

**MASTER TERMS AND CONDITIONS FOR THE SUPPLY OF  
GOODS AND SERVICES**

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1. **APPLICATION**
  - 1.1 In the absence of any Supply Agreement which has been signed on behalf of Samancor and the Supplier, all Goods and Services, including all agreements, orders, and Purchase Orders, are supplied subject to these Master Terms and Conditions ("MT&C") as detailed below.
  - 1.2 Without limitation, accepting a Purchase Order from Samancor shall signify acceptance of these MT&C and shall override any other terms or conditions put forward by the Supplier.
  - 1.3 These MT&C shall apply only to an individual order and supply of Goods or Services between Samancor and the Supplier and shall not be construed as conferring an on-going relationship or term contract between the Supplier and Samancor nor shall it create any relationship of exclusivity.
  - 1.4 Samancor has no obligation to accept any order or quote from the Supplier or to place orders with the Supplier. Samancor reserves the right to recover any loss it suffers as a result of the Supplier cancelling or amending an order after it has been submitted to and accepted by Samancor.
  - 1.5 Samancor reserves the right to at all times select other suppliers to provide Goods and Services similar or identical to those described in the Scope of Work or Purchase Order.
  - 1.6 Samancor shall not entertain or accept any liability for Goods and/or Services for which no Purchase Order exists or where the value of the Purchase Order has been exhausted and the acceptance of any such Goods and/or Services by Samancor shall not create any such liability.
2. **INTERPRETATION**
  - 2.1 In these MT&C, unless clearly inconsistent with or otherwise indicated by the context any reference to the singular includes the plural and *vice versa*, any reference to natural persons includes legal persons and *vice versa* and any reference to a gender includes the other genders.
  - 2.2 The clause headings in these MT&C have been inserted for convenience only and shall not be taken into account in its interpretation.
- 2.3 Words and expressions defined in any sub-clause shall, for the purposes of the clause of which that sub-clause forms part, bear the meanings assigned to such words and expressions in that sub-clause.
- 2.4 The *contra proferentem* rule of construction shall not apply and be interpreted against the Party responsible for the drafting of these MT&C.
- 2.5 The Supplier acknowledges and agrees that: it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of these MT&C and that it has either taken such independent advice or has dispensed with the necessity of doing so.
3. **DEFINITIONS**
  - 3.1 In this Agreement, unless inconsistent with the context, the following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings:
    - 3.2 "**Goods**"- means the goods to be supplied and delivered by the Supplier to Samancor as set out in the Purchase Order;
    - 3.3 "**Legal Proceedings**"- means any suits, proceedings, judgements, rulings or orders by or before any court or any governmental authority;
    - 3.4 "**Master Terms and Conditions**"-means these Master Terms and Conditions for the Supply of Goods and/or Services and which are posted at [<http://www.samancorcr.com/>] and as may be updated in Samancor's sole discretion from time to time;
    - 3.5 "**Purchase Order**"- means a Purchase Order issued by Samancor to the Supplier for the order of the supply and delivery of the Goods and/or Services subject to these MT&C;
    - 3.6 "**Samancor**"- means Samancor Chrome Limited, registered according to the laws of the Republic of South Africa, registration number 1926/008883/06 having its principal place of business at 1st Floor, Block B, Cullinan Place, 2 Cullinan Close, Morningside, Sandton. Where the context so requires, reference to Samancor shall be deemed to include reference to any other group company or business unit;

- 3.7 **"Scope of Work"**- means the document which defines Samancor's objectives and requirements and specifies the Services which must, or may, be provided under this Agreement;
- 3.8 **"Services"**- means the services to be provided by the Supplier to Samancor as set out in the Scope of Work and all incidental work, services and actions including plant and equipment to be provided and utilised by the Supplier in connection therewith;
- 3.9 **"Supply Agreement"**- means a signed agreement between Samancor and the Supplier which agreement will be governed by these Master Terms and Conditions; and
- 3.10 **"Supplier"**- means the Supplier of Goods and Services to Samancor and named as Supplier in the Purchase Order or Supply Agreement and includes its representatives, affiliates, successors, and approved assignees.

**4. GENERAL PROVISIONS**

**4.1 Jurisdiction and Governing Law**

These MT&C shall be governed by and construed and interpreted in accordance with the law of the Republic of South Africa. The South Gauteng High Court, or where applicable any magistrate court in Gauteng, shall have exclusive jurisdiction in respect of all disputes arising from or in connection with these MT&C.

**4.2 Contractual Language**

The language of the Contract and of all communications between the Parties shall be English. All reports and recommendations prepared by the Supplier under these MT&C shall be in English.

**4.3 Domicilium and Notices**

- 4.3.1 The parties choose *domicilia citandi et executandi* ("**Domicilium Address**") for all purposes arising from or pursuant to these MT&C at their respective addresses and facsimile numbers set out hereunder:

**Samancor:** 1st Floor, Block B, Cullinan Place, 2 Cullinan Close, Morningside, Sandton

Fax: (011) 245 1200

**Supplier:** The Supplier's Domicilium Address shall be as indicated on the Purchase Order.

- 4.3.2 Any party shall be entitled from time to time, by written notice to the other, to vary its *Domicilium Address* to any other physical address in the Republic of South Africa which is not a post office box or *poste restante*.

- 4.3.3 All notices given in terms of these MT&C shall be in writing and any notice given by any party to another ("**Addressee**") which-

- 4.3.3.1 is delivered by hand or transmitted by telefacsimile shall be deemed to have been received by the Addressee on the first business day after the date of delivery or transmission, as the case may be; and

- 4.3.3.2 is posted by pre-paid registered post shall be deemed to have been received by the Addressee on the 14th (**fourteenth**) day after the date of such posting.

- 4.3.4 The Supplier and Samancor shall each appoint a representative duly authorised to issue and accept instructions with regard to the supply of Goods and/or the rendering of Services in terms of these MT&C.

- 4.3.5 General queries relating to these MT&C shall be forwarded to the Group Procurement Manager. All communications shall contain details of the Supplier, the relevant business unit(s) within Samancor to whom Goods are or are to be supplied and/or Services rendered or to be rendered as well as Samancor's contract reference number.

**4.4 Confidential Information**

- 4.4.1 The Supplier understands and acknowledges that by reason of its relationship with Samancor, it may have access to certain information and materials concerning Samancor's business, plans, Samancor's customers and/or suppliers and technology that constitutes proprietary and confidential information of, and of substantial value to, Samancor ("**Confidential Information**") and which value would be impaired if such Confidential Information were disclosed to a third party. The Supplier agrees that it shall not use, in any way, for its own account or the account of any third party, nor disclose to any third party, any Confidential Information disclosed and/or revealed to it by Samancor other than to fulfil its express obligations under these MT&C. The Supplier will take every reasonable precaution to protect the confidentiality of the Confidential Information.

- 4.4.2 The Supplier's obligation not to disclose Confidential Information shall not apply where such Confidential Information is demonstrated by dated written documents -
- 4.4.2.1 to be in the public domain;
- 4.4.2.2 to have been obtained or acquired in good faith from a third party not under a similar obligation of confidence; and
- 4.4.2.3 to be required to be disclosed under the operation of law or pursuant to a lawful order of a court of competent jurisdiction, provided that the Supplier takes reasonable steps to first give Samancor sufficient prior notice to contest such order.
- 4.4.3 Immediately upon termination of these MT&C the Supplier shall return to Samancor all Confidential Information (and all copies thereof) on any media which is in the Supplier's possession or under its control, or shall at Samancor's election destroy all such Confidential Information and shall confirm in writing to Samancor that it has complied in all respects with the provisions of this clause.
- 4.4.4 The confidentiality obligations in terms of this clause 4.4 shall survive the termination of these MT&C.
- 4.5 **Non-Solicitation**
- During the term of these MT&C and for 6 (six) months after any termination of these MT&C, the Supplier shall not, without the prior written consent of Samancor, either directly or indirectly, on the Supplier's own behalf or in the service or on behalf of others, solicit or attempt to solicit, divert or hire away any person employed by Samancor or any customer of Samancor.
- 4.6 **No Advertisement**
- The Supplier shall not, without the prior written consent of Samancor, advertise, publish or disclose to any person, in any manner, the fact that the Supplier has supplied or has contracted to supply Goods and/or render Services to Samancor.
- 4.7 **Variation**
- No alteration or variation to, or consensual cancellation of, these MT&C shall be of any force or effect unless it is recorded in writing and signed by the Supplier and the Group Procurement

Manager on behalf of Samancor.

4.8 **Entire Agreement**

Save for the representations made by the Supplier inducing Samancor to enter into contracting with the Supplier, these MT&C constitutes the entire agreement between the parties with regard to the subject matter thereof and supersedes all previous agreements, negotiations, representations and correspondence in respect of the subject matter of the Purchase Order.

4.9 **Waiver**

No failure by a party to enforce any provision of these MT&C 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 right arising from any subsequent breach nullify the effectiveness of the provision itself.

4.10 **Severability**

4.10.1 In the event that any of the terms of these MT&C are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining provisions, which shall remain of full force and effect. If any invalid term is capable of amendment to render it valid, the parties agree to negotiate an amendment to remove the invalidity and any failure to reach agreement on such amendment shall constitute a dispute capable of being resolved in terms of these MT&C.

4.10.2 Any provision of these MT&C which contemplates performance or observance subsequent to any termination or expiration of this MT&C, shall survive any termination or expiration of these MT&C.

4.11 **Conflict of Interest**

The Supplier hereby represents and warrants that the execution of these MT&C and the performance of the obligations of the Supplier hereunder will not breach or be in conflict with any other agreement to which the Supplier is a party or is bound and that the Supplier is not now subject to any covenants against competition or similar covenants that would affect the performance of the Supplier hereunder.

4.12 **Cession and Assignment**

4.12.1 The Supplier shall not be entitled to cede its rights and/or delegate its obligations under these MT&C (including by way of

subcontracting) without the prior written consent of Samancor. Samancor shall not be bound to give such consent and may withhold same without assigning any reason therefore or may grant such consent subject to such terms and conditions as Samancor may, in its absolute discretion, deem fit. Notwithstanding any permitted assignment, such assignment shall not relieve the Supplier of its obligations and liabilities in terms of these MT&C.

4.12.2 Samancor shall be entitled to cede any of its rights in terms of these MT&C to any group company or business unit of Samancor.

## 5. NATURE OF THE RELATIONSHIP

### 5.1 Independent Contractors

5.1.1 The Parties are independent contractors to each other. Nothing in these MT&C shall be construed to create a partnership, joint venture or agency relationship between the Parties.

5.1.2 The Supplier has no authority whatsoever to incur and may not incur any obligation on behalf of Samancor.

5.1.3 The Supplier is responsible for *inter alia* all costs and expenses howsoever and whatsoever necessary to fulfil his contractual and other obligations.

## 6. STANDARDS OF DOING BUSINESS

### 6.1 Legal Formation

The Supplier warrants the following:

6.1.1 that the submission and or conclusion of these MT&C and any agreement and Purchase Order has been duly authorised by all necessary corporate or other organisational action on its part and do not violate or conflict with any law applicable to it, its organisational documents or any order or judgment of a court or other agency of government applicable to it or its assets;

6.1.2 that it has any and all necessary governmental and other third party permits, approvals and licenses required to fulfil all obligations undertaken pursuant to these MT&C;

6.1.3 that there are no insolvency proceedings pending or being contemplated by it or, to its knowledge, threatened against it;

6.1.4 that it is financially sound and has sufficient cash flow to honour its obligations in terms of this MT&C; and

6.1.5 that there are no Legal Proceedings pending or, to its knowledge, threatened against it or any of its affiliates that are likely to affect the legality, validity, enforceability or its ability to perform its obligations under these MT&C and Purchase Order.

### 6.2 Black Economic Empowerment Status

6.2.1 In order to ensure compliance by Samancor with the Mining Charter, the Broad Based Black Economic Empowerment Act, No. 53 of 2003 and the codes of good practice published in terms thereof ("**BBBEEA**") as amended from time to time as well as the Mining Charter targets for black economic empowerment in terms of both of the aforesaid acts, or any subsequent legislation pertaining to black economic empowerment ("**legislation**"), the Supplier shall, at its cost and expense expeditiously deliver to Samancor a South African National Accreditation System ("**SANAS**") verification certificate as defined in the BBBEEA and the mining charter or any further information as may be legitimately requested of the Supplier in accordance with legislation, in the format and at the time and interval prescribed in the legislation;

6.2.2 The Supplier must submit a valid B-BBEE Verification Certificate issued by a SANAS accredited agency indicating Black Ownership, Black Women Ownership percentage, preferably with an overall B-BBEE Scorecard rating of Level 1 to Level 4 for Measured Entities ("**ME**") with annual total turnover of more than R35 million and Qualifying Small Enterprises ("**QSE**") with annual total turnover of between R5 million and R35 million.

6.2.3 In the absence of a valid BEE verification certificate, the Supplier must submit a letter from the Independent Regulatory Board for Auditors ("**IRBA**") stating the date, their annual total turnover and their audited Black Ownership and Black Women Ownership percentage, and the voting rights percentage by the BEE shareholding, will be accepted for Exempted Micro-Enterprises ("**EME**'s) only. This letter will only be valid for 1 (one) year from date of issue.

6.2.4 Any supplier, who has less than 26% BEE ownership, less than 26% BEE voting rights and an overall B-BBEE rating of Level 5 to Non-Compliant, must submit a plan of action on how the 26% BEE ownership, voting rights targets and an improved overall B-

- BBEE rating will be reached within a (12) twelve month time frame.
- 6.2.5 In the event that the Supplier is a multinational company and its local entity has not yet transformed to at least 26% Black Ownership, it shall make arrangements to pay the percentage, as fixed by the Mining Charter, of its annual turnover into a socio-economic fund and proof thereof shall be send to Samancor.
- 6.2.6 The Supplier warrants that it is familiar with the requirements of the aforementioned legislation and shall ensure strict compliance.
- 6.2.7 It shall be the Supplier's responsibility to provide a valid accredited certificate each and every year, prior to the expiry date of same.
- 6.2.8 Notwithstanding anything contrary herein contained, non-compliance is tantamount to breach of these MT&C and Samancor may at its sole and absolute discretion terminate the Purchase Order or any agreement forthwith and or reject any proposed price increases or escalations.
- 6.3 Ethical Business Practices**
- 6.3.1 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 in connection with these MT&C.
- 6.3.2 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 Samancor;
- 6.3.3 The Supplier shall have a written code of business ethics and conduct and shall promote compliance with such code of business ethics and conduct.
- 6.3.4 The Supplier shall have an employee business ethics and compliance training program and an internal control system that:-
- 6.3.4.1 Facilitate timely discovery and disclosure of improper conduct in connection with Samancor contracts; and
- 6.3.4.2 Ensure corrective measures are promptly instituted and carried out.
- 6.3.5 The Supplier is and will remain in compliance with all applicable anti-
- corruption and bribery laws, including the laws of the country in which Goods are produced and/or delivered and/or Services are to be performed pursuant to these MT&C.
- 6.3.6 The Supplier shall indemnify and keep indemnified Samancor against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever that Samancor 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.
- 6.4 Insurance**
- 6.4.1 The Supplier shall, at its own cost and expense, and for the duration of these MT&C, procure and shall maintain in force insurance in reasonable form and amount having regard to the Goods supplied and/or Services rendered, the business carried on by the Supplier and the liabilities that may arise as a result of the carrying on of such business and the supply of Goods and/or the rendering of Services to Samancor.
- 6.4.2 The Supplier shall, in relation to all insurance policies required to be maintained in terms of this MT&C, on demand, furnish Samancor with:
- 6.4.2.1 Certificates or other evidence of all its insurance policies; and
- 6.4.2.2 Proof of payment of premiums in respect of its insurance policies.
- 6.5 Laws and Regulations**
- 6.5.1 The Supplier shall inform itself of the content of and shall, at all times, comply with, and shall procure that its employees and sub-contractors (if any) are informed of and, at all times, comply with all laws and regulations in force from time to time. The Supplier warrants that the supply of Goods and/or the rendering of Services in terms of these MT&C is not in breach or contravention of any law or regulation.
- 6.5.2 The Supplier shall ensure that, at all times during the supply of Goods and/or the rendering of Services to Samancor -
- 6.5.2.1 all of its vehicles, tools, implements, hardware and software components of whatsoever nature and howsoever utilised by the Supplier are and shall have been regularly and properly maintained and tested in accordance with

the manufacturer's specifications and are and shall have been properly licensed in terms of all laws and regulations in force from time to time;

6.5.2.2 all its employees and sub-contractors (if any) shall have been properly trained and licensed in terms of all laws and regulations in force from time to time to operate, and are physically capable of operating, anything utilised in the supply of Goods and/or the rendering of Services and are not under the influence of alcohol, medicines or other substances which may impair such ability;

6.5.2.3 the Supplier complies, and the Supplier shall procure that its employees and sub-contractors (if any) comply, with all of Samancor's reasonable instructions and guidelines; and

6.5.2.4 without derogating from the provisions of 6.5.1, if the supply of Goods and/or Services involves any substance of a hazardous nature, the Supplier shall immediately notify Samancor of that fact and shall comply, and shall procure that its employees and sub-contractors (if any) comply, with all laws and regulations relating to hazardous substances including, without limitation:-

6.5.2.4.1 Hazardous Substances Act, No 15 of 1973, as amended;

6.5.2.4.2 Schedule of Hazardous Substances, Government Gazette (1984-12-21), as amended; and

6.5.2.4.3 regulations governing the conveyancing of hazardous substances by road tanker.

6.5.3 The Supplier shall, on written demand, deliver to Samancor Chrome certified copies of all certificates, permits and/or licenses relating to any vehicle, tool, employee, sub-contractor (if any), implement, hardware and software component employed and/or utilised in the supply of Goods and/or the rendering of Services for the purposes of ensuring compliance by the Supplier with the provisions of these MT&C.

**6.6 Safety, Security and Access to Samancor Sites**

6.6.1 Access to, and the conduct of the Supplier upon any of Samancor's security procedures and guidelines. The Supplier shall, and shall procure that its employees and sub-contractors (if any), at all times during the supply of Goods and/or rendering of Services in terms of these MT&C, comply with Samancor's safety and security procedures and guidelines. The Supplier shall not be

entitled to charge Samancor in respect of the time taken to familiarise the Supplier's employees and sub-contractors (if any) with Samancor's safety and security procedures and guidelines.

6.6.2 Samancor may, at its sole and absolute discretion, provide the Supplier potable water, electricity and/or compressed air for the purposes of supplying Goods and/or rendering Services to Samancor, and Samancor shall be entitled to recover from the Supplier the costs associated with the provision of such potable water, electricity and/or compressed air.

**6.7 Damage to Samancor Property**

6.7.1 All of Samancor's property (in whatever form and on whatever media) loaned by Samancor to the Supplier, or which Samancor specifically permits the Supplier to use in supplying Goods and/or rendering Services in terms of these MT&C-

6.7.1.1 shall be and shall remain the property of Samancor;

6.7.1.2 is loaned to and/or shall be used by the Supplier at its risk and expense and shall be maintained in proper working order at all times; and

6.7.1.3 shall be returned to Samancor, at the Supplier's risk and expense, upon demand, and in any event, upon termination of these MT&C.

6.7.2 The Supplier shall maintain adequate insurance in relation to Samancor's property in its possession and shall furnish Samancor with a certificate of insurance and proof of payment of premiums therefor, on demand.

**6.8 Records**

Where the purchase price of Goods and/or Services, in terms of these MT&C, is to be determined with reference to the Supplier's time, cost of materials and/or other records kept and/or maintained by the Supplier, the Supplier shall retain all such records as may be necessary to calculate such purchase price for a period of at least (2) two years after termination of these MT&C. Samancor shall, subject to such reasonable costs and charges as may be imposed by the Supplier in relation thereto, be entitled to access and make copies of all such records at all reasonable times during such (2) two year period.



## 6.9 Indemnification

- 6.9.1 The Supplier, hereby assuming personal liability in respect of any act performed by its employees and/or sub-contractors (if any), indemnifies and holds Samancor, its officers, directors, employees and agents (collectively, the "Indemnified") harmless from and against, and shall, on demand, pay to the Indemnified the amount of any and all damages, claims, losses, expenses, costs, obligations and liabilities, including, without limiting the generality of the foregoing, attorney's fees on the scale as between attorney and own client ("Claim") suffered directly or indirectly by an Indemnified by reason of, arising out of, resulting from or incurred in connection with:-
- 6.9.1.1 any breach of any representation or warranty made by the Supplier in connection with or pursuant to these MT&C;
- 6.9.1.2 any Goods supplied and/or Services rendered by the Supplier in connection with or pursuant to these MT&C, including any defects therein;
- 6.9.1.3 any failure by the Supplier to perform, comply with and/or fulfil any of its obligations in connection with or pursuant to these MT&C; or
- 6.9.1.4 any litigation, proceedings or claims by any third party, for whatsoever cause and howsoever arising (including, without limiting the generality of the aforesaid, breach or alleged breach of intellectual property rights of third parties) in connection with or pursuant to these MT&C.
- 6.9.2 If any of Samancor's vehicles, tools, implements or machines ("Equipment") is or shall have been utilised by the Supplier in the rendering of Services and/or supply of Goods to Samancor in connection with or pursuant to these MT&C, such Equipment shall, for the purposes of these MT&C, be considered as being under the sole custody and control of the Supplier during the period of such use by the Supplier.
- 6.9.3 If any of Samancor's employees shall have been or are utilised or employed by the Supplier to operate Equipment in connection with or pursuant to these MT&C, then for the duration of such period of use or employment, such Samancor employee shall be deemed to be an employee of the Supplier for the purposes of this MT&C.

## 7. LIMITATION OF LIABILITY

- 7.1 Under no circumstances will Samancor be liable to the Supplier for any consequential, indirect, special, punitive or incidental damages from whatsoever cause and howsoever arising, whether in contract or delict or otherwise and whether based on or in connection with these MT&C, any commitment performed or undertaken by Samancor or otherwise.

## 8. INVOICING, PAYMENT AND SET-OFF

### 8.1 Invoicing

- 8.1.1 The Supplier shall, in respect of each calendar month for the duration of these MT&C, provide Samancor with details of all of the Goods and/or Services supplied to Samancor during each such calendar month in a certificate reasonably acceptable in form and content to Samancor ("Certificate"). As soon as reasonably possible following approval by Samancor of the Certificate, and in any event, by no later than the 28th of the month, a tax invoice for the approved value shall be delivered by the Supplier to Samancor.

- 8.1.2 In the event that Samancor does not approve the amount set out in the Certificate or a dispute arises over an invoice delivered to Samancor, the parties shall use reasonable endeavours to resolve the dispute before the 28th day of the month, failing which it shall be resolved in terms of 11. During such period, the Supplier shall not be entitled to suspend the supply of Goods and/or Services to Samancor in terms of these MT&C. In the event that Samancor, in its sole and absolute discretion, pays an undisputed portion of the amount reflected in a tax invoice or Certificate, such payment shall be without prejudice to Samancor's rights to pursue or defend any claim on the disputed portion reflected in such tax invoice or Certificate.

- 8.1.3 Payment will only be made against tax invoices from the Supplier complying in all respects with the Value Added Tax Act, No. 89 of 1991.

### 8.2 Payment

- 8.2.1 Subject to the due and proper fulfilment of all the Supplier's obligations in terms of this Agreement and provided original tax invoices were submitted to Samancor by no later than the 28th of the month in which the Service was rendered or Goods supplied ("Delivery Month"),

- payment will, as far as possible and unless otherwise specified by Samancor, be made within (60) sixty days of the first business day of the month immediately following the Delivery Month. In the event that the last day of the aforesaid (60) sixty day period falls on a day which is not a business day, the last day for payment shall be extended to the immediately succeeding business day.
- 8.2.2 The Supplier shall not be entitled to interest on any amount owed by Samancor to the Supplier, whether in terms of these MT&C or otherwise, and Samancor shall not incur any liability to the Supplier as a result of the payment of any amount due in terms hereof at any time after the last or due date for payment thereof (including consequential damages). The Supplier shall not be entitled, and hereby waives any right to claim, mora interest in terms of the Prescribed Rate of Interest Act, No. 55 of 1975 and any amendments thereto.
- 8.2.3 Samancor shall be entitled to an early settlement discount in the amount set out in these MT&C in the event that Samancor shall have paid the Supplier by not later than (30) thirty days of receipt of the Supplier's tax invoice and may deduct such early settlement discount from the amount due to the Supplier.
- 8.2.4 Samancor shall pay the Supplier by electronic funds transfer.
- 8.3 **Set-off**
- Samancor shall be entitled to set off any amount owed by the Supplier to Samancor against any amount owed by Samancor to the Supplier.
9. **BREACH AND TERMINATION**
- 9.1 The Supplier shall have committed an **"Event of Default"** if the Supplier shall have:-
- 9.1.1 breached any of the provisions of, or shall not have performed all or any single part of its obligations under, this Agreement;
- 9.1.2 misappropriated a trade secret or infringed or violated of any intellectual property rights, proprietary rights or personal rights of any third party, including any claim that any Deliverable or any use thereof (or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other intellectual property right or proprietary right of any third party;
- 9.1.3 furnished any statement, representation, warranty or certification in connection with these MT&C, the RFP or the Proposal that is false, deceptive, or materially incorrect or incomplete;
- 9.1.4 made a compromise or composition or a threatened compromise or composition with its creditors;
- 9.1.5 committed an act of insolvency, or would have committed an act of insolvency if it had been a natural person, dissolved or ceased to trade in the normal course of business, shall have been provisionally or finally wound-up or placed under a provisional or final order of judicial management;
- 9.1.6 undergone a change in ownership or management;
- 9.1.7 according to Samancor's determination or belief that the Supplier has engaged in conduct that: (a) has or may expose the Samancor to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardised;
- 9.1.8 conducted its dealings with Samancor dishonestly, unethically or in a corrupt manner; and/or
- 9.1.9 by reason of its directors, managers or members been involved in criminal activities or shall have committed an offence and sentenced to a fine exceeding R10 000 (ten thousand rand) or to imprisonment without the option of a fine; or
- 9.1.10 had its corporate existence or good standing in its jurisdiction of incorporation is suspended, terminated, revoked or forfeited, or any license or certification held by Supplier related to Supplier's performance under these MT&C suspended, terminated, revoked, or forfeited; or
- 9.1.11 infringed or allegedly infringed or violated any patent, trademark, trade secret, copyright, or any other intellectual property right or proprietary right, or Supplier misappropriates or allegedly misappropriated a trade secret.
- 9.2 Should the Supplier have committed an Event of Default, then Samancor shall, in its sole and absolute discretion, be entitled to –
- 9.2.1 give the Supplier written notice calling upon the Supplier to remedy any such Event of Default within the period set out in such notice; and/or

- 9.2.2 deduct an amount equal to 2% (two per cent) of the price of the Goods to be supplied and/or the Services to be rendered in terms of these MT&C ("Penalty") for each week during which the Supplier shall have failed to remedy the Event of Default, provided that Samancor shall be entitled to recover damages in lieu of the Penalty; and/or
- 9.2.3 cancel this MT&C or to claim immediate payment and/or specific performance by the Supplier of all the Supplier's obligations whether or not the due date for payment and/or performance shall have arrived, without prejudice to Samancor's rights to claim damages and to such other rights as Samancor may have at law or in terms of these MT&C.
- 9.2.4 Should the operations of any entity constituting Samancor cease or be curtailed, Samancor shall be entitled but not obliged to terminate these MT&C by giving (5) five business days written notice to such effect to the Supplier and without payment to the Supplier of any damages whatsoever including, without limitation, consequential damages and loss of business and/or profits resulting from such termination.
- 9.2.5 All legal costs incurred by Samancor in successfully enforcing its rights against the Supplier in consequence of any breach of these MT&C shall be payable by the Supplier, on demand, on the scale as between attorney and own client and shall include collection charges, the costs incurred by Samancor in endeavouring to enforce such rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any judgment awarded in favour of Samancor in relation to its rights in terms of or arising from these MT&C.
- 9.3 **Upon termination of these MT&C -**
- 9.3.1 Samancor's liability to the Supplier shall be limited as set out in these MT&C and to the amounts, if any, in respect of properly supplied and/or rendered and accepted Goods and/or Services as at the date of termination; and/or
- 9.3.2 at Samancor's sole and absolute discretion, the Supplier shall, and shall procure that its employees and subcontractors, immediately vacate Samancor's premises.
10. **FORCE MAJEURE**
- 10.1 Neither party shall have any claim against the other party ("**Affected Party**")
- for any failure of the Affected Party to carry out any of its obligations under these MT&C arising from or attributable to acts of God, strikes, lock-outs, labour action or unrest, civil commotion, riots, war, threat of or preparation for war, breaking off of diplomatic relations, fire, explosion, sabotage, storm, flood, earthquake or any other cause or contingency beyond the control of that party ("**Force Majeure**") provided, where reasonably foreseeable, prior notice of the occurrence of an event of *Force Majeure* was given by the Affected Party to the other party.
- 10.2 The performance of the obligations of the Affected Party shall be suspended for the duration of an event of *Force Majeure*. Upon cessation of an event of *Force Majeure*, these MT&C shall again become fully operative and the Affected Party shall immediately resume its performance.
- 10.3 If the suspension of performance continues for more than 30 (thirty) consecutive calendar days, then Samancor may immediately terminate these MT&C by written notice to the Supplier.
11. **DISPUTE AND ARBITRATION**
- 11.1 Save as provided to the contrary in these MT&C, any and all disputes between the parties relating to or arising from the provisions of these MT&C shall be referred to a joint committee comprising the duly authorised representative of the Supplier and Samancor's Chief Executive Officer, or alternates appointed by them, who will use their best endeavours to resolve the dispute within (14) fourteen calendar days of it having been referred to them.
- 11.2 Should any dispute not be resolved in accordance with 11.1, either Party shall be entitled, on written notice to the other party, to require that the dispute be referred to arbitration and such dispute shall be decided by an arbitrator who will be appointed by the chairman of the Arbitration Foundation of Southern Africa ("**AFSA**") on written application by any of the parties. The arbitration shall be held in Sandton and in accordance with the rules of AFSA. Proceedings shall be held in camera and the proceedings, as well as any determination or finding, whether interim or final, shall be confidential.
- 11.3 This 11 constitutes an irrevocable consent by the parties to any proceedings in terms hereof. No party may withdraw therefrom or claim at such proceedings that it is not bound by this

- clause. The decision resulting from such arbitration shall be final and binding on the parties, and may be made an order of any court of competent jurisdiction.
- 11.4 The provisions of this 11 shall not preclude any party from access to an appropriate court of law for interim relief in the form of an interdict, mandamus or order for specific performance pending the outcome of the arbitration.
- 11.5 The Supplier shall not be entitled to withhold and or suspend the supply of Goods and/or the rendering of Services in terms of these MT&C pending the resolution of a dispute between the parties in terms of this 11.
12. **SUPPLY OF GOODS AND SERVICES**
- 12.1 **Deliveries and Collection**
- Goods shall be delivered or collected by the Supplier on the days, between hours and in loads of minimum and/or maximum quantity as may from time to time be prescribed by Samancor. The Supplier warrants and undertakes to provide safe collection vehicles suitable for delivering Goods of the type and quantity to be delivered/collected and compatible with the facilities available at the Samancor location. Vehicles must be insured, licensed and in proper roadworthy condition. Drivers of vehicles must be qualified, equipped for taking delivery of Goods and must strictly comply with all safety and other requirements of any applicable law and as stipulated by Samancor at each location. Samancor accepts no liability for any damage, losses, claims, liabilities, costs and expenses of any kind arising from the Supplier's failure to comply with the provisions of this clause.
- 12.2 **Ownership, Risk and Intellectual Property Rights**
- 12.2.1 Ownership of and the risk in and to Goods supplied by the Supplier shall vest in Samancor upon delivery provided that ownership of and the risk in and to Goods constituting Consignment Products (as defined in terms of a Supply of Goods Agreement between the Supplier and Samancor) shall vest in Samancor when used and/or consumed by Samancor.
- 12.2.2 Intellectual property rights, including, without limitation, all know-how, trade secrets, patent and copyright resulting from the provision of Services by the Supplier shall vest in Samancor. The Supplier shall take all necessary steps to ensure that Samancor obtains full legal title.
- 12.2.3 The Supplier shall within a reasonable period of written demand by Samancor, appoint any director of Samancor with power of attorney for and on behalf of the Supplier to do all such things as may be necessary to give effect to the provisions hereof.
- 12.3 **Warranties, Inspection and Returns**
- 12.3.1 The Supplier warrants that for the (12) twelve month period commencing on the expiry of the (30) thirty day period, referred to 12.3.4 or such longer period as may be applicable in relation to the particular Goods and/or Services in question, all Goods and/or Services supplied to Samancor are and shall be:-
- 12.3.1.1 free of any claim of any nature by any third person;
- 12.3.1.2 in conformance with the specifications, drawings, plans, instructions, samples or other descriptions furnished to or accepted by Samancor;
- 12.3.1.3 of merchantable quality, free from any defect (latent or patent), and whether in design, workmanship and/or materials; and
- 12.3.1.4 fit and sufficient for ordinary use and/or, the particular purpose for which they are purchased and/or any of Samancor's specific requirements disclosed to the Supplier.
- 12.3.2 The Supplier warrants that it has necessary and sufficient skills and personnel to supply the Goods and/or render the Services in terms of these MT&C and that the supply of the Goods and/or the rendering of the Services in terms hereof shall not infringe the rights of any third party (including, without limitation, intellectual property rights).
- 12.3.3 The warranties in this 12.3 are in addition to and are not to be construed as restricting or limiting any warranties or Samancor's remedies, express or implied, whether in terms these MT&C, law or otherwise.
- 12.3.4 In addition to Samancor's rights in law or in terms of these MT&C, Samancor may within the (30) thirty day period commencing on delivery of Goods or purported completion of the rendering of Services by the Supplier, in its sole and absolute discretion, reject any defective service rendered, and/or return any excess or defective Goods or Goods not

in accordance with Samancor's specifications or this Agreement ("**Non-Conforming**") supplied by the Supplier to Samancor. The Supplier shall, on demand, reimburse Samancor the purchase price of such Non-Conforming or defective Goods and/or defective Services as well as all of Samancor's costs incurred as a result of the rejection of such Non-Conforming, excess or defective Goods and/or defective Services.

12.3.5 Weighbridge certificates issued by Samancor shall constitute conclusive proof of the mass of any Goods delivered to Samancor. Every truckload, both before unloading (full load) and thereafter (empty load) shall be weighed on Samancor's weighbridges. The Supplier shall ensure and warrants that its vehicles' mass is and shall be within legal limits so as not to prejudice Samancor in any way.

12.3.6 At Samancor's sole and absolute discretion, the Supplier shall, at its cost and expense, replace defective and/or Non-Conforming Goods and/or shall remedy any defect in the Services rendered.

12.3.7 All rejected, excess or Non-Conforming Goods shall be held for a reasonable period of time for collection/return in accordance with the Supplier's instructions and at the Supplier's risk and expense and, if the Supplier so directs, shall be returned to the Supplier at the Supplier's risk and expense, provided that, in the absence of any instruction from the Supplier, Samancor shall be entitled to dispose of such rejected, excess or Non-Conforming Goods as Samancor, in its sole and absolute discretion, may deem appropriate in the circumstances and may utilise the proceeds, if any, to defray Samancor's costs of storage of such rejected, excess or Non-Conforming Goods.

12.3.8 The use or consumption of, or payment in respect of Goods supplied and/or Services rendered shall not constitute acceptance thereof by Samancor and such use, consumption or payment, if any, shall be without prejudice to, nor shall it constitute any waiver of, any rights and/or claims Samancor may have in terms of this MT&C or in law.

12.4 **Performance and Delivery**

12.4.1 Time is of the essence with regard to the supply of any Goods and/or the rendering of Services. Any failure by the Supplier to supply Goods and/or complete rendering Services by the date due

therefor, shall entitle Samancor to cancel these MT&C and/or to claim damages without prejudice to any other rights Samancor may have in terms of these MT&C and/or in law.

12.4.2 All of the costs associated with the supply of Goods and/or the rendering of the Services to Samancor, including, without limitation, labour, plant, machinery and the costs and charges associated with packaging and/or delivery, unless otherwise expressly stated, shall be borne and paid by the Supplier.

12.5 **Work Delayed**

12.5.1 Should the Suppliers' obligations not be performed within the period or on or before the date as stipulated by Samancor, or if no such date be stipulated, should the Supplier fail to perform its obligations within a reasonable period, Samancor shall be entitled in its sole and absolute discretion, to procure the Services from other service providers at the Supplier's cost and expense, even where such cost and expense exceeds the purchase price of the Services to be rendered by the Supplier, and provided that the failure to perform is not attributable to any of the circumstances set out in the force majeure clause.

12.5.2 Notwithstanding clause 12.5.1, if Samancor, in its sole and absolute discretion, considers the non-performance to be rectifiable, it shall require the Supplier to perform its obligations and the Supplier shall be obliged to effect performance thereof by means other than those stipulated and any costs so incurred shall be for the account of the Supplier, unless the failure to perform its obligations is attributable to any of the circumstances as set out in the force majeure clause.

12.5.3 The Supplier warrants that it is not a party to any existing or previous agreement or arrangement which prevents it from entering into these MT&C or adversely affects its ability to perform its obligations under these MT&C.

12.5.4 The Supplier will not perform Services for any person or entity if such Services could, in the reasonable opinion of Samancor, lead to a conflict with the Supplier's obligations for the purposes of these MT&C.

12.6 **Quality Assurance/Quality Control**

- 12.6.1 The Supplier guarantees that the quality, quantity and outward appearance of the delivered Goods and Services comply with the requirements of these MT&C and/or relevant specifications.
- 12.6.2 The Supplier guarantees that accessories, spare parts and user's instructions belonging to the delivered Goods and Services are also delivered.
- 12.6.3 The Supplier guarantees that the delivered Goods are the same in all respects as the sample and/or models provided by the Supplier.
- 12.6.4 The Supplier shall adopt and establish an effective quality management system designed to ensure compliance with the requirements of ISO 9001 (or equivalent) and all relevant SANS Codes and demonstrate that the Goods and Services conform to specification

12.7 **Strip, Clean and Quote Procedure**

- 12.7.1 Where the Services to be rendered in terms of these MT&C include reconditioning and/or repair work –
- 12.7.2 a report detailing external visible damage and/or the presence or absence of components at the time of receipt of equipment to be repaired shall be provided by the Supplier;
- 12.7.3 a detailed report shall be compiled by the Supplier and submitted to Samancor when the equipment to be repaired is stripped and cleaned indicating the internal condition of the unit and its component parts. All measurements and findings shall be recorded and compared to the original manufacturer's specifications and shall be used to determine whether any part is fit for re-use or is to be repaired;
- 12.7.4 on completion of inspection and identification of machine and parts requirements, a detailed estimate in summary form is to be issued by the Supplier to Samancor. In the event of the estimated total cost of repair exceeding 60% (sixty percent) of the value of a new unit, Samancor shall be entitled to terminate these MT&C and the provisions of 9.5, with the necessary changes, shall apply; and test results must be submitted with every repair on a duly completed test certificate to Samancor and signed by a duly authorised representative of the Supplier indicating:-

12.7.4.1 in the case of pumps :-

- 12.7.4.1.1 working pressure;
- 12.7.4.1.2 free flow;
- 12.7.4.1.3 efficiency;
- 12.7.4.1.4 input shaft speed; and
- 12.7.4.1.5 oil temperature;

12.7.4.2 in the case of motors –

- 12.7.4.2.1 working pressure;
- 12.7.4.2.2 output torque;
- 12.7.4.2.3 shaft speed; and
- 12.7.4.2.4 oil temperature; and

12.7.4.3 in the case of cylinders –

- 12.7.4.3.1 full load performance;
- 12.7.4.3.2 leakage factor;
- 12.7.4.3.3 different stroke positions; and;
- 12.7.4.3.4 by-pass.

12.8 **Packaging**

- 12.8.1 The Supplier shall, in supplying the Goods and/or Services, adequately protect all Goods, sub-assemblies and parts supplied in terms of these MT&C against harmful forces of nature, and to prevent damage resulting from handling of the Goods. Samancor shall refuse to accept Goods or parts in the case of non-compliance with the packaging requirements.
- 12.8.2 Generally, all Goods must be protected to prevent damage resulting from –
  - 12.8.2.1 ingress of water or moisture;
  - 12.8.2.2 rust or other forms of corrosion;
  - 12.8.2.3 contamination of and by oil;
  - 12.8.2.4 mechanical damage during handling or storage;
  - 12.8.2.5 ingress of dirt; and
  - 12.8.2.6 excessive heat or sun.

13. **SUPPLY OF SERVICES** MT&C shall not infringe any Intellectual Property Rights of any third party.
- 13.1 **SCOPE OF WORK** 13.2.9 The Supplier will keep accurate records for the purposes of demonstrating compliance with the requirements stipulated in these MT&C and the Purchase Order.
- 13.1.1 The Supplier shall perform the Services in accordance with the Scope of Work with all reasonable care, diligence and skill in accordance with specification and generally accepted professional techniques and standards. 13.3 The Supplier shall take the steps reasonably required by Samancor to prevent unauthorised persons being admitted to Samancor's premises. If Samancor gives the Supplier notice that any person is not to be admitted to or is to be removed from the Samancor's premises or is not to become involved in or is to be removed from involvement in the performance of these MT&C, the Supplier shall take all reasonable steps to comply with such notice and if required by Samancor the Supplier shall replace any person removed under this condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered to Samancor.
- 13.2 The Supplier warrants and represents that:
- 13.2.1 it has carefully examined all parts of Samancor's premises where the Services are to be performed or which are otherwise relevant to the performance of the Services;
- 13.2.2 it has fully informed itself by all such tests and examinations as are reasonably necessary of any conditions and limitations that might affect its ability to perform the Services in accordance with the terms of these MT&C;
- 13.2.3 it will render the Services with a high degree of professional skill, care and diligence, experience, qualifications, staff and capability and will execute the Services efficiently and expeditiously to Samancor in accordance with the specification and best professional standards and the terms of this MT&C; 13.4 The decision of Samancor as to whether any person is to be admitted to or is to be removed from the premises or is not to become involved in or is to be removed from involvement in the performance of these MT&C and as to whether the Supplier has taken the steps required of the Supplier by this condition shall be final and conclusive. The Supplier shall bear the cost of any notice, instruction or decision of Samancor under this condition.
- 13.2.4 it has the power to enter into and perform its obligations under this MT&C,
- 13.2.5 all personnel used to provide the Services will be vetted in accordance with good industry practice, and all Samancor' and any other applicable security policies and standards;
- 13.2.6 The Supplier's personnel, engaged within the boundaries of Samancor's premises, shall comply with such rules, regulations, requirements and advisory notices (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside Samacor's premises.
- 13.2.7 it has and will retain and will keep in force all titles, permits, licences, and certificates necessary for it to perform its obligations and duties under these MT&C and shall comply with all applicable laws, rules and regulations relating to the Services; and
- 13.2.8 Samancor's use and possession of the Services or any part thereof in accordance with the terms of these