

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

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1 INTERPRETATION

- 1.1 In these MT&Cs, any reference:
- 1.1.1 to the singular includes the plural and *vice versa*;
 - 1.1.2 to natural persons includes juristic persons and *vice versa*;
 - 1.1.3 to a gender includes the other genders;
 - 1.1.4 a Party includes a reference to that Party's successors in title and assignees allowed at law; and
 - 1.1.5 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last-mentioned clauses.
- 1.2 The clause headings and the heading of these MT&Cs have been inserted for convenience only and shall not be taken into account in its interpretation.
- 1.3 Any reference in these MT&Cs to:
- 1.3.1 "**business hours**" shall be construed as being the hours between 08h00 and 16h30 on any business day. Any reference to time shall be based upon South African Standard Time;
 - 1.3.2 "**days**" shall be construed as calendar days unless qualified by the word "**business**", in which instance a "**business day**" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;
 - 1.3.3 "**laws**" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgements, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of, or instructions by any governmental body; and the common law, and "**law**" shall have a similar meaning; and
 - 1.3.4 "**person**" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.
- 1.4 The words "**include**" and "**including**" mean "**include without limitation**" and "**including without limitation**". The use of the words "*include*" and "*including*" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.
- 1.5 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in clause 2 or elsewhere in these MT&Cs, shall be given effect to as if it were a substantive provision in the body of these MT&Cs.
- 1.6 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word and expression throughout these MT&Cs.
- 1.7 Unless otherwise provided, defined terms appearing in these MT&Cs in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain English meaning.
- 1.8 A reference to any statutory enactment shall be construed as a reference to that enactment as at the date on which the Goods and/or Services are provided and as amended or substituted from time to time.
- 1.9 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next succeeding business day.
- 1.10 The *contra proferentem* rule of construction that an agreement be interpreted against the Party responsible for the drafting thereof shall not apply to these MT&Cs.
- 1.11 No provision of these MT&Cs shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to these MT&Cs.
- 1.12 The use of any expression in these MT&Cs covering a process available under South African law, such as winding-up, shall, if either of the Parties to these MT&Cs is subject to the law of any other jurisdiction,

be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

1.13 Any reference in these MT&Cs to “**these MT&Cs**” shall be construed as a reference to these MT&Cs and/or any relevant Supply Agreement that is subject to these MT&Cs as amended, varied, novated or supplemented from time to time, such that any term or condition applying to these MT&Cs shall also apply to a Supply Agreement, unless otherwise indicated in the relevant Supply Agreement.

1.14 Any reference in these MT&Cs to any other agreement or document shall be construed as a reference to such other agreement or document, as amended, varied, novated or supplemented from time to time.

1.15 In this Agreement the words “**clause**” or “**clauses**” and “**annexure**” or “**annexures**” refer to clauses of and annexures to these MT&Cs.

1.16 The Supplier acknowledges and agrees that it has:

1.16.1 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&Cs; and

1.16.2 either taken such independent advice or has dispensed with the necessity of doing so.

2 DEFINITIONS

2.1 In these MT&Cs, unless inconsistent with the context, the following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings:

2.1.1 “**Act of Insolvency**” - means, in relation to any person, any of the following events or circumstances:

2.1.1.1 it is dissolved or de-registered;

2.1.1.2 an order or declaration is made, or a resolution is passed, for the administration, custodianship, bankruptcy, liquidation, winding-up, receivership, trusteeship, de-registration or dissolution (and, in each case, whether provisional or

final) of it, its assets or its estate or an order or declaration is made, or a resolution is passed, to authorise the commencement of any business rescue proceeding in respect of it, its assets or its estate;

2.1.1.3 it convenes any meeting to consider the passing of a resolution for the administration, custodianship, bankruptcy, liquidation, winding-up, receivership, trusteeship, de-registration or dissolution (and, in each case, whether provisional or final) of it, its assets or its estate or to authorise the commencement of any business rescue proceeding in respect of it, its assets or its estate;

2.1.1.4 it seems the appointment of an administrator, liquidator (whether provisional or final), business rescue practitioner, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets or estate;

2.1.1.5 it has a secured party take possession of all or substantially all its assets or has an execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 (thirty) days thereafter;

2.1.1.6 it commits any act which is or which would be, had such act been committed by a natural person, an act of insolvency as that term is defined in the Insolvency Act No. 24 of 1936, as amended or replaced, from time to time, or any equivalent legislation in any jurisdiction to which such person is subject;

2.1.1.7 it is unable (or admits inability), or capable of being deemed to be unable, to pay its debts generally as they fall due or is (or admits to being) otherwise insolvent or stops, suspends or threatens to stop or suspend payment of all or a material part of its indebtedness or proposes or seeks to make or makes a general

	assignment or any arrangement or composition with or for the benefit of its creditors or a moratorium is agreed or declared in respect of or affecting all or a material part of its indebtedness;		South African Prevention of Organised Crime Act of 1998;
2.1.1.8	it takes any proceeding or other step with a view to the general readjustment, rescheduling or deferral of its indebtedness (or any part thereof which it would otherwise be unable to pay when due) or proposes to take any such step;	2.1.3	“Collusive Practices” - means any agreement (which includes without limitation a contract, arrangement or understanding, whether or not legally enforceable) or concerted practice (being co-operative, or co-ordinated conduct between firms, achieved through direct or indirect contact, that replaces their independent action, but which does not amount to an agreement) between two or more persons (other than between the Supplier and its affiliates), regardless of any technological, efficiency or other pro-competitive gains, involving the direct or indirect fixing of a purchase or selling price or any other trading condition, the division of markets by allocating customers, suppliers, territories, or specific types of goods or services and/or collusive tendering;
2.1.1.9	any receiver, administrative receiver, administrator, compulsory manager, judicial custodian, trustee in bankruptcy, liquidator, business rescue practitioner or the like is appointed in respect of it, its estate or any material part of its assets or it requests any such appointment;		
2.1.1.10	it is or is deemed by any authority or legislation to be financially distressed (as defined in terms the Companies Act 71 of 2008 as amended or replaced from time to time);	2.1.4	“Corrupt Act” - means an offence in respect of corruption or corrupt activities contemplated in the Prevention and Combating of Corrupt Activities Act No. 12 of 2004;
2.1.1.11	it causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses 2.1.1.1 to 2.1.1.10; and/or	2.1.5	“Control” - means, with respect to any Entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Entity, whether through the ownership of voting securities (or other ownership interests), by contract or otherwise, and (without derogating from the generality of the foregoing) includes —
2.1.1.12	it takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts;		
2.1.2	“Anti-Bribery and Sanctions Legislation” - means all anti-bribery, anti-corruption and anti-money laundering laws, regulations and/or policies as well as economic or trade sanctions or export control related laws, regulations and/or policies to which it is subject, including but not limited to the provisions of the South African Prevention and Combatting of Corrupt Activities Act No. 12 of 2004, the United Kingdom Bribery Act 2010, the U.S. Foreign Corrupt Practices Act, the US OFAC Regulations, the US Export Administration Regulations and the	2.1.5.1	owning (directly or indirectly) the majority of the issued ordinary shares or membership interests of such Entity; and/or
		2.1.5.2	controlling (directly or indirectly) the majority of voting rights in relation to such Entity; and/or
		2.1.5.3	the right to appoint (and then appointing) so many directors on the board of directors or so many trustees or so many other individuals (who, in relation to such Entity perform a similar decision making function as directors perform in respect of a company and as

- trustees perform in respect of a trust), as the case may be, of such Entity as controls or control the majority of the voting rights of all such directors, trustees or individuals, as the case may be;
- 2.1.6 **“Entity”** - means any juristic person, association, business, close corporation, company, concern, enterprise, firm, partnership, joint venture, trust, undertaking, voluntary association, body corporate and any similar entity;
- 2.1.7 **“Goods”** - means the goods to be supplied and delivered by the Supplier to Samancor as set out in (i) the Supply Agreement; and/or (ii) the Purchase Order and/or (iii) both the Supply Agreement and relevant Purchase Order issued thereunder;
- 2.1.8 **“Legal Proceedings”** - means any suits, proceedings, judgements, rulings or orders by or before any court or any governmental authority;
- 2.1.9 **“Mining Charter”** - means the broad-based socio-economic empowerment charter for the mining and minerals industry, as gazetted from time to time;
- 2.1.10 **“MT&Cs”** - means these master terms and conditions for the Supply of Goods and/or Services, as contained in this document and which are posted at <http://www.samancorcr.com/> and as may be amended in Samancor’s sole discretion from time to time;
- 2.1.11 **“Order Confirmation”** - means any written confirmation by the Supplier of its acceptance of a Purchase Order. Where no written confirmation is given by the Supplier, performance by the Supplier in accordance with the provisions of a Purchase Order and/or Supply Agreement shall be taken as acceptance of the Purchase Order;
- 2.1.12 **“Party”** - means collectively and/or individually, as the case may be, Samancor and the Supplier;
- 2.1.13 **“Personal Information”** means any information relating to an identifiable, living, natural person and where applicable, an identifiable, existing, juristic person as further defined in the Protection of Personal Information Act, No. 04 of 2013 (“**POPIA**”);
- 2.1.14 **“Processing”** means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information;
- 2.1.15 **“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&Cs and/or any applicable Supply Agreement;
- 2.1.16 **“Rand” or “R”** - means the Rand, being the lawful currency and tender in South Africa from time to time;
- 2.1.17 **“Recognised Good Practice”** - means the skill, care and diligence of a Supplier seeking in good faith to perform its contractual obligations and in so doing and in the general conduct of its undertakings, observing and/or exercising the degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced Supplier in relation to his practices, methods, techniques, specifications and/or standards (whether in respect of design, workmanship or otherwise) engaged in the same type of undertaking under the same or similar circumstances and conditions as set out in the relevant Purchase Order and/or Supply Agreement;
- 2.1.18 **“Samancor”** - means Samancor Chrome Limited, registered according to the laws of the South Africa, with registration number 1926/008883/06, having its principal place of business at 1st Floor, Block B, Cullinan Place, 2 Cullinan Close, Morningside, Sandton, and shall include, to the extent required by the context, reference to any other company within the same group as Samancor or business unit within Samancor and/or any company within the same group as Samancor;
- 2.1.19 **“Sanctioned Entity”** - means a person against whom sanctions have been imposed by the Office of Foreign Assets Control of the Department of Treasury of the United States of America, the United Nations Security Council (“UNSC”), the

European Union, and /or Her Majesty's Treasury;

- 2.1.20 **"Scope of Work"** - means the document which defines Samancor's objectives and requirements and specifies the Services and/or Goods which shall, or may, be provided under these MT&Cs, and/or any relevant Supply Agreement and/or Purchase Order;
- 2.1.21 **"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;
- 2.1.22 **"South Africa"** - means the Republic of South Africa;
- 2.1.23 **"Supply Agreement"** - means an agreement entered into between Samancor and the Supplier, which agreement shall, unless otherwise stated therein, be subject to these MT&Cs; and
- 2.1.24 **"Supplier"** - means the Supplier of Goods and/or Services to Samancor and named as Supplier in these MT&Cs and/or Purchase Order and/or Supply Agreement and includes its representatives, affiliates, successors and approved assignees.

3 APPLICATION

- 3.1 Unless otherwise agreed in writing, these MT&Cs together with any Purchase Order and/or Supply Agreement represent the only conditions upon which Samancor will purchase the Goods and/or Services from the Supplier. In the event of any inconsistency between these MT&Cs and a Supply Agreement, the terms of the Supply Agreement will prevail to the extent of the inconsistency.
- 3.2 Without limitation to the generality of the above, should a Supplier accept a Purchase Order from Samancor, the Supplier shall be deemed to have accepted these MT&Cs.
- 3.3 These MT&Cs 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, agency, partnership and/or joint venture.

- 3.4 Samancor has no obligation to accept any quote from the Supplier or to place Purchase Orders with the Supplier. Samancor reserves the right to recover any loss and/or damages it suffers as a result of the Supplier cancelling or amending a Purchase Orders after Order Confirmation.
- 3.5 Samancor reserves the right to at all times select other suppliers to provide Goods and/or Services similar or identical to those described in the Scope of Work, Supply Agreement and/or Purchase Order.
- 3.6 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.

4 GENERAL PROVISIONS

4.1 Jurisdiction and Governing Law

- 4.1.1 These MT&Cs shall in all respects be governed by and construed and interpreted in accordance with the laws of South Africa.
- 4.1.2 Subject to clause 11, the Parties hereby consent and submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division (Johannesburg) in any dispute arising from or in connection with these MT&Cs.

4.2 Contractual Language

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

4.3 Domicilium and Notices

- 4.3.1 The Parties choose as *domicilia citandi et executandi* the following physical addresses ("**Domicilium Address**") and for the purposes of giving or sending any notice provided for or required under these MT&Cs ("**Notice Address**") the following physical addresses and email addresses:

Samancor:

Block A, Cullinan Place, 2 Cullinan Close, Morningside, Sandton, 2196

Email: notices@samancorcr.com

Fax: (011) 245 1200

Supplier:

The Supplier's Domicilium Address shall be as indicated on a Purchase Order and/or in any Order Acceptance and/or relevant Supply Agreement.

- 4.3.2 Any Party shall be entitled from time to time, by written notice to the other, to change its Domicilium Address to any other physical address in South Africa which is not a post office box or *poste restante* or may change its Notice Address to any other physical address and/or email address by written notice to the other Party to that effect. Such change of address will be effective 5 (five) business days after receipt of the notice of the said change of address.
- 4.3.3 All notices given in terms of these MT&Cs shall be in writing and any notice given by any Party to another ("Addressee") which -
 - 4.3.3.1 is delivered by hand during business hours, shall be deemed to have been received by the Addressee on the date of delivery. Any notice delivered after business hours and/or on a day which is not a business day will be presumed to have been received on the following business day;
 - 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; and
 - 4.3.3.3 if sent by email during business hours, be presumed to have been received on the date of successful transmission of the email. Any email sent after business hours and/or on a day which is not a business day will be presumed to have been received on the following business day.

4.3.4 The Parties 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&Cs.

4.3.5 General queries relating to these MT&Cs shall be addressed to the Group Procurement Manager of Samancor and shall be delivered to the Notice Address of Samancor. All communications shall contain details of the Supplier, the relevant business unit(s) within Samancor to whom Goods are or 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, regardless of the form of such information and/or materials and whether or not such information and/or material is in writing and marked "confidential". The above information together with the nature, content or existence of any agreement and /or Supply Agreement entered into between the Parties pursuant to these MT&Cs, regardless of the form of such information and/or materials and whether or not such information and/or material is in writing and marked "confidential", shall be referred to in these MT&Cs as "**Confidential Information**".

4.4.2 The Supplier shall not, without the prior consent of Samancor, disclose to any third party:

4.4.2.1 any details of these MT&Cs, any details of the negotiations leading to these MT&Cs (including the details contained in any request for quotation or request for information), any Confidential Information handed over to the Supplier during the course of said negotiations nor any

- confidential details of any transaction, agreement or matter contemplated or set out in these MT&Cs; nor
- 4.4.2.2 any 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, which value would be impaired if such information were disclosed to a third party.
- 4.4.3 The Supplier hereby undertakes to and in favour of Samancor, that it shall keep confidential and 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 of Samancor.
- 4.4.4 The Supplier's obligation not to disclose any Confidential Information shall not apply where:
- 4.4.4.1 such disclosure is permitted in terms of these MT&Cs and/or any relevant Supply Agreement;
- 4.4.4.2 such Confidential Information is demonstrated by dated written documents to be in the public domain prior to the disclosure thereof by the Supplier;
- 4.4.4.3 to have been obtained or acquired in good faith from a third party not under a similar obligation of confidence; and/or
- 4.4.4.4 to be required to be disclosed under the operation of applicable law (including by the rules of any recognised securities exchange, where applicable) or pursuant to a lawful order or director of a court or governmental body of competent jurisdiction, provided that the Supplier shall take reasonable steps to first give Samancor sufficient prior written notice to enable it to, in its sole discretion, contest such order and/or directive.
- 4.4.5 Immediately upon termination of these MT&Cs, 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 4.4.5.
- 4.4.6 The confidentiality obligations in terms of this clause 4.4 shall survive the termination of these MT&Cs.
- 4.5 Non-Solicitation**
- Whilst these MT&Cs are in force and effect between the Parties and for 6 (six) months after any termination of these MT&Cs each Party agrees that it shall not, without the prior written consent of the other, either directly or indirectly, on the party'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 the other party or any customer of the other party save for where that person is engaged by the Party as a consequence of a *bona fide* advertising or recruitment campaign targeted to a wide range of potential applicants, or identified as a prospective employee by an independent party such as an employment agency in the normal course of such agency's business.
- 4.6 No Advertisement**
- 4.6.1 The Supplier shall not, without the prior written consent of Samancor, announce, advertise, publish or otherwise disclose to any person, in any manner, anything relating to these MT&Cs, any relevant Supply Agreement and/or Purchase Order, provided that where any announcement or statement is required to be made in terms of the provisions of any law or by the rules of any recognized securities exchange, then the Supplier, that is so obligated, will first consult with Samancor in order to enable the Parties in good faith, to attempt to agree the content of such announcement and/or statement, which (unless agreed) must go no further than is required in terms of such law or rules.
- 4.6.2 This clause 4.6 shall not apply to any disclosure made by the Supplier to its professional advisors or consultants, provided that they have agreed to the

same confidentiality undertakings as set out herein, or to any judicial or arbitral tribunal or officer, in connection with any matter relating to these MT&Cs or arising out of it.

- 4.6.3 The Supplier shall not without the prior written consent of Samancor, use for any reason whatsoever, Samancor's name or logo.

4.7 Variation

No addition to, alteration or variation, addition, deletion to, or agreed cancellation of, all or any clauses or provisions of these MT&Cs, shall be of any force or effect unless it is recorded in writing and signed by the Parties and the Group Procurement Manager of Samancor.

4.8 Entire Agreement

- 4.8.1 Save for the representations made by the Supplier inducing Samancor to enter into contracting with the Supplier, these MT&Cs, constitute the entire agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein or in any relevant Supply Agreement and/or Purchase Order, no undertaking, representation, term or condition relating to the subject matter of these MT&Cs not incorporated in this these MT&Cs shall be binding on either of the Parties.

- 4.8.2 These MT&Cs supersede and replace all previous agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter of these MT&Cs.

4.9 Waiver

- 4.9.1 No latitude, extension of time or other indulgence which may be given or allowed by either Party to the other in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of either Party arising from these MT&Cs and no single or partial exercise of any right by either Party under these MT&Cs, shall in any circumstances be construed to be an implied consent or election by that Party or operate as a

waiver or a novation of or otherwise affect any of its rights in terms of or arising from these MT&Cs or estop or preclude it from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of either Party in exercising any right, power or privilege under these MT&Cs will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

- 4.9.2 No waiver, suspension or postponement by either Party of any right arising out of or in connection with these MT&Cs shall be of any force or effect unless in writing and signed by that Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

4.10 Severability and continuing effectiveness

- 4.10.1 All provisions of these MT&Cs are, notwithstanding the manner in which they have been grouped together or linked grammatically, are severable from each other. Any provision or clause of these MT&Cs which is, or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of these MT&Cs shall remain of full force and effect. The Parties declare that it is their intention that these MT&Cs would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

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

4.11 Assignment and Cession

- 4.11.1 The Supplier shall not be entitled to cede, delegate, relinquish or transfer its rights and/or its obligations under these MT&Cs (including by way of subcontracting) without the prior written consent of Samancor.
- 4.11.2 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 or cession, such assignment or cession shall not relieve the Supplier of its obligations and liabilities in terms of and under these MT&Cs prior to the date on which the permitted assignment or cession becomes effective.
- 4.11.3 Samancor shall be entitled to cede any of its rights in terms of these MT&Cs to any company within the same group as Samancor or a business unit of Samancor.

4.12 Exclusion of Electronic Signature

The reference in clauses 4.6.3, 4.9 and 4.11 to writing signed by a Party shall, notwithstanding anything to the contrary in these MT&Cs, be read and construed as excluding any form of electronic signature.

5 NATURE OF THE RELATIONSHIP

5.1 Independent Contractors

- 5.1.1 The Parties are independent contractors to each other. Nothing in these MT&Cs 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 Save as otherwise agreed between the parties, the Supplier is responsible for, *inter alia*, all costs and expenses howsoever and whatsoever necessary to fulfil its contractual and other obligations to Samancor.

6 STANDARDS OF DOING BUSINESS

6.1 Legal Formation

- 6.1.1 The Supplier warrants to and in favour of Samancor that:
- 6.1.1.1 the submission and or conclusion of these MT&Cs and/or any relevant Supply Agreement and/or Purchase Order has been duly authorised by all necessary corporate action on its part;
- 6.1.1.2 these MT&Cs and/or any relevant Supply Agreement and/or Purchase Order is valid, binding and enforceable against it in accordance with its terms;
- 6.1.1.3 these MT&Cs and/or any relevant Supply Agreement and/or Purchase Order and/or Order Confirmation do not violate or conflict with any law applicable to it, its constitutional documents, any order or judgment of a court or other agency of government applicable to it or its assets, or conflict with or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it;
- 6.1.1.4 to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of these MT&Cs and/or any relevant Supply Agreement and/or Purchase Order;
- 6.1.1.5 it is entering into these MT&Cs and/or any relevant Supply Agreement and/or Purchase Order and/or Order Confirmation as principal (and not as agent or in any other capacity);
- 6.1.1.6 the natural person who signs and executes any relevant Supply Agreement and/or Purchase Order and/or Order Confirmation on its behalf, is validly and duly authorised to do so;
- 6.1.1.7 no other party is acting as a fiduciary for it or on its behalf;

- 6.1.1.8 it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in these MT&Cs and/or any relevant Supply Agreement and/or Purchase Order;
- 6.1.1.9 that it has any and all necessary governmental and other third-party permits, approvals and licences required to fulfil all obligations undertaken in these MT&Cs and/or any relevant Supply Agreement and/or Purchase Order and/or Order Confirmation;
- 6.1.1.10 that there are no insolvency proceedings and/or Acts of Insolvency pending or being contemplated by it or, to its knowledge, threatened (in writing) against it;
- 6.1.1.11 that it is financially sound and has sufficient cash flow to honour its obligations in terms of these MT&Cs, any relevant Supply Agreement and/or Purchase Order and/or Order Confirmation; and
- 6.1.1.12 that there are no Legal Proceedings pending or, to its knowledge, threatened in writing 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&Cs, any relevant Supply Agreement, and/or Purchase Order and/or Order Confirmation.
- 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 or any subsequent legislation pertaining to black economic empowerment as amended from time to time ("BBBEEA"), the Supplier shall, at its cost and expense, expeditiously deliver to Samancor a valid -
- 6.2.1.1 South African National Accreditation System ("SANAS") accredited Black Economic Empowerment ("BEE") verification certificate as defined in BBBEEA or any further information; or
- 6.2.1.2 sworn affidavit or a valid companies and intellectual property certificate;
- 6.2.1.3 sworn affidavit in the absence of a valid BEE verification certificate which will only be accepted for exempted micro-enterprises and qualified small enterprises with black ownership of >51% and will only be valid for 1 (one) year from date of issue; indicating the - (i) date of their annual total turnover; (ii) black ownership and black women ownership percentage, preferably with an overall BEE scorecard rating of Level 1 to Level 4 for measured entities and qualifying small enterprises and (iii) voting rights percentages held by the black shareholder as such terms and value thresholds are understood in terms of the applicable BBBEEA laws and as may be legitimately requested of the Supplier, in the format and at the time and interval prescribed in BEE and by Samancor.
- 6.2.2 Any Supplier, who has less than 26% black ownership and/or or voting rights and an overall black rating of Level 5 to non-compliant, must submit a plan of action on how the 26% black ownership, voting rights targets and an improved overall BBBEEA rating will be reached within a 12 (twelve) month time frame.
- 6.2.3 Should the Supplier be supplying mining Goods and/or consumables, then the Supplier must have a local content verification certificate issued by an accredited institution and proof thereof shall be sent to Samancor.
- 6.2.4 The Supplier warrants to and in favour of Samancor that it is familiar with the requirements of BBBEEA and shall ensure strict compliance therewith.
- 6.2.5 It shall be the Supplier's responsibility to provide a valid BBBEEA accredited certificate or affidavit each and every year, prior to the expiry date of same.
- 6.2.6 Notwithstanding anything contrary herein contained, non-compliance with the BBBEEA is a breach of these MT&Cs and Samancor may at its sole and absolute discretion terminate the Supply Agreement and/or 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 warrants that:
- 6.3.1.1 it has not committed any Corrupt Act or contravened any Anti-Bribery and Sanctions Legislation in entering into this Agreement or receiving any Purchase Order.
- 6.3.1.2 it is not and shall not become a Sanctioned Entity nor shall it appoint, attempt to appoint or seek approval for the appointment of, any Sanctioned Entity as a subcontractor; and
- 6.3.2 neither it nor any of its affiliates have engaged in any Collusive Practices in connection with the Agreement.
- 6.3.3 The Supplier shall prohibit any of its Personnel from offering, soliciting or accepting any advantage as defined in any applicable Anti-Bribery and Sanctions Legislation when conducting business in connection with these MT&Cs, any relevant Supply Agreement and/or any Purchaser Order.
- 6.3.4 The Supplier shall remain in compliance with all applicable Anti-Bribery and Sanctions Legislation and not commit any Collusive Practice.
- 6.3.5 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 its relationship with Samancor.
- 6.3.6 The Supplier shall have a written code of business ethics and conduct and shall ensure compliance with such code of business ethics and conduct.
- 6.3.7 The Supplier shall have an employee business ethics and compliance training program and an internal control system that:
- 6.3.7.1 facilitates timely discovery and disclosure of improper conduct in connection with the relationship
- and/or agreements with Samancor; and
- 6.3.7.2 ensure corrective measures in this regard are promptly instituted and carried out.
- 6.3.8 The Supplier is and shall 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&Cs and/or any relevant Supply Agreement and/or Purchase Order.
- 6.3.9 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 its employees, officers, directors, agents, contractors, sub-contractors or suppliers.
- 6.4 **Insurance**
- 6.4.1 The Supplier shall, at its own cost and expense, and for so long as these MT&Cs are in force against it, procure and shall maintain in force adequate insurance cover in the form and amount acceptable to Samancor having regard to the -
- 6.4.1.1 Goods supplied and/or Services rendered;
- 6.4.1.2 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; and
- 6.4.1.3 Supplier's public liability and all other legal liabilities hereunder and in respect of its employees, agents and third parties.
- 6.4.2 The Supplier shall, in relation to all insurance policies required to be maintained in terms of these MT&Cs, on demand, furnish Samancor with:

- 6.4.2.1 certificates of insurance or other evidence of all its insurance policies; and/or
- 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, officers, directors, agents, contractors, sub-contractors or suppliers (if any) are informed of and, at all times, comply with all laws and regulations in force from time to time and any applicable rules, policies, guidelines and procedures of Samancor ("**Samancor Rules and Procedures**").
- 6.5.2 Samancor Rules and Procedures are available on request. It is the responsibility of the Supplier to request a copy of and acquaint itself with the content of all applicable Samancor Rules and Procedures.
- 6.5.3 The Supplier warrants to and in favour of Samancor that the supply of Goods and/or the rendering of Services in terms of these MT&Cs and/or any relevant Supply Agreement and/or Purchaser Order; and/or Order Confirmation is not in breach or contravention of any law or regulation.
- 6.5.4 The Supplier shall ensure that at all times during the supply of Goods and/or the rendering of Services to Samancor, that:
- 6.5.4.1 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;
- 6.5.4.2 all its employees, officers, agents, contractors, suppliers 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;
- 6.5.4.3 it complies with, and shall procure that its employees, officers, agents, contractors, suppliers and sub-contractors (if any) comply, with all of Samancor's reasonable instructions and guidelines;
- 6.5.4.4 it obtains and maintains all permits and/or similar permissions required for purposes of providing the Goods and/or Services under these MT&Cs; and
- 6.5.4.5 without derogating from the provisions of clause 6.5.1, if the supply of Goods and/or Services involves any substance of a hazardous nature or pollution and/or degradation of the environment, the Supplier shall immediately notify Samancor of that fact and shall comply, and shall procure that its employees, officers, agents, contractors, suppliers and sub-contractors (if any) comply, with all laws and regulations relating to hazardous substances and/or the pollution and/or degradation of the environment.
- 6.5.5 The Supplier shall, on written demand, deliver to Samancor, certified copies of all certificates, permits and/or licences relating to any vehicle, tool, employee, officer, agent, contractor, supplier and/or sub-contractor (if any), implement, hardware and software, equipment, 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&Cs.
- 6.6 Safety, Security and Access to Samancor Sites**
- 6.6.1 Access to, and the conduct of the Supplier, its employees, officers, agents, contractors, suppliers and/or sub-contractors upon entry into any of Samancor's premises shall at all times

be subject to Samancor's security procedures and guidelines. The Supplier shall at all times comply, and shall procure that its employees, officers, agents, contractors, suppliers and sub-contractors (if any), at all times during the supply of Goods and/or rendering of Services in terms of these MT&Cs, comply with Samancor's safety and security procedures and guidelines. It is the Supplier's responsibility to request and ensure that it obtains Samancor's safety and security guidelines.

6.6.2 It is the Supplier's responsibility to request Samancor's safety and security procedures and acquaint itself with the contents thereof. The Supplier shall not be entitled to charge Samancor in respect of the time taken to familiarise the Supplier's employees, officers, agents, contractors, suppliers and sub-contractors (if any) with Samancor's safety and security procedures and guidelines.

6.7 **Damage to Samancor Property**

6.7.1 All of Samancor's property (in whatever form and on whatever media) provided 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&Cs:

6.7.1.1 shall be and shall remain the property of Samancor;

6.7.1.2 is provided 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&Cs.

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 thereof, on demand.

6.8 **Records**

Where the purchase price of Goods and/or the fees for Services, in terms of these

MT&Cs, 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 and/or fees for Services rendered for a period of at least (2) two years after termination of these MT&Cs. 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 assumes personal liability in respect of any act performed or omission by its Personnel, suppliers and sub-contractors (if any), indemnifies and holds Samancor, and its Personnel (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 suffered by an Indemnified by reason of, arising out of, resulting from or incurred in connection with any:

6.9.1.1 breach of any representation or warranty made by the Supplier;

6.9.1.2 Goods supplied and/or Services rendered by the Supplier;

6.9.1.3 failure by the Supplier to perform, comply with and/or fulfil any of its obligations;

6.9.1.4 unauthorised use of any of Samancor's vehicles, tools, implements or machines ("Equipment"). Use of Equipment will be unauthorised if Samancor's prior written consent is not obtained prior to the use thereof;

6.9.1.5 unauthorised use or employment of Samancor Personnel. Use or employment of Samancor Personnel will be unauthorised if Samancor's prior written consent is not obtain prior to the use or employment;

- 6.9.1.6 a failure to procure or maintain insurance as contemplated in clause 6.4;
- 6.9.1.7 a failure to comply with the Ethical Business Practices warranties contained in clause 6.3;
- 6.9.1.8 a failure to comply with the data protection warranty contained in clause 12.5; and or
- 6.9.1.9 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&Cs.

7 LIMITATION OF LIABILITY

Under no circumstances shall Samancor be liable to the Supplier for any consequential, indirect, special, punitive or incidental damages (including loss of profits) from whatsoever cause and howsoever arising, whether in contract or delict or otherwise and whether based on or in connection with these MT&Cs, any Supply Agreement, Purchaser Order and/or Order Confirmation, 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 during which these MT&Cs are enforceable against the Supplier, provide Samancor with details of all the Goods and/or Services supplied to Samancor during each such calendar month in a certificate reasonably acceptable in form and content ("**Certificate**") to Samancor. As soon as reasonably possible following approval by Samancor of the Certificate, and in any event, by no later than the 28th day 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 clause 11 hereto. During such period, the Supplier shall not be entitled to suspend the supply of Goods and/or rendering of the Services to Samancor in terms of these MT&Cs. 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 by Samancor shall only be made against tax invoices from the Supplier complying in all respects with the Value Added Tax Act, No. 89 of 1991 as amended from time to time and any other applicable laws.

8.2 Payment

- 8.2.1 Subject to the due and proper fulfilment of all the Supplier's obligations in terms of these MT&Cs and provided original tax invoices were submitted to Samancor by no later than the 28th day of the month in which the Service was rendered or Goods supplied ("**Delivery Month**"), payment by Samancor shall, 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&Cs 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 or loss of profit). 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 (as amended from time to time).

- 8.2.3 Where agreed by the Parties, Samancor shall be entitled to an early settlement discount in the amount set out in these MT&Cs in the event that Samancor shall have paid the Supplier by no 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 ("EFT").
- 8.2.5 The Supplier indemnifies Samancor and Samancor's Personnel against any and all claims of whatsoever nature, which may be brought against any of them by any person or Entity alleging non-payment of any amounts due to the Supplier for any EFT payment which has been effected in terms of this clause.
- 8.2.6 The onus rests on the Supplier to verify any change of banking details, and as a consequence thereof, Samancor shall not be responsible for fraudulent changes to banking details that have not been verified and Samancor is hereby indemnified against any resultant loss or damages.
- 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, these MT&Cs and/or any relevant Supply Agreement and/or Purchase Order ;
- 9.1.2 misappropriated a trade secret or infringed or violated any intellectual property rights, proprietary rights or personal rights of Samancor and/or 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 Samancor and/or any third party;
- 9.1.3 furnished any statement, representation, warranty or certification in connection with these MT&Cs, the relevant request for proposal or a request for information or a 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;
- 9.1.6 undergone a change in Control, without giving prior written notice to Samancor and obtaining Samancor's prior written consent;
- 9.1.7 according to Samancor's determination or belief that the Supplier has engaged in conduct that: (a) has or may expose 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;
- 9.1.9 by reason of its directors, managers or shareholders or otherwise 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; had its corporate existence or good standing in its jurisdiction of incorporation suspended, terminated, revoked or forfeited, or any license or certification held by Supplier related to Supplier's performance under these MT&Cs suspended, terminated, revoked, or forfeited;
- 9.1.10 breached any provisions of the Anti-Bribery and Sanctions Legislation and/or engaged in any Corrupt Practice or Collusive Practice; or
- 9.1.11 any combination of or all of the circumstances referred to above.
- 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;
- 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&Cs ("**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; or
- 9.2.3 cancel these MT&Cs and/or any relevant Supply Agreement and/or Purchase Order 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&Cs.
- 9.3 All legal costs incurred by Samancor in successfully enforcing its rights against the Supplier in consequence of any breach of these MT&Cs 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 or order awarded in favour of Samancor in relation to its rights in terms of or arising from these MT&Cs.
- 9.4 Upon termination of these MT&Cs:
 - 9.4.1 Samancor's liability to the Supplier shall be limited as set out in these MT&Cs 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
 - 9.4.2 at Samancor's sole and absolute discretion, the Supplier shall procure that Personnel, suppliers and sub-contractors (if any) 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&Cs and/or any relevant Supply Agreement and/or Purchase Order and/or Order Confirmation 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 the Affected 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 specifying the:
 - 10.1.1 nature of the event or circumstances constituting the *Force Majeure*; and
 - 10.1.2 performance obligations which is or will be prevented as result thereof.
- 10.2 The performance of the obligations of the Affected Party shall be suspended for the duration of the notified event of *Force Majeure*. Upon cessation of an event of *Force Majeure*, these MT&Cs shall again become fully operative and the Affected Party shall immediately resume its performance.
- 10.3 The Affected Party shall at all times use reasonable endeavours to minimise any delay in its performance under these MT&Cs as a result of the event of *Force Majeure*.
- 10.4 If the suspension of performance continues for more than 30 (thirty) consecutive days, then Samancor may immediately terminate these MT&Cs by written notice to the Supplier.

11 DISPUTE AND ARBITRATION

- 11.1 Save as provided to the contrary in these MT&Cs, any and all disputes or differences between the Parties relating to or arising from the provisions of these MT&Cs (including any dispute or difference as to the validity, enforceability or otherwise of these MT&Cs) 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 the Supplier and Samancor (as the case may be), who shall use their best endeavours to resolve the dispute or difference within 14 (fourteen) days of it having been referred to them.
- 11.2 Should any dispute not be resolved in accordance with clause 11.1, either Party shall be entitled, on written notice to the other Party, to require that the dispute or difference be referred to arbitration and such dispute or difference 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 either or both of the Parties. The arbitration shall be held in Sandton, Johannesburg, South Africa 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 Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, or should AFSA refuse to accept the particular request for arbitration for whatever reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the Parties to the dispute or failing agreement within 10 (ten) business days of the demand for arbitration, then any Party to the dispute shall be entitled to forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate/attorney of not less than 10 (ten) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the Parties to the dispute or difference failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the Parties to the dispute.
- 11.4 This clause 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 11.
- 11.5 Any Party to the arbitration may appeal the decision of the arbitrator or arbitrators in terms of the AFSA rules for commercial arbitration.
- 11.6 Nothing herein contained shall be deemed to prevent or prohibit a Party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 11.7 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&Cs pending the resolution of a dispute or difference between the Parties in terms of this clause 11.
- 11.8 This clause 11 shall continue to be binding on the Parties notwithstanding any termination or cancellation of these MT&Cs.
- 11.9 The Parties agree that the written demand by a Party to the dispute in terms of clause 11 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act No. 68 of 1969 as amended from time to time.
- 12 SUPPLY OF GOODS AND SERVICES**
- 12.1 Deliveries and Collection**
- 12.1.1 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.
- 12.1.2 The Supplier warrants and undertakes and in favour of Samancor, 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. The Supplier's vehicles must be insured, licensed and in proper roadworthy condition. Drivers of said 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.
- 12.1.3 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 and Risk

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 the relevant Supply Agreement) shall vest in Samancor when used and/or consumed by Samancor.

12.3 Intellectual Property Rights

The Parties acknowledge and agree to the following:

12.3.1 The Supplier hereby grants to Samancor, a royalty-free, non-exclusive, non-transferable licence to use the Goods and/or Services during the term of these MT&Cs.

12.3.2 Where there are modifications to pre-existing material which are inseparable from the pre-existing material, then the Party which owns the pre-existing material will own the modifications.

12.3.3 Save for the information which is proprietary to the Supplier at the time of entering into these MT&Cs, the supply of Goods and/or the rendering of Services may include the reviewing, amending, developing, drafting, creation and design, for or under the instruction of Samancor, of documents, diagrams, technologies, processes and other written works in which Samancor is interested ("**Intellectual Property**").

12.3.4 Save where agreed otherwise, all such Intellectual Property and all rights, including, without limitation, all Intellectual Property rights, know-how, trade secrets, patent and copyright resulting from the provision of Services and/or the supply of Goods by the Supplier shall vest in Samancor. The Supplier shall take all necessary steps to ensure that Samancor obtains full legal title to the said intellectual property rights.

12.3.5 The Supplier shall not own any rights in or to the Intellectual Property.

12.3.6 The Supplier shall take all necessary steps to ensure that Samancor obtains full legal title and shall, if and when required by Samancor, and at the expense of Samancor, apply or join in applying for the registration of appropriate protection in respect of the Intellectual Property on behalf of Samancor and will, at the expense of Samancor execute all documents and do all things necessary for vesting the protection and all right, title and interest in respect of the Intellectual Property in Samancor or in any person Samancor may specify.

12.3.7 The rights in or to the Intellectual Property, as well as all the rights to any Intellectual Property in all the works created for Samancor during the course of the Supplier's appointment in terms of these MT&Cs will vest in Samancor.

12.3.8 The Supplier shall not divulge, nor authorise or allow anyone to divulge, either during the subsistence of these MT&Cs or afterwards, any knowledge of the subject matter of the Intellectual Property. Without limiting the generality of the foregoing, the provisions of clause 4.4 shall apply to the Supplier in this regard.

12.3.9 In the event that, and as soon as, any Intellectual Property rights, particularly, but without limitation, copyright, come into existence in respect of documents on which the Supplier works, this clause serves as automatic assignment of all rights to any Intellectual Property in all works created during the subsistence of these MT&Cs.

12.3.10 The above assignment shall be of all Intellectual Property rights, including but not limited to, copyright, which came into existence along with all accrued rights therein, including the right to sue for infringements, which may have taken place prior to the date of recording such assignments.

12.4 Intellectual Property Rights Indemnity

12.4.1 The Supplier shall at all times whether during or after termination or expiry of these MT&Cs, indemnify and keep Samancor indemnified ("**Intellectual Property Rights Indemnity**") against all

losses, claims, damages, liabilities, additional licence fees and expenses (including all reasonable legal fees) incurred by or awarded against Samancor or which are agreed by Samancor to be paid by way of settlement or compromise, arising out of or in relation to any infringement or alleged infringement of any Intellectual Property Rights of any third party which is suffered by Samancor as a result of Samancor's receipt of the Goods and/or Services or its use or possession of the Goods and/or Services, or any part thereof, ("IPR Claim") provided that Samancor shall:

- 12.4.1.1 allow the Supplier to conduct all negotiations and proceedings and give the Supplier all reasonable assistance in relation to the IPR Claim, each at the Supplier's cost; and
- 12.4.1.2 make no admission relating to the IPR Claim.
- 12.4.2 Samancor shall notify the Supplier in writing as soon as is reasonably practicable of any IPR Claim of which Samancor has notice.
- 12.4.3 The Supplier shall conduct the litigation proceedings diligently using competent counsel and in such a way as not to bring the reputation or name of Samancor into disrepute.
- 12.4.4 The Supplier shall not be entitled to settle or compromise any IPR Claim made against Samancor without Samancor's prior written consent which consent shall not to be unreasonably withheld.
- 12.4.5 If at any time an IPR Claim is made, the Supplier may, at its own expense and sole option, either:
 - 12.4.5.1 procure for Samancor, the right to continue using the relevant Goods and/or Services; or
 - 12.4.5.2 replace or modify the Goods and/or Services with non-infringing substitutes, provided that any substitute shall not materially prejudice Samancor's use of the Goods and/or Services and that such substitution will be carried out so as

to avoid or reduce insofar as possible any interruption to Samancor's business operations.

- 12.4.6 If the Supplier has availed itself of its rights to modify the Goods and/or Services or to supply substitute item(s) under sub-clause 12.2.9.2 or to procure a licence in accordance with sub-clause 12.2.9.1 and such exercise of the said rights has not avoided the relevant IPR Claim, then Samancor may at its option:
 - 12.4.6.1 return the Goods and/or Services to the Supplier and, without prejudice to the Intellectual Property Rights Indemnity, the Supplier shall refund in full all fees paid by Samancor and other costs directly incurred by Samancor under these MT&Cs in relation to such Goods and/or Services; or
 - 12.4.6.2 terminate these MT&Cs in line with the provisions of clause 9.

12.5 Data Privacy and Protection

- 12.5.1 The Supplier acknowledges that in providing the Goods or Services to Samancor, the Supplier may be exposed to Samancor's Personal Information and/or the Personal Information of Samancor's customers, employees, suppliers and/or any other third parties.
- 12.5.2 The Parties specifically record that all Personal Information provided by Samancor to the Supplier, or to which the Supplier may be exposed, shall constitute Confidential Information in terms of which clause 4.4 of these MT&Cs shall apply.
- 12.5.3 The Supplier hereby:
 - 12.5.3.1 provides its express consent for Samancor to process any of its Personal Information as required for the conclusion, implementation and enforcement of these MT&Cs, subsequent Purchase Order and/or Supply Agreement or any other purpose directly related to the execution of the aforementioned. To the extent that the Supplier's Personal Information pertains to other data subjects, the Supplier warrants to having procured all

	necessary consents from such data subjects to Samancor's collection, processing and storage thereof for all purposes related to the conclusion and performance of these MT&Cs, subsequent Purchase Order and/or Supply Agreement.		Samancor to enable Samancor to notify any affected data subjects and/or regulatory authorities.
12.5.3.2	undertakes in favour of Samancor that it shall at all times, strictly comply with all applicable data privacy and protection laws, specifically, POPIA, and with all the provisions and requirements of Samancor's internal and external data protection policies and procedures, as may be updated from time to time, together with any further requirements which Samancor may, from time to time, advise the Supplier of in writing, or which may be required by law or any relevant industry body, whether within or outside the Republic of South Africa.	12.6	Warranties, Inspection and Returns
		12.6.1	The Supplier warrants to and in favour of Samancor that during the Latent Defects Notification Period, or such other period or date 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:
		12.6.1.1	free and clear of any encumbrances or of any claim of any nature by any third person;
		12.6.1.2	in conformance with the specifications, drawings, plans, instructions, samples or other descriptions furnished to or accepted by Samancor;
12.5.3.3	undertakes that it shall not, at any time, Process Personal Information in any manner for any purpose other than with the express prior written consent of Samancor, and to the extent necessary to provide the Services to Samancor.	12.6.1.3	of merchantable quality, free from any defect (latent or patent and whether in design, workmanship and/or materials); and
		12.6.1.4	fit and sufficient for purpose for which they are purchased and/or any of Samancor's specific requirements disclosed to the Supplier.
12.5.3.4	undertakes that it shall maintain, periodically review and where necessary, update a written document of policies, procedures and controls governing its processing, storage, transmission and safeguarding of Personal Information, which document shall incorporate industry standards and legislative requirements designed to protect Personal Information from unauthorized access, acquisition, use, disclosure or destruction.	12.6.2	The Supplier warrants to and in favour of Samancor that it has the necessary and sufficient skills and Personnel to supply the Goods and/or render the Services in terms of these MT&Cs 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).
12.5.3.5	undertakes that, unless notification is restricted by law, it shall report any unauthorized access, use, acquisition, disclosure or destruction of Samancor's data (" Data Breach ") promptly, without undue delay and no later than 72 (seventy-two) hours after the Supplier has determined or becomes aware that a Data Breach has occurred. The Supplier shall provide information about the Data Breach that is requested by	12.6.3	The warranties in this clause 12.6 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&Cs, law or otherwise.
		12.6.4	In addition to Samancor's rights in law or in terms of these MT&Cs, Samancor may within a 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 these MT&Cs ("**Non-Conforming**") supplied by the Supplier to Samancor ("**Initial Warranty Period**"). The Supplier shall, on demand, reimburse Samancor the purchase price of such Non-Conforming Goods and/or fees for Services as well as all of Samancor's costs incurred as a result of the rejection of such Non-Conforming Goods and/or Services.

- 12.6.5 Weighbridge certificates issued by Samancor shall constitute *prima facie* 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.
- 12.6.6 At Samancor's sole and absolute discretion, the Supplier shall, at its cost and expense, replace Non-Conforming Goods and/or shall remedy any Non-Conforming Services rendered.
- 12.6.7 All rejected, 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 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 Non-Conforming Goods.
- 12.6.8 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 these MT&Cs or in law.

12.7 Performance and Delivery

- 12.7.1 The Parties agree that time is of importance 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 due date, shall constitute an Event of Default.
- 12.7.2 The Purchase Order Price is deemed to have accounted for all costs and expenses related to the supply of the Goods and/or the rendering of the Services and as such, all of the costs associated with the supply of Goods and/or the rendering of the Services to Samancor, including 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.

12.8 Work Delayed

- 12.8.1 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 Goods and/or the fees for 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.
- 12.8.2 Notwithstanding the provisions of clause 12.8.1, if Samancor, in its sole and absolute discretion, considers the Supplier's 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.

12.8.3 The Supplier warrants to and in favour of Samancor that it is not a party to any existing or previous agreement or arrangement which prevents it from entering into these MT&Cs or adversely affects its ability to perform its obligations under these MT&Cs.

12.8.4 The Supplier shall 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&Cs.

12.9 **Quality Assurance/Quality Control**

12.9.1 The Supplier guarantees that the quality, quantity and outward appearance of the Goods delivered and/or Services rendered comply with the requirements of these MT&Cs and/or relevant agreed specifications of the Goods and/or Services as set out in any Supply Agreement and/or Purchase Order and/or such other quality control measures as required by Recognised Good Practice.

12.9.2 The Supplier guarantees that accessories, spare parts and user's instructions belonging to the Goods delivered and/or Services rendered shall also be delivered together with the Goods and/or on completion of rendering the Services.

12.9.3 The Supplier guarantees that the delivered Goods shall, where applicable, be the same in all respects as the sample and/or models provided by the Supplier.

12.9.4 The Supplier shall comply with and make due allowance for the Quality Control Procedure and 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.

12.9.5 Samancor is entitled not to accept (and/or to refuse delivery of) any Goods and/or Services rendered which do not conform to any conditions, standards, specifications, samples and/or models provided by the Supplier to Samancor.

12.10 **Strip, Clean and Quote Procedure**

Where the Services to be rendered in terms of these MT&Cs include reconditioning and/or repair work, the Supplier shall submit to Samancor, a detailed report and attach photographs taken (where applicable or as requested by Samancor) setting out:

12.10.1 external visible damage; and/or the presence or absence of components at the time of receipt of Equipment to be repaired;

12.10.2 where the Equipment to be repaired is stripped and cleaned, 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 thereof is fit for re-use or is to be repaired;

12.10.3 the repair and/or reconditioning requirements of the Equipment upon completion of the initial inspection. Should the estimated total cost of repair exceed 60% (sixty percent) of the value of a new unit, Samancor shall be entitled to terminate these MT&Cs and the provisions of clause 9.4.1, with the necessary changes, shall apply; and test results indicating all relevant statistical information including all the repairs duly carried out every repair on a duly completed test certificate to Samancor and signed by a duly authorised representative of the Supplier must be submitted

12.11 **Packaging**

12.11.1 The Supplier shall, in supplying the Goods and/or performing the Services, adequately protect all Goods, sub-assemblies and parts supplied in terms of these MT&Cs against harmful forces of nature, and to prevent damage resulting from handling of the Goods and/or the performance of the Services. Samancor shall refuse to accept Goods

- or sub-assemblies or parts in the case of non-compliance with the original manufacturer's and/or Samancor's packaging requirements as agreed to by the Parties
- 12.11.2 All Goods packaged shall comply with all applicable laws and regulatory requirements, taking into account the nature of the Goods and shall be securely packaged. Certificates of conformance in relation to packaging of the Goods may from time to time be required and shall, where requested by Samancor, be submitted by the Supplier to Samancor before delivery of the Goods will be accepted by Samancor.
- 12.11.3 Samancor or its designee shall have the right, upon reasonable notice to the Supplier, to inspect those portions of the facilities and equipment used by the Supplier in converting, packaging and/or processing (including without limitation, the manufacturing and storing) of the Goods to ensure compliance with the specifications, conditions, standards and samples and/or models supplied by the Supplier to Samancor. Any such inspection and review of the Supplier's quality assurance program will not constitute acceptance of the Goods and shall not be construed as relieving the Supplier from its obligations under this clause 12.11.
- 12.11.4 No witnessing, reviewing, inspection, verification or approval by the Samancor shall relieve the Supplier from its obligations, responsibilities, or warranties under these MT&Cs.
- 13 SCOPE OF WORK**
- 13.1 The Supplier shall supply the Goods and/or 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.
- 13.2 The Supplier warrants and represents to and in favour of Samancor that:
- 13.2.1 it has carefully examined all parts of Samancor's premises where the Goods are to be delivered and the Services are to be performed or which are otherwise relevant to the delivery of the Goods and/or 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 deliver the Goods and/or perform the Services in accordance with these MT&Cs;
- 13.2.3 it will deliver the Goods and/or perform the Services with a high degree of professional skill, care and diligence, experience, qualifications, staff and capability and will deliver the Goods and/or perform the Services efficiently and expeditiously to Samancor in accordance with the specification and best professional standards and these MT&Cs;
- 13.2.4 it has the capability to perform its obligations under these MT&Cs;
- 13.2.5 all Personnel used to deliver the Goods and/or provide the Services will be vetted in accordance with good industry practice, and all Samancor's 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 Samancor'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&Cs and shall comply with all applicable laws, rules and regulations relating to the Goods and/or Services;
- 13.2.8 Samancor's use and possession of the Goods and/or Services or any part thereof in accordance with these MT&Cs shall not infringe any intellectual property rights of any third party;
- 13.2.9 it will keep accurate records for the purposes of demonstrating compliance with the requirements stipulated in these MT&Cs and any Supply Agreement and/or the Purchase Order; and

- 13.2.10 it 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 into or is to be removed from Samancor's premises, or is not to become involved in, or is to be removed from involvement in the performance of the Supplier's obligations, under these MT&Cs, 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 access pass issued to the person removed is surrendered to Samancor.
- 13.3 Samancor's decision as to whether any person is to be admitted into or is to be removed from Samancor's premises or is not to become involved in or is to be removed from involvement in the performance of the obligations of the Supplier 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.

14 SANCTIONS

- 14.1 The Supplier is not nor, to the knowledge of the Supplier, is Personnel, sub-contractor or affiliate of the Supplier on the list of Specially Designated Nationals and Blocked Persons or is the subject of limitations or prohibitions contained in any Anti-Bribery and Sanctions Legislation.
- 14.2 The Supplier hereby indemnifies and hold harmless Samancor and Samancor's Personnel against any claims, damages, losses, penalties or criminal liability, cost and expenses howsoever arising or incurred from the breach by the Supplier of any Anti-Bribery and Sanctions Legislation as may be amended from time to time, to the extent that such Sanctions are in force at the time of entering into these MT&Cs, or come into force during the Supplier's performance under the MT&Cs and relates to the performance thereof.

I, the undersigned, warrant that I am duly authorised and hereby accept, on behalf of _____, the Samancor Chrome Limited Master Terms and Conditions, as set out in the document above, together with associated annexures, where applicable. This will apply to all Requests for Quote and Purchase Orders received from Samancor Chrome Limited and any of its associated entities.

Signed at on this the day of 202..

_____ For: _____
Duly Authorised

Name of Supplier Representative: _____

Designation: _____