that it understands the criteria that apply to distinguish independent contractors from personal service providers as envisaged in the Income Tax Act.
- 25.2. The Supplier indemnifies the Purchaser against all losses, claims, liabilities, damage or expense which the Purchaser may suffer or be exposed to as a result of, or which may be attributable to any liability of the Supplier for tax in respect of payments made in terms of the Order. For these purposes “tax” includes SITE, PAYE, VAT and all other forms of duties or taxation, and any penalties or interest.

26. NOTICES

Unless otherwise expressly stated herein, all notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient as set out in the Order or such other address as the recipient may designate by notice given in accordance with the provisions of this clause. Failing any such address being so set out or designated, such notices shall be sent to the recipient’s registered address. Any such notice may be delivered personally or by prepaid registered post or e-mail and shall be deemed to have been served if by hand when delivered, if by prepaid registered post 48 (forty eight) hours after posting and if by email when despatched (provided no errors are reported). Any notice which affects the validity or existence of these terms and conditions shall be delivered personally or sent by prepaid registered post only.

27. FORCE MAJEURE

Neither party shall be liable for any failure to fulfil its obligations under these Conditions if and to the extent the failure is caused by any circumstances beyond its reasonable control, including without limitation flood, fire, earthquake, war, tempest, hurricane, industrial action/strike, civil unrest, protest action, community disruptions, government restrictions or acts of God. Should any event of force majeure arise, the affected party shall notify the other party without delay and the parties shall meet within 7 (seven) calendar days of the notice to negotiate in good faith alternative methods of fulfilling its obligations under an Order, if any. In addition, the Supplier shall continue to provide and the Purchaser shall continue to pay for those Goods not affected by the event of force majeure. Should either party be unable to fulfil a material part of its obligations under an Order for a period in excess of 30 (thirty) calendar days due to circumstances or force majeure, the other party may at its sole discretion cancel the relevant Order forthwith by written notice.

28. GENERAL

- 28.1. The Contract (including these Conditions) constitutes the whole agreement between the Purchaser and the Supplier relating to the subject matter thereof. No amendment or consensual cancellation of the Contract or any provision or term thereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms thereof and no settlement of any disputes arising there under and no extension of time waiver or relaxation or suspension of any of the provisions or terms thereof or of any agreement, bill of exchange or other document issued pursuant to or in terms thereof shall be binding unless recorded in a written document signed by an authorised representative of both parties. Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or give.
- 28.2. No extension of time or waiver or relaxation of any of the provisions or terms of the Contract or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of thereof, shall operate as an estoppel of a parties' rights under the Contract, nor shall it operate so as to preclude a party thereafter from exercising its rights strictly in accordance with the Contract.
- 28.3. Neither party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the Contact between the Supplier and the Purchaser or not.
- 28.4. The Supplier shall not cede or assign or otherwise transfer the Contract or any of its rights and obligations thereunder, whether in whole or in part, without the prior written consent of the Purchaser.
- 28.5. If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provisions in question shall not be affected thereby.
- 28.6. The Contract shall be governed by and construed in accordance with the laws of the Republic of South Africa and shall be subject to the exclusive jurisdiction of the South African Courts.
- 28.7. Should any dispute arise at any time between the Purchaser and the Supplier relating to this Contract or a matter arising out of any use of the Goods and/or Services, such dispute shall in the first instance be resolved amicably between the respective General Managers (or persons holding equivalent positions) of the parties. Should the General Managers fail to resolve the dispute amicably within 14 (fourteen) days, the dispute will be finally resolved in accordance with the rules of the Arbitration Foundation of South Africa, by an arbitrator(s) appointed by the foundation. The parties agree that, in pursuance hereof, either party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other party.
- 28.7.1. This clause 28.7 shall not preclude any of the parties from obtaining interim relief on an urgent basis and for such purpose the parties agree to the exclusive jurisdiction of the High Court of the Republic of South Africa, Gauteng Local Division, Johannesburg, alternatively the Western Cape High Court, at the election of the Purchaser.
- 28.7.2. The arbitration referred to herein shall be held in Johannesburg or Cape Town, at the election of the Purchaser, with a view to being completed within 21 (twenty-one) days after it is demanded. The Supplier irrevocably agrees that the decision of the Arbitrator in the arbitration proceedings: shall be final and binding on it; shall be carried into effect; and may be made an order of a court of competent jurisdiction.
- 28.7.3. This clause 28.7 is severable from the remainder of the terms and conditions and shall remain valid and binding on the Supplier notwithstanding any cancellation by the Supplier of any of the Services or Goods, or the withdrawal by the Purchaser of any Order. The Contract shall further be governed by Afrimat's policies on, *inter alia*, access, safety, health, the environment and traffic.