GENERAL CONDITIONS OF CONTRACT FOR SUPPLY

WITHOUT INSTALLATION

Between

MINAS DE BENGA, LDA

And

XXX

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1 Interpretation and construction of Contract

In the *Contract*, except where the context otherwise requires:

acceptable means:

a) the *Equipment* is substantially in accordance with the requirements of the *Contract* except for minor *defects* which do not:

i) prevent the *Equipment* from being reasonably capable of being used for the stated purpose in the *Contract*; or

ii) if no such purpose is stated, adversely affect the normal use of the *Equipment*;

b) where the *Contract* so requires, the *Equipment* satisfies *acceptance testing*; and

c) manuals, documents and other information required under the *Contract* have been supplied;

acceptance means notification under subclause 20.1 or 20.8 by the *Purchaser* that the *Equipment* is *acceptable*;

acceptance testing means testing referred to in subclause 17.1;

Claim includes any claim for or entitlement to:

a) an *EOT*, including an extension of:

i) the time within which the *Supplier* shall design, supply and deliver the *Equipment*, or perform any obligation under or in connection with the *Contract*;

ii) the *date for delivery*;

b) adjustment to the *contract sum* or any other amount payable under the *Contract*;

c) any costs, expenses, damages, liabilities or other amounts of whatever nature against the *Purchaser*, or any of the *Purchaser's* employees, officers, agents and contractors; or

d) relief from any of the *Supplier's* obligations or liabilities under the *Contract*,

whether under the *Contract* or otherwise at law or in equity (including under statute, in tort (including negligence) or for restitution, unjust enrichment or quantum meruit);

compensable cause means any act, default or omission of the *Purchaser* or its consultants, agents or other contractors (not being the *Supplier* or employed by the *Supplier*)

Contract has the meaning in clause 4;

contract sum means the price set out in the Purchase Order which shall be considered firm subject to any Special Conditions, and:

a) where the *Purchaser* accepted a lump sum, the lump sum;

b) where the *Purchaser* accepted unit prices, the sum of the products ascertained by multiplying the quantity of *Equipment* and the corresponding unit prices in the *schedule of unit prices*; or

c) where the *Purchaser* accepted a lump sum and unit prices, the aggregate of the sums referred to in paragraphs (a) and (b),

excluding any additions or deductions which may be required to be made under the *Contract*, as detailed in Annexure C, namely any customs duty (unless specifically exempt), packaging, marking, handling, freight and delivery (Free-in-Store), insurance, taxes (including withholding tax, value added tax or other consumption tax) and any other applicable costs and charges. Unless otherwise specified in the Special Conditions, the contract sum is not subject to change for the Equipment.

date for delivery means (within 10 months from the date of PO issued by ICVL) or the date specified in the Purchase Order, but if any *EOT* for *delivery* is directed by the *Purchaser* or allowed in any arbitration or litigation, it means the date resulting therefrom;

date of acceptance of tender means the date of the *Contract*;

date of delivery means:

a) the date upon which the *Equipment* was *delivered*; or

b) where another date is determined in any arbitration or litigation as the date upon which the *Equipment* was *delivered*, that other date;

defects has the meaning in clause 20 and includes omissions;

defects liability period has the meaning in clause 21;

deliver (and delivered) have the meaning in clause 18;

delivery has the meaning in clause 18;

delivery place is at the Beira Port (ICVL Work shop) in Beira, Mozambique;

delivery program has the meaning in clause 14;

Design has the meaning in subclause 2.3;

direction includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;

dispute has the meaning in clause 27;

EOT (from 'extension of time') has the meaning in subclause 16.2;

Equipment means the items as specified in the Purchase Order to be supplied or supplied by the *Supplier* pursuant to the *Contract* [as more fully described in Annexure A];

final certificate has the meaning in subclause 23.4;

final payment claim means the final payment claim referred to in subclause 23.4;

intellectual property right means any patent, registered design, trademark or name, copyright or other protected right;

legislative requirements includes:

a) acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the supply or *delivery* of the *Equipment* or the particular part thereof is being carried out;

b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction where the supply or *delivery* of the *Equipment* or the particular part thereof is being carried out; and

c) fees and charges payable in connection with the foregoing;

prescribed notice has the meaning in subclause 26.1;

Purchase Order Means and includes the purchase order document, these general terms and conditions, the specifications, schedules, drawings and samples referred to in the purchase order document or the specifications;

Purchaser means Minas de Benga, Limitada, with head-offices at Avenida 24 de Julho, nº1123, 4º Andar, Cidade de Maputo, Mozambique, registered in the Registrar of Legal Entities under number 18006, taxpayer with NUIT 400148066;

qualifying cause of delay means:

a) any act, default or omission of the *Purchaser*, its consultants, agents or other contractors (not being employed by the *Supplier*); or

b) industrial conditions beyond the reasonable control of the *Supplier* or its related entities, subcontractors, employees or agents; but does not include:

c) war, floods, cyclones and other acts of God; or

d) but does not include:

i) a breach, act or omission of the *Supplier* or its related entities, subcontractors, employees or agents;

ii) industrial conditions or inclement weather occurring after the *date for delivery*; and

iii) any other cause of delay not specified in a) to d), above.

security means:

a) cash;

b) retention moneys;

c) bonds or inscribed stock or their equivalent issued by a national, state or territory government;

d) an approved unconditional undertaking (the form in Annexure C is approved) or an approved performance undertaking given by an approved financial institution or insurance company; or

f) other form approved by the party having the benefit of the security;

separable portion means an item or part of the *Equipment* identified as such in the *Contract* or by the *Purchaser* pursuant to subclause 18.2;

site means the location where the Goods are to be delivered and/or installed, including but not limited to the premises or property of Minas de Benga, Lda.

Supplier means the legal or natural person who has undertaken to fulfil the Purchase Order;

test has the meaning in clause 17 and includes examine and measure;

variation has the meaning in clause 22, and like words have a corresponding meaning.

In the *Contract*:

a) references to days mean calendar days and references to a person include an individual, firm or a body, corporate or unincorporate;

b) time for doing any act or thing under this *Contract* shall, if it ends on a Saturday, Sunday or Statutory or Public Holiday, be deemed to end on the day next following which is not a Saturday, Sunday or Statutory or Public Holiday;

c) clause headings and subclause headings shall not form part of, nor be used in the interpretation of, the *Contract*;

d) words in the singular include the plural and words in the plural include the singular, according to the requirements of the context. Words importing a gender include every gender;

e) communications between the *Purchaser* and the *Supplier* shall be in the English language;

f) measurements of physical quantities shall be in legal units of measurements of the jurisdiction of Mozambique;

h) The *Contract*, its interpretation and any agreement to arbitrate shall be governed by the terms of the Contract and the law of Mozambique.

2 Nature of Contract

2.1 Performance and payment

In accordance with the requirements of the *Contract*:

a) the *Supplier* shall supply and *deliver* the *Equipment*; and

b) the *Purchaser* shall pay the *Supplier* the *contract sum* adjusted by any additions or deductions made pursuant to the *Contract*.

2.2 Acknowledgment by the Supplier

Except to the extent as expressly provided otherwise in the *Contract* the *Supplier* agrees that:

a) the *contract sum* and any prices to be applied in calculating the *contract sum* or otherwise contained in the *Contract*:

   i) include all costs, expenses, taxes, duties, fees, charges (including any costs of loading, unloading and delivering the *Equipment*) incurred by the *Supplier* in performing all its obligations under the *Contract*;

   ii) shall not be subject to foreign exchange adjustments;

   iii) shall not be subject to adjustment for rise or fall;

   iv) shall not be subject to adjustment for any other reason; and

b) it shall not be entitled to any *Claim* arising out of or in connection with the *Contract*.

2.3 Design

The *Supplier* acknowledges and agrees that:

a) the *Purchaser* is not liable to the *Supplier* for any loss suffered or incurred by the *Supplier* arising from, or in connection with, the *Design*; and

b) the *Supplier* is not entitled to make a *Claim*, or recover in any other way from the *Purchaser*, in respect of such loss.

3 Security

3.1 Provision

Security shall be provided as stated in Annexure C.

3.2 Recourse

Security shall be subject to recourse by a party who remains unpaid after the time for payment where at least 5 days have elapsed since the party notified the other party of intention to have recourse.

3.3 Change of security

At any time a party providing retention moneys or cash *security* may substitute another form of *security*. To the extent that another form of *security* is provided, the other party shall not deduct, and shall promptly release and return, retention moneys and cash *security*.

3.4 Conversion of Security

Despite any other provision of the *Contract*, a party holding *security* or retention moneys may continue to hold and/or have recourse to *security* where the *Contract* may otherwise require it to be released or after termination of the *Contract* for any reason, to the extent of any amount

claimed by the party under or in connection with the *Contract* (whether liquidated or otherwise).

3.5 Further Security Provisions

The *Purchaser* may refuse any payment due under the *Contract* or otherwise until the *Supplier* has complied with sub-clause 3.1.

4 Evidence of Contract

means this General Conditions of Contract for Supply Of Goods Without Installation together with the Purchase Order. Any additions to these General Conditions shall be in writing and attached as Special Conditions to the Purchase Order. In the event of any inconsistency between these General Conditions and any Special Conditions, the latter shall prevail. By accepting the Purchase Order, the Supplier agrees to the following terms and any Special Conditions.

These General Conditions of Contract including annexures and related documents.

Where the Purchase Order is issued under the terms of an Existing Contract, then the agreement with the Supplier will comprise of first, any Special Conditions, second, the Existing Contract and third this Purchase Order and these General Conditions of Contract. In the event of any inconsistency between the terms of any of these documents, the terms in the document listed first in this clause will govern to the extent of the inconsistency.

5 Service of notices

A notice (and other documents) shall be deemed to have been given and received:

a) if addressed or delivered to the relevant address in the *Contract* or last communicated in writing to the person giving the notice; and

b) on the earliest date of:

   i) actual receipt;

   ii) confirmation of correct transmission of fax; or

   iii) 3 days after posting.

6 Contract documents

6.1 Discrepancies

If either party discovers any inconsistency, ambiguity or discrepancy in any document prepared for the purpose of performing the *Contract*, that party shall give the other party written notice of it. The *Purchaser*, thereupon, and upon otherwise becoming aware, shall direct the *Supplier* as to the interpretation and construction to be followed.

Subject to clause 6.2, if compliance with any other *direction* under this subclause causes the *Supplier* to incur more or less cost than otherwise would have been incurred had the *direction* not been given, the difference shall be assessed by the *Purchaser* and added to or deducted from the *contract sum.*

The *Supplier* shall be deemed to have:

a) carefully examined the *Contract;* and

b) satisfied itself as to all the conditions and circumstances affecting the *contract sum* and to have agreed upon the *contract sum* according to the *Supplier's* own view,

and the *Supplier* shall not be entitled to any C*laim* arising out of or in connection with any inconsistency, ambiguity or discrepancy or any *direction* by the *Purchase*r pursuant to this clause.

Work which is not specifically identified in the *Contract* but which is necessary, desirable or inferred from the *Contract* so as to complete the *Equipment* in accordance with the *Contract* shall be deemed to be included and priced in the *contract sum*.

6.2 Purchaser-supplied documents

If the *Purchaser* submits documents to the *Supplier*, then except where the *Contract* otherwise provides, such documents shall:

a) remain the *Purchaser's* property and be returned to the *Purchaser* on written demand; and

b) not be used, copied nor reproduced for any purpose other than the performance of the *Contract*.

6.3 Supplier-supplied documents

If the *Supplier* submits documents to the *Purchaser*, then except where the *Contract* otherwise provides:

a) the *Purchaser* shall not be required to check such documents for errors, omissions, inconsistencies, ambiguities, discrepancies or compliance with the *Contract*;

b) the *Supplier* acknowledges and agrees that any review, comment on, consent or approval by the *Client* in respect of any documents submitted to it by the *Purchaser* is to give the *Client* an opportunity to:

   i) monitor the progress of the work under the *Contract*;

   ii) monitor the *Purchaser's* compliance with its obligation under the *Contract*; and

   iii) allow assessment of any design;

c) any *Purchaser's* acknowledgment, review, comment on, consent or approval shall not relieve the *Supplier* from liability or responsibility for the performance of the *Supplier's* obligations; and

d) if the *Contract* requires the *Supplier* to obtain the *Purchaser's direction* about such documents, the *Purchaser* shall give, within a reasonable time, the appropriate *direction*, including reasons if the documents are not suitable.

Copies of documents supplied by the *Supplier* shall be the *Purchaser's* property but shall not be used or copied otherwise than for the installation, use, support, repair, maintenance or alteration of the *Equipment*.

6.4 Availability

The *Supplier* shall keep available to the *Purchaser* at the place of manufacture or assembly of any significant part of the *Equipment*, a set of the documents affecting that part.

6.5 Confidential Information

Despite any other clause in the *Contract*, the *Supplier* shall keep (and ensure is kept) confidential and shall not, without the *Purchaser's* prior written consent, disclose or use (or allow others to disclose or use), other than for the purpose of the *Contract*, any data or information obtained from the *Purchaser* or provided by or on behalf of the *Purchaser* in the course of performance of the *Contract* or as a consequence of the *Contract* whether relating to the performance of the *Contract* or relating generally to the activities and operations of the *Purchaser* or the *Equipment* (except insofar as the same may be part of the public domain other than resulting from a breach of a confidentiality obligation or may be required to be disclosed by law or pursuant to any rule of any Stock Exchange). This obligation shall survive the expiration or sooner termination of the *Contract.*

The above data or information, kept in any media, shall remain property of and shall be returned to the *Purchaser* upon request or expiration or sooner termination of the *Contract*.

6.6 Media

The *Supplier* shall not disclose any information concerning the *Contract* for distribution through any communications media without the *Purchaser's* prior written approval (which shall not be unreasonably withheld). The *Supplier* shall refer to the *Purchaser* any enquiries from any media concerning the *Contract*.

6A Purchaser supplied information

In this clause, *Purchaser Supplied Information* means any information (whether written or otherwise) supplied or made available to the *Supplier* by or on behalf of the *Purchaser* before or after the date of the *Contract* other than documents which comprise part of the *Contract*.

The *Supplier* agrees:

a) unless the *Purchaser* expressly agrees otherwise in writing, any *Purchaser Supplied Information*:

   i) has been or will be provided only for the *Supplier's* convenience; and

   ii) has not been and will not be relied upon by the *Supplier* for any purpose (including entering into the *Contract* or performing its obligations under the *Contract*);

b) the *Purchaser* does not:

   i) assume any responsibility or duty of care in respect of; or

   ii) warrant, guarantee or make any representations as to,

the *Purchaser Supplied Information* (including its accuracy, completeness or adequacy for the purposes of the *Contract*);

c) the *Supplier* shall not be entitled to any *Claim* arising from or in connection with the *Purchaser Supplied Information* (including its accuracy, completeness or adequacy);

d) the *Supplier* must:

i) not rely upon (or allow any other person to rely upon) the *Purchaser Supplied Information* for or in connection with the supply and *delivery* of *Equipment* under the *Contract* until it has satisfied itself as to the accuracy, completeness and adequacy of the *Purchaser Supplied Information*; and

ii) indemnify the *Purchaser* against any *Claim* arising from or in connection with the *Supplier* failing to satisfy itself in accordance with sub-paragraph (d)(i) above; and

e) without prejudice to paragraph (a), it has by its own independent enquiries satisfied itself as to and taken into account any matter or thing disclosed by any *Purchaser Supplied Information* relevant to the supply and *delivery* of the *Equipment* under the *Contract*.

7 Assignment and subcontracting

7.1 Assignment

a) Subject to clause 7.1(b), the *Supplier* shall not, without the *Purchaser*'s prior written approval (including terms) assign the *Contract* or any payment or any other right, benefit or interest thereunder.

b) The *Purchaser* shall, in its absolute discretion, be entitled to assign, novate or transfer the *Contract* or any payment or any other right, benefit or interest thereunder at any time to a *third party*.

7.2 Subcontracting

The *Supplier* shall not without the *Purchaser's* prior written approval (which shall not be unreasonably withheld):

a) subcontract or allow a subcontractor to subcontract any work; or

b) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.

The *Supplier* shall be liable to the *Purchaser* for the acts, defaults or omissions of subcontractor and employees and agents of subcontractors as if they were those of the *Supplier*.

Approval to subcontract shall not relieve the *Supplier* from any liability or obligation under the *Contract*.

The *Supplier* agrees to assign or novate its rights, interests and benefits in the subcontracts to the *Purchaser* or nominees of the *Purchaser* and sign all documents and give all reasonable assistance required by the *Purchaser* to give effect to such assignment or novation if both:

a) the work is taken out of the hands of the *Supplier* or the *Purchaser* terminates the *Contract* for any reason; and

b) the *Purchaser* directs the *Supplier* to do so.

8 Intellectual property rights

8.1 Warranties

Despite any other clause in the *Contract*:

a) the *Purchaser* warrants that, unless otherwise provided in the *Contract*, design, materials, documents and methods of working provided or directed by the *Purchaser*, shall not infringe any *intellectual property right*;

b) the *Supplier* warrants that any drawings, designs, plans, methods of working, materials, specifications, manuals, models, program, documents, work or other forms or recording ideas prepared, drawn, devised, written, manufactured, assembled or constructed by or on behalf of the *Supplier* as part of the performance of the *Contract* ***(Supplier's Documents)*** shall not infringe any *intellectual property right*; and

c) each party shall indemnify the other against any and all *Claims* arising from such respective infringements.

8.2 Ownership and licence

a) Despite any other clause of the *Contract*, ownership of *intellectual property rights* (other than *intellectual property rights* existing prior to the performance of the *Contract*) associated with the *Equipment* and the works under the *Contract* (including the *Supplier's Documents*) are vested in and shall vest in the *Purchaser*.

b) Subject to clause 8.2(a) the *Supplier* grants (and shall ensure third parties grant) the *Purchaser* a worldwide, irrevocable royalty-free, perpetual licence to use (and allow others to use) all other *intellectual property rights* owned by the *Supplier* or its subcontractors for any purpose in connection with the *Equipment*.

8.3 Consent of Authors

The *Supplier* warrants that:

a) the *Supplier* has been given the benefit of a consent from every individual (involved in the carrying out of work under the *Contract*) who has or may in the future have any moral rights (***Moral Rights***) relating to the *Equipment* or anything else provided by the *Supplier* as part of or in connection with the *Equipment* (***Copyright Works***); and

b) to the extent permissible by law, each consent referred to in paragraph (a):

   i) allows the *Purchaser* or any person authorised by the *Purchaser* to do any act or omission (whether before or after the date of the consent) arising from or connected with the exercise by the *Purchaser* of its rights of ownership or use of the *Copyright Works*, which may (but for the consent) infringe the individual's *Moral Rights*; and

   ii) satisfies the requirements for consent set out in the applicable Copyright legislation.

8.4 Supplier indemnity

The *Supplier* shall indemnify the *Purchaser*, its officers, employees and agents against any costs, expenses, claims, losses, damages or other liabilities whatsoever arising from or in connection with any breach of the warranties or obligations of the *Supplier* under this clause 8.

8.5 Exclusion of Claims

The *Supplier* shall have no *Claim* arising from or in connection with:

a) the existence of any *Moral Rights*; or

b) the *Supplier's* obligations under this clause 8.

9 Legislative requirements

9.1 Compliance

Despite any other clause of the *Contract*:

a) the *Supplier* shall satisfy (and ensure that the *Equipment* satisfies) all *legislative requirements*, including all *legislative requirements* of each jurisdiction in which the whole or any part of the *Equipment* is being manufactured and/or delivered, except those directed by the *Purchaser* to be satisfied by or on behalf of the *Purchaser*; and

b) the *Supplier*, upon finding that a *legislative requirement* is at variance with the *Contract*, shall promptly give the *Purchaser* written notice thereof.

9.2 Changes

If a *legislative requirement*:

a) necessitates a change:

   i) to the *Equipment*;

   ii) in a fee or charge or payment of a new fee or charge; or

   iii) in the method of working as may be stated in the *Contract*;

b) comes into effect within 30 days after the *date of acceptance of tender* but could not reasonably then have been anticipated by a competent supplier; and

c) causes the *Supplier* to incur more or less cost than otherwise would have been incurred,

the difference shall be assessed by the *Purchaser* and added to or deducted from the *contract sum.*

10 Quality assurance

In respect of the *Equipment*, the *Purchaser* may direct the *Supplier* to:

a) supply particulars of the mode and place of manufacture, the source of supply of materials and other components, the performance capacities and other related information; and

b) arrange reasonable inspection at such place or sources by the *Purchaser* or persons authorised by the *Purchaser*.

If the *Contract* elsewhere requires further quality assurance, the *Supplier* shall:

a) plan, establish and maintain a conforming quality system; and

b) ensure that the *Purchaser* has reasonable access to the quality system of the *Supplier* and subcontractors so as to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the *Contract* and to document such compliance. Such system shall not discharge the *Supplier's* other obligations under the *Contract*.

10A Purchaser's right to inspect works in progress

Despite any other clause in the *Contract*, when requested to do so, the *Supplier* shall:

a) give to the *Purchaser* or its nominee access to all work under the *Contract* and shall allow the *Purchaser* or its nominee to inspect any work under the *Contract* on reasonable notice at any place (including the premises of the *Supplier* and its *subcontractors*) where the work is being carried out; and

b) provide such information as reasonably required by the *Purchaser* to satisfy itself in regard to the progress of the work under the *Contract* and that the work under the *Contract* complies with the *Contract.*

11 Supplier's indemnity

Insofar as this clause applies to property, it applies to property other than the *Equipment*.

The *Supplier* shall indemnify the *Purchaser* against:

a) loss of or damage to the *Purchaser's* property;

b) C*laims* in respect of personal injury or death or loss of, or damage to, any other property;

c) Claims, losses, liabilities and damages in respect of breach of environmental laws; and

d) costs and expenses incurred in connection with Claims by government authorities regarding a failure of the Equipment to comply with any legislative requirements,

arising out of or as a consequence of the *Supplier's* performance of the *Contract*, but the indemnity shall be reduced proportionally to the extent that the act or omission of the *Purchaser* or its consultants, agents or other contractors (not being employed by the *Supplier*) contributed to the injury, death, loss or damage.

This clause shall not apply to:

a) the extent that the *Supplier's* liability is limited by another provision of the *Contract*; and

b) exclude any other right of the *Purchaser* to be indemnified by the *Supplier*.

11A. Suppliers Acknowledgements and Warranties

11A.1 Supplier's Warranties

The *Supplier* warrants that:

a) it shall supply and *deliver* the *Equipment* in accordance with the *Contract* so that it will:

i) be fit for its intended purposes;

ii) be of merchantable quality; and

iii) comply with all the requirements of the *Contract*;

b) the manufacture of *Equipment* shall be carried out and completed in a proper and workmanlike manner;

c) the *Equipment* shall conform to the description, specifications, drawings and standards referred to in the *Contract*;

d) it is, and shall at all times be, suitably qualified and experienced and shall exercise the highest degree of skill, care and diligence in performing its obligations under the *Contract*; and

e) it will fully co-operate with, and provide all reasonable assistance to, the *Purchaser* and any government authority to satisfy any regulatory, legislative or administrative requirements that may arise in connection with the *Equipment* or the *Contract* from time to time.

11A.2 Warranties Unaffected

The *Supplier's* warranties, obligations and liabilities under or in connection with the *Contract* remain unaffected notwithstanding:

a) any receipt or review of, or comment or direction on, or failure to comment in respect of any documents provided by the *Supplier* (including any design) by the *Purchaser* or any person for whom the *Purchaser* is responsible; or

b) any *variation*.

11A.3. Equipment Warranties

The *Supplier* shall:

a) use its best endeavors to ensure that all warranty entitlements obtained by the *Supplier* from third parties in connection with the *Equipment* include the *Purchaser* and the *Supplier* as named beneficiaries;

b) submit all warranties obtained from third parties in connection with the *Equipment* to the *Purchaser* prior to and as a pre-requisite to *acceptance*; and

c) to the extent that the *Supplier* is unable to have the *Purchaser* named as a beneficiary in respect of third party warranties, upon request by the *Purchaser*, assign or novate such warranties to the *Purchaser* or its nominee and promptly execute all documents and provide all reasonable assistance required by the *Purchaser* to give effect to such assignment or novation.

12 Insurance

12.1 Insurance of Equipment

The *Supplier* shall insure the *Equipment* for its replacement value against loss or damage, including loss or damage in transit to the *delivery place*, and unloading of the *Equipment*.

Insurance cover shall be effected before the *Supplier* commences performance of the *Contract*. The policy or policies under this subclause shall:

a) be maintained until risk in the *Equipment* passes to the *Purchaser*;

b) cover the parties' respective rights, interests and liabilities; and

c) if required by the *Purchaser*, be in the joint names of the parties.

12.1A Transit Insurance

Without limiting this clause 12, the *Supplier* shall, before transporting or otherwise moving any *Equipment* to be supplied under the *Contract*, effect a policy of insurance against loss of or damage to the same (resulting from any cause whatever) during their transit to the *delivery place* (including by air, sea or otherwise) and during their unloading at the *delivery place*, which shall:

a) be for an amount being no less than the full value of the *Equipment*;

b) be maintained until risk in the *Equipment* passes to the *Purchaser*;

c) be effected with an insurer and on terms and conditions both satisfactory to and approved in writing by the *Purchaser* in its discretion; and

d) be in the joint names of the *Purchaser* and the *Supplier*.

12.2 Public and product liability insurance

For the duration of the *Contract*, before commencing the performance of the *Contract*, the *Supplier* shall effect and maintain public liability insurance.

Before commencing the performance of the *Contract*, the *Supplier* shall effect and maintain product liability insurance for the duration of the *Contract* and thereafter 1 year after the expiry of the last defects liability.

Policies if required, shall:

a) cover the:

   i) respective rights and interests; and

   ii) liabilities to third parties,

of the parties and subcontractors from time to time, whenever performing obligations under the *Contract*;

b) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by subclause 12.1) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);

c) provide insurance cover for an amount in respect of any one occurrence of not less than USD 10,000,000; and

d) be with an insurer and otherwise in terms both approved in writing by the *Purchaser* (which approvals shall not be unreasonably withheld).

12.3 Insurance of employees

Before commencing performance of the *Contract*, the *Supplier* shall insure against statutory and common law liability for death of or injury to persons employed by the *Supplier*. The insurance cover shall be maintained for the duration of the *Contract*.

Where permitted by law, the insurance policy or policies shall be extended to provide indemnity for the *Purchaser's* statutory liability to the *Supplier's* employees.

The *Supplier* shall ensure that all subcontractors have similarly insured their employees.

12.4 Proof of Insurance

Whenever requested in writing by the *Purchaser*, the *Supplier* shall provide satisfactory evidence of such insurance effected and maintained.

Insurance shall not limit liabilities or obligations under other provisions of the *Contract*.

If after being so requested, the *Supplier* fails promptly to provide satisfactory evidence of compliance with subclause 12.1, 12.2 or 12.3, then without prejudice to other rights or remedies, the *Purchaser* may insure and the cost thereof shall become moneys due and payable from the *Supplier* to the *Purchaser*. The *Purchaser* may refuse payment until such evidence is produced by the *Supplier*.

12.5 Notices from or to insurer

The *Supplier* shall ensure that each insurance policy under subclause 12.1 or 12.2 contains provisions acceptable to the *Purchaser* which:

a) requires the insurer to inform both parties, whenever the insurer gives a party or a subcontractor a notice in connection with the policy;

b) provides that a notice of claim given to the insurer by either party or a subcontractor shall be accepted by the insurer as a notice of claim given by both parties and the subcontractor; and

c) requires the insurer, whenever the *Supplier* fails to maintain the policy, promptly to give written notice thereof to both parties and prior to cancellation of the policy.

12.6 Notices of potential claims

A party shall, as soon as practicable, inform the other party in writing of any occurrence that may give rise to a claim under an insurance policy required by subclause 12.1 or 12.2 and shall keep the other party informed of subsequent developments concerning the claim. The *Supplier* shall ensure that its subcontractors in respect of their operations similarly inform the parties.

12.7 Cross liability

Any insurance required to be effected in joint names in accordance with the *Contract* shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons constituting the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons constituting the insured as if a separate policy of insurance had been

issued to each of them (subject always to the overall sum insured not being increased thereby).

12.8 Additional insurance obligations

a) The *Supplier* shall at all times, at its own cost and expense, comply with all relevant terms and conditions of each of the insurances required under this *Contract* and the requirements of any relevant insurer so as to prevent any loss of or any prejudice to the rights of any party insured thereunder.

b) The *Supplier* shall not in performing its obligations under the *Contract* do or permit any act or suffer any circumstances of which the *Supplier* is aware will be done or will occur and which either a reasonable person in the *Supplier's* position would recognise or the *Supplier* recognises as an act or circumstance which may cause any of the insurances required under the *Contract* to become void or voidable.

c) If there is any occurrence, circumstance, matter or thing arising out of or in connection with the *Equipment* or the *Supplier's* acts or omissions of which the *Supplier* becomes aware and which either a reasonable person in the *Supplier's* position would recognise or the *Supplier* recognises as an occurrence, circumstance, matter or thing which may give rise to a claim under any of the insurances required under the *Contract*, the *Supplier* shall:

   i) promptly give the *Purchaser* written particulars thereof;

   ii) provide all reasonable assistance to the *Purchaser* in the investigation of the circumstances relating to such occurrence, circumstance, matter or thing;

   iii) in accordance with any relevant policy of insurance or *legislative requirement*, give all necessary notices and take all reasonable measures to obtain such indemnity as may be available under the relevant insurance;

   iv) co-operate with the *Purchaser* and any relevant insurer in processing any claim, in obtaining any evidence and ensuring the availability of any witnesses;

   v) despite any other provision of the *Contract* (other than subparagraph (vi)) apply any money available under the relevant indemnity, so far as it shall go, in compensation of any loss suffered or incurred by the *Purchaser* and thereafter to any other party; and

   vi) despite any other provision of the *Contract*, accept as full payment for any rectification or replacement of *Equipment* which is the subject of an insurance claim, the amount of insurance proceeds recovered by the *Purchaser* or the *Supplier* in respect of that rectification or replacement.

13 Directions

Except where the *Contract* otherwise provides, the *Purchaser* may give a *direction* orally but shall as soon as practicable confirm it in writing. If

the *Supplier* in writing requests the *Purchaser* to confirm an oral *direction*, the *Supplier* shall not be bound to comply with the *direction* until the *Purchaser* does so.

13A Purchaser's Representative

The *Purchaser* may at any time, by written notice to the *Supplier*, appoint (and change the appointment of) a *Purchaser's Representative* and the *Purchaser's Representative* appointed may carry out all of the *Purchaser's* functions under the *Contract*:

a) as agent and representative of the *Purchaser*; and

b) in accordance with instructions given to it by the *Purchaser* (acting in its absolute discretion unless the *Contract* expressly requires otherwise).

The *Supplier* shall comply with the *directions* of the *Purchaser's Representative*.

14 Programming

The *Supplier* shall give the *Purchaser* reasonable advance notice of when the *Supplier* needs information, materials, documents or instructions from the *Purchaser*.

The *Purchaser* shall not be obliged to give any information, materials, documents or instructions earlier than the *Purchaser* should reasonably have anticipated at the *date of acceptance of tender*.

The *Purchaser* may direct in what order and at what time the various items or parts of the *Equipment* shall be *delivered*. If the *Supplier* can reasonably comply with the *direction*, the *Supplier* shall do so. If the *Supplier* cannot reasonably comply, the *Supplier* shall give the *Purchaser* written notice of the reasons.

A *delivery program* is a written statement showing the dates by which, or the times within which, the various items or parts of the *Equipment* are to be *delivered* and shall include critical path manufacturing dates.

The *Purchaser* may direct the *Supplier* to give the *Purchaser* a *delivery program* within the time and in the form directed.

The *Supplier* shall not, without reasonable cause, depart from a *delivery program*.

If compliance with any such *directions* under this clause, except those pursuant to the *Supplier's* default, causes the *Supplier* to incur more or less cost than otherwise would have been incurred had the *Supplier* not been given the *direction*, the difference shall be assessed by the *Purchaser* and added to or deducted from the *contract sum*.

14A Acceleration

14A.1 Acceleration to remedy Supplier's departure from program

a) In the event of a departure from a *delivery program* (other than a departure permitted pursuant to clause 14), the *Supplier* shall be required to notify the *Purchaser* in writing of the departure and include in the notice details of the course of action which the *Supplier* proposes to undertake to remedy such departure from the *delivery program*;

b) If either:

i) the *Supplier* fails to notify in accordance with paragraph (a);

ii) the course of action notified in accordance with paragraph (a) is not to the reasonable satisfaction of the *Purchaser*; or

iii) the *Purchaser* notifies the *Supplier* that, in lieu of an *EOT* which would have been granted pursuant to clause 17.4, this clause shall apply,

then the *Purchaser* may, without limiting any other rights it may have, issue one or more *directions* (including, to the extent reasonably practicable, a *direction* to accelerate the work to be carried out, whether by way of overtime, additional resources or otherwise) to, as applicable, remedy the departure from the *delivery program* or overcome or minimise the effects of the whole or any part of the delay which would have entitled the *Supplier* to an *EOT* (the subject of paragraph (c)) but for this clause;

c) If, in the *Purchaser*'s reasonable opinion, the *Supplier* will not deliver the *Equipment* by the *date for delivery* (***Delay Events***) then the *Purchaser* may, without limiting any other rights it may have, issue one or more *directions* (including, to the extent reasonably practicable, a *direction* to accelerate the work to be carried out, whether by way of overtime, additional resources or otherwise) to overcome or minimise the effects of the whole or any part of the *Delay Events* specified in the relevant *direction*;

d) The *Supplier* shall have no claims arising out of or in connection with compliance with the *directions* issued pursuant to paragraphs (b) or (c) except to the extent that the *directions* were issued pursuant to paragraph (b)(iii), in which case, to the extent that the *Supplier* incurs more or less costs than otherwise would have been incurred but for such directions, the difference shall be assessed by the *Purchaser* and added to or deducted from the contract sum

14A.2 Acceleration for the Purchaser's convenience

Without limiting clause 14A.1:

a) the *Purchaser* may at any time give to the *Supplier* written notice of a proposed direction that the *Supplier* accelerate the progress of the work under the *Contract* (***Acceleration Request***);

b) within 2 days of receipt of the *Acceleration Request*, the *Supplier* shall notify the *Purchaser* as to whether the *Supplier* can comply with the *Acceleration Request*, together with details of:

i) the effect on the *date for delivery*;

ii) all costs to the *Purchaser* (including all time related costs) of the *Supplier* complying with the *Acceleration Request*;

iii) any other issues requested by the *Purchaser*; and

iv) if the *Supplier* cannot comply, written notice of the reason,

in sufficient detail to enable the *Purchaser* to properly assess the estimate;

c) the *Purchaser* may direct the *Supplier* to give a more detailed quotation for the *Acceleration Request* by measurements or other evidence of cost;

d) upon consideration of the information provided by the *Supplier* in response to an *Acceleration Request*, the *Purchaser* may direct the *Supplier* to accelerate the work under the *Contract* so as to bring forward the *date for delivery* (***Acceleration Direction***);

e) an *Acceleration Direction* given under this clause shall be taken to be a *direction* given under clause 19.1 of the *Contract*;

f) the giving by the *Purchaser* of, or the compliance by the *Supplier* with, an *Acceleration Direction* shall not prejudice the *Purchaser's* right to claim liquidated damages in accordance with the *Contract.*

15 Suspension

15.1 Purchaser's suspension

The *Purchaser* may direct the *Supplier* to suspend supply or *delivery* of the whole or part of the *Equipment* for such time as the *Purchaser* thinks fit, if the *Purchaser,* acting reasonably, is of the opinion that it is necessary:

a) because of an act, default or omission of:

i) the *Purchaser* or its employees, consultants, agents or other contractors (not being employed by the *Supplier*); or

ii) the *Supplier*, a subcontractor or either's employees or agents;

b) for the protection or safety of any person or property; or

c) to comply with a court order or a legal imposition or directive.

15.2 Supplier's suspension

If the *Supplier* wishes to suspend supply or *delivery* of the whole or part of the *Equipment*, otherwise than pursuant to subclause 24.7, the *Supplier* shall obtain the *Purchaser's* prior written approval. The *Purchaser* may approve the suspension and may impose conditions of approval.

15.3 Recommencement

As soon as the *Purchaser* becomes aware that the reason for any suspension no longer exists, the *Purchaser* shall direct the *Supplier* to recommence the suspended supply or *delivery* as soon as reasonably practicable.

The *Supplier* may recommence the supply or *delivery* suspended pursuant to subclause 15.2 or 24.7 at any time after reasonable notice to the *Purchaser*.

15.4 Cost

The *Supplier* shall bear the cost of suspension pursuant to paragraph (a)(ii) of subclause 15.1 and subclause 15.2. If the *Supplier* made the protection, safety or court order necessary, the *Supplier* shall bear the cost of suspension pursuant to paragraph (b) or (c) of subclause 15.1. If the *Supplier* otherwise incurs more or less cost than otherwise would

have been incurred, the difference shall be assessed by the *Purchaser* and added to or deducted from the *contract sum*.

16 Time

16.1 Notice of delay

A party becoming aware of anything which will probably cause delay to supply or *delivery* shall promptly give the other party written notice of that cause and the estimated delay.

16.2 Claim

The *Supplier* shall be entitled to such extension of time for *delivery* as the *Purchaser*, acting reasonably, assesses (***EOT***), if:

a) *delivery* is or will be delayed by a *qualifying cause of delay*; and

b) the *Supplier* gives the *Purchaser*, within 14 days of when the *Supplier* should reasonably have become aware of that causation occurring, a written claim for an *EOT* evidencing the facts of causation and of the delay to *delivery* (including extent).

If further delay results from a *qualifying cause of delay* evidenced in a claim under paragraph (b) of this subclause, the *Supplier* shall claim an *EOT* for such delay by promptly giving the *Purchaser* a written claim evidencing the facts of that delay.

16.3 Assessment

When both non-qualifying and *qualifying causes of delay* overlap, the *Purchaser* shall apportion the resulting delay to supply and *delivery* according to the respective causes' contribution.

In assessing each *EOT* the *Purchaser* shall disregard questions of whether:

a) the *Equipment* can nevertheless be *delivered* without an *EOT*; or

b) the *Supplier* can accelerate,

but shall have regard to what prevention and mitigation of the delay has not been effected by the *Supplier*.

16.4 Extension of time

Within 14 days after receiving the *Supplier's* claim for an *EOT*, the *Purchaser* shall give to the *Supplier* a written *direction* evidencing the *EOT* so assessed. If the *Purchaser* does not do so, there shall be a deemed assessment and *direction* for an *EOT* as claimed.

Notwithstanding that the *Supplier* is not entitled to or has not claimed an *EOT*, the *Purchaser* may at any time and from time to time before issuing the *final certificate* direct an *EOT*.

16.4A Additional extension of time provisions

Despite any other clause in the *Contract*, the *Supplier* shall not be entitled to an *EOT*:

a) unless it has given all the notices and information required by clause 16.2 within the time periods specified in clause 16.2;

b) unless it has demonstrated to the satisfaction of the *Purchaser* in its notice claiming an *EOT* that:

i) the delay has affected the *Supplier's* critical path and the impact of the delay on the *delivery* of the *Equipment*; and

ii) the *Supplier* has taken all reasonable measures to mitigate the effect of the delay; and

c) to the extent that the *Purchaser* has directed the *Supplier* to accelerate to overcome or minimise the effects of the delay pursuant to clause 14A.

16.4B Limit on EOT

Despite any other clause of the *Contract*, the *Supplier* will not be entitled to claim an *EOT* for any cause of delay within the reasonable control of the *Supplier*, its *subcontractors* or their respective employees, officers, agents, invitees or any other person for whom they are responsible.

16.5 Liquidated damages

If the *Equipment* is not *delivered* by the *date for delivery* or is rejected pursuant to subclause 20.1, liquidated damages in the amount of 1% of the total price shall be due and payable to the *Purchaser* for every week of delay after the *date for delivery* to and including the earliest of the *date of delivery* or termination of the *Contract* or, where the *Equipment* has been rejected, upon *acceptance*.

If an *EOT* is directed after the *Supplier* has paid or the *Purchaser* has set off liquidated damages, the *Purchaser* shall forthwith repay to the *Supplier* such of those liquidated damages as represent the days the subject of the *EOT*.

16.6 Delay damages

For every day the subject of an *EOT* for a *compensable cause* and for which the *Supplier* gives the *Purchaser* a claim for delay damages pursuant to subclause 26.1, damages in in the amount of 1% of the total price shall be due and payable to the *Purchaser* for every week of delay.

16.7 Reduction of time for delivery date

Where any *direction* given by the *Purchaser* (including any *variation*) has the effect of reducing the amount of time required by the *Supplier* to achieve *delivery* of the *Equipment* to the *delivery place*, the *Purchaser* may give to the *Supplier* a written direction bringing forward the *date for delivery* by a reasonable period.

17 Testing

17.1 Acceptance testing

The *Purchaser* may direct that the whole or any part of the *Equipment* be tested before *acceptance*. Such *acceptance testing* shall be completed within 30 days after delivery. The *Supplier* shall give such assistance and samples and make accessible such parts of the *Equipment* as may be directed by the *Purchaser*.

17.2 Who conducts

Tests shall be conducted as provided elsewhere in the *Contract* or by the *Purchaser* or a person (which may include the *Supplier*) nominated by the *Purchaser*.

17.3 Notice

The *Purchaser* or the *Supplier* (whichever is to conduct the *test*) shall give reasonable written notice to the other of the date, time and place of the *test*. If the other does not attend, the *test* may nevertheless proceed.

17.4 Delay

Without prejudice to any other right, if the *Supplier* or the *Purchaser* delays in conducting a *test*, the other, after giving reasonable written notice of intention to do so, may conduct the *test*.

17.5 Completion and results

On completion of the *test*s, the *Supplier* shall make good the *Equipment* so that it fully complies with the *Contract*.

Results of *test*s shall be promptly made available by each party to the other.

17.6 Costs

Costs in connection with testing pursuant to this clause shall be borne by the *Purchaser* except where the *Contract* otherwise provides or the *test* is consequent upon, or reveals a failure of the *Supplier* to comply with the *Contract* (including this clause).

17.7 Further testing

If at any time before the expiry of the *defects liability period:*

a) the *Purchaser* asserts that any part of the *Equipment* is not in accordance with the *Contract*; and

b) the *Supplier* requests permission to *test* the *Equipment*,

the *Purchaser* shall not refuse the *Supplier* reasonable access to *test* the *Equipment*.

18 Delivery

18.1 Mode of and date and place for delivery

The *Supplier*, at its expense, shall *deliver* the *Equipment* on the *date for delivery* to the *delivery place*. If so requested, the *Supplier* shall give the *Purchaser* reasonable advance notice of each *delivery*.

The *Supplier* shall promptly unload the *Equipment* at the *delivery place*. When so unloaded the *Purchaser* shall take *delivery* of the *Equipment.*

The *Purchaser* may direct the *Supplier* to change the *date for delivery, delivery place* or the mode of *deliver* (including that the *Purchaser* may direct the *Supplier* to deliver to, and hold in, storage (provided by the *Supplier*) for a period of time nominated by the *Purchaser*). If the *Supplier* can reasonably comply with the *direction*, the *Supplier* shall do so. If the *Supplier* cannot reasonably comply, the *Supplier* shall give the *Purchaser* written notice of the reasons.

If compliance with any such *directions* under this subclause, except those pursuant to the *Supplier's* default, causes the *Supplier* to incur more or less cost than otherwise would have been incurred had the *Supplier* not been given the *direction*, the difference shall be assessed by the *Purchaser* and added to or deducted from the *contract sum*.

18.2 Separable portions

Separable portions may be directed by the *Purchaser*, who shall clearly identify for each, the:

a) item of the *Equipment*;

b) *date for delivery*; and

c) respective amounts for *security*, liquidated damages and delay damages (all calculated pro-rata according to the ratio of the value of the *separable portion* to the *contract sum*).

18.3 International delivery

As required by the *Purchaser*, the *Supplier* shall be responsible to prepare the *Equipment* in a manner appropriate for transport via sea and/or road to the *Project Site*. Compliance with this provision does not limit, affect or relieve the *Supplier* of any other obligation under the *Contract*.

Packing of the *Equipment* shall be suitable for transport over rough terrain.

The parties acknowledge that the Client enjoys certain fiscal benefits as a mineral title holder in Mozambique, subject to the terms and provisions of applicable Mozambican law. The Supplier agrees to consult and cooperate with and to follow the agreed customs, transit, fiscal and other procedures, including the required format of the invoice and Bill of Lading, in order to ensure the application of any tax exemptions from VAT, duty and other taxes and fees that might otherwise apply to the transactions contemplated herein. For this purpose the Supplier shall provide the Purchaser with a draft invoice and Bill of Lading prior to the initiation of any shipping. Any VAT, customs duty or other tax, fee (including customs warehouse fees) or fine or penalty (the payment of which would otherwise be exempt or not payable under the respective applicable Mozambican law) that is applied to the Equipment import and other transactions as a result of a party's failure to comply with the above-referred agreed procedures shall be for the account of the party failing to comply.

Non-conforming deliveries will not be accepted by Minas de Benga Limitada and will constitute non-delivery.

19 Risk in and ownership of the Equipment

19.1 Risk in the Equipment

Despite any other clause of the *Contract*, risk in the *Equipment* shall only pass from the *Supplier* to the *Purchaser* upon the later of:

a) delivery; or

b) *acceptance* of the *Equipment* in accordance with clause 20 of the *Contract*.

Unless the *Equipment* is in the *Supplier's* possession, the *Purchaser* shall take reasonable measures to protect the *Equipment* from loss or damage occurring after *delivery* but before risk in the *Equipment* has passed to the *Purchaser*.

19.2 Ownership of Equipment

Despite any other clause of the *Contract*, ownership in the *Equipment* shall pass from the *Supplier* to the *Purchaser* upon the date of payment of the *Contract* price, or part thereof, for the *Equipment*, whichever is the earlier.

If ownership of the *Equipment* has passed to the *Purchaser* pursuant to this subclause and:

a) subclause 20.4(a) applies, ownership of the *Equipment* shall revert to the *Supplier* upon the *Supplier's delivery* to the *Purchaser* of the replacement *Equipment*; or

b) subclause 20.4(b) applies, ownership of the *Equipment* shall revert to the *Supplier* upon the *Supplier's* compliance with subclause 20.7(a) and (b).

19.3 Title

At the time ownership passes under clause 19.2, the *Supplier* warrants full, clear and unrestrained title to *Purchaser* to the *Equipment* and all parts of it furnished by the *Supplier* in performance of the *Contract*, free and clear of any and all liens, restriction, reservations, security interests and encumbrances."

20 Acceptance or rejection of Equipment

20.1 Notification

Within 7 days after:

a) the later of:

   i) *delivery*; or

   ii) if applicable, completion of *acceptance testing*, or

b) if applicable, the receipt of a notice given by the *Supplier* pursuant to subclause 20.6,

the *Purchaser* shall give a written notice to the *Supplier* that the *Equipment* is *acceptable* or that it is rejected.

If the *Purchaser* fails to so notify the *Supplier*, rejection shall be deemed to have been notified upon the expiration of the 7 days period.

20.2 Details of notification

If notice of *acceptance* of the *Equipment* is given pursuant to subclause 20.1, the notice shall state the minor *defects*, if any, to be rectified by the *Supplier*.

If notice of rejection of the *Equipment* is given pursuant to subclause 20.1, the notice:

a) shall state the reasons for the rejection; and

b) may either:

   i) direct the *Supplier* to submit a proposal under subclause 20.3; or

   ii) notify the *Supplier* that the *Purchaser* elects to accept the *Equipment* and claim damages.

20.3 Supplier to notify action

Within 14 days after receipt of a *direction* under subclause 20.2(b)(i), the *Supplier* shall notify the *Purchaser* in writing whether the *Supplier* proposes to:

a) correct the *Equipment* where it is located; or

b) recover and either:

   i) replace the *Equipment*; or

   ii) correct it, and, if so, where,

and, in either event, also specify the:

c) nature of the work involved;

d) times when or during which the replacement or correction will take place;

e) access which the *Supplier* will require and the disruption, if any, which might be caused to the *Purchaser*; and

f) damages, if any, proposed by the *Supplier* to compensate the *Purchaser* for the *Supplier's* failure to comply with the *Contract.*

If the *Supplier* fails to so notify the *Purchaser*, subclause 20.7 shall apply as if a proposal by the *Supplier* had been rejected.

20.4 Purchaser's decision on Supplier's proposal

Within the period of 7 days after receipt of the *Supplier's* proposal under subclause 20.3, the *Purchaser* shall by written notice to the *Supplier*:

a) accept the *Supplier's* proposal;

b) reject the *Supplier's* proposal;

c) if the *Purchaser* has not already done so, inform the *Supplier* that the *Purchaser* elects to accept the *Equipment* and claim damages.

If the *Purchaser* fails to gives such notice to the *Supplier*, the *Supplier's* proposal shall be deemed to have been rejected by the *Purchaser* upon the expiration of the period stated in *Item* 30.

20.5 Consequences of acceptance of proposal

Subject to the terms of the accepted proposal and the *Purchaser's* rights under subclause 16.5, if the *Purchaser* accepts the *Supplier's* proposal given under subclause 20.3, the *Purchaser* shall have no right to claim in connection with the failure of the *Supplier* to comply with the requirements of the *Contract*, as identified by the *Purchaser* in its notice rejecting the *Equipment* under subclause 20.1.

20.6 Compliance by Supplier

The *Supplier* shall promptly:

a) comply with any proposal accepted by the *Purchaser* under subclause 20.4; and

b) give written notice to the *Purchaser* upon the *Supplier's* compliance with that proposal whereupon subclause 20.1 shall apply.

20.7 Rejection of Supplier's proposal

If the *Supplier's* proposal under subclause 20.3 is rejected by the *Purchaser* under subclause 20.4, or the *Supplier* fails to notify the *Purchaser* under subclause 20.3, the *Supplier* shall:

a) prior to removal of the rejected *Equipment*, repay to the *Purchaser* all moneys paid to the *Supplier* by the *Purchaser* for that *Equipment*;

b) remove the *Equipment* from the *Purchaser's* possession within a reasonable period of time notified in writing by the *Purchaser*; and

c) where appropriate, pay damages reasonably incurred by the *Purchaser*.

The rights and remedies given by this subclause are in addition to any other rights and remedies of the *Purchaser*.

20.8 Purchaser's right to use Equipment

Other than for the purposes of *acceptance testing*, the *Purchaser* shall not use the *Equipment* before *acceptance* without the written approval of the *Supplier*.

21 Defects liability

The *defects liability period* shall be of 12 months and shall commence on the date of *acceptance*.

The *Supplier* shall carry out rectification at times and in a manner causing as little inconvenience to the users of the *Equipment* as is reasonably possible.

As soon as possible after *acceptance*, the *Supplier* shall rectify all *defects* existing at the date of *acceptance*.

At any time during the *Contract* up to the expiry of the *defects liability period*, the *Purchaser* may give the *Supplier* a *direction* to rectify a *defect* which:

a) shall identify the *defect* and the reasonable date for completion of its rectification; and

b) may state a date for commencement of the rectification and whether in respect of *defects* identified after acceptance, there shall be a separate *defects liability period* therefore (not exceeding the period of 12 months, commencing at 4:00 pm on the date the rectification is completed and governed by this clause).

If the rectification is not commenced or completed by the stated dates, the *Purchaser* may have the rectification carried out by others but without prejudice to any other rights and remedies the *Purchaser* may have. The cost thereby incurred shall be moneys due and payable to the *Purchaser*.

For the avoidance of doubt, if the *Equipment* is made up of separately delivered items or *separable portions*, then the *defects liability period* for all items or all *separable portions* of the *Equipment* commences from the *acceptance* of the last item or *separable portion*.

22 Variations

22.1 Directing variations

The *Supplier* shall not vary the *Equipment* except as directed in writing, failing which the *Supplier* shall not be entitled to any *Claim* in connection with the variation of the *Purchaser's direction*.

The *Purchaser*, before *acceptance*, may direct the *Supplier* to carry out any one or more of the following which are nevertheless of an extent contemplated by, and capable of being carried out under, the provisions of the *Contract*:

a) increase or decrease the quantities of the *Equipment* or any part of it;

b) omit any part of the *Equipment*;

c) change the character, quality or performance requirements of the *Equipment*;

d) change the dimensions of the *Equipment* or any part of it.

22.2 Proposed variations

The *Purchaser* may give the *Supplier* written notice of a proposed *variation.*

The *Supplier* shall within 7 days after receiving such notice, notify the *Purchaser* whether the proposed *variation* can be effected, together with, if it can be effected, the *Supplier's* estimate of the:

a) effect on the *delivery program* (including the *date for delivery*); and

b) cost (including all time-related costs, if any) of the proposed *variation*.

The *Purchaser* may direct the *Supplier* to give a detailed quotation for the proposed *variation* supported by evidence of cost.

The *Supplier's* costs for each compliance with this subclause shall be assessed by the *Purchaser* as moneys due to the *Supplier*.

22.3 Variations for the convenience of the Supplier

If the *Supplier* requests the *Purchaser* to direct a *variation* for the convenience of the *Supplier*, the *Purchaser* may do so. The *direction* shall be written and may be conditional. Unless the *direction* provides otherwise, the *Supplier* shall be entitled to neither extra time nor extra money.

22.4 Pricing

The *Purchaser* shall, as soon as possible, price each *variation* using the following order of precedence:

a) prior agreement;

b) applicable rates or prices in the *Contract*;

c) rates or prices in a *schedule of unit prices*, to the extent that it is reasonable to use them; and

d) reasonable rates or prices, which shall include a reasonable amount for profit and overheads,

and any deductions shall include a reasonable amount for profit but not overheads.

That price shall be added to or deducted from the *contract sum*.

22.5 Notification of variations

Despite any other clause in the *Contract*, if the *Purchaser* at any time gives the *Supplier* a direction which involves a *variation* (except directions which the *Purchaser* expressly acknowledges involve a *variation*) the *Supplier* shall notify the *Purchaser* of:

a) the fact that the direction involves a *variation*; and

b) the *Supplier's* estimate of the additional work necessary to give effect to the *variation* (including additional cost and the impact on the *delivery program* and *date for delivery*),

within 7 days after receipt by the *Supplier* of the direction (and, in any event, prior to carrying out the direction), failing which the *Supplier* shall not be entitled to any *Claim* in connection with the variation or *Purchaser's* direction.

23 Payment

23.1 Invoices and time for payment

The *Supplier* shall render to the *Purchaser* an invoice for moneys then due to the *Supplier* pursuant to the *Contract*. Each invoice shall include details of the *Equipment* supplied and *delivered* and may include details of other moneys then due to the *Supplier* pursuant to the provisions of the *Contract.*

An early invoice shall be deemed to have been received on the date for rendering that invoice.

Subject to subclause 23.2, within the period of 30 days after receiving an invoice under this subclause, the *Purchaser* shall pay to the *Supplier* the amount then due to the *Supplier* pursuant to the *Contract*.

With such payment, the *Purchaser* shall issue a statement to the *Supplier* setting out the calculations employed to arrive at the amount and, if the amount is more or less than the invoice rendered by the *Supplier*, the reasons for the difference.

If the *Supplier* does not render an invoice, the *Purchaser* may nevertheless make payment to the *Supplier* pursuant to this subclause.

23.2 Payment for Equipment not yet delivered

The *Purchaser* shall make an advance payment for *Equipment* not yet accepted under subclause 20.1 or 20.8 for an amount not exceeding 30% of the *contract sum* and provided that the *Supplier* provides the *security* referred in sub-clause 3.1.

23.3 Effect of payment

Payment of moneys under subclause 23.1 or 23.2 shall not be evidence that the subject *Equipment* complies with the *Contract*. Payment other than final payment shall be on account only.

23.4 Final payment claim and final certificate

On *date of delivery*, the *Supplier* shall give the *Purchaser* a written *final payment claim* endorsed 'Final Payment Claim' being a progress claim together with all other claims whatsoever in connection with the subject matter of the *Contract*.

23.5 Other moneys due

The *Purchaser* may elect that moneys due and owing otherwise than in connection with the subject matter of the *Contract* also be due to the *Purchaser* pursuant to the *Contract.*

23.6 Additional set-offs by the Purchaser

In addition to the *Purchaser's* rights under clause 23.5, the *Purchaser* may deduct from moneys due to the *Supplier* any moneys claimed by the *Purchaser* from the *Supplier* or payable by the *Supplier* to the *Purchaser* under or in connection with the *Contract* (including, without limitation, any withholding tax payable in connection with the *Equipment*), whether liquidated or otherwise, and if those moneys are insufficient, the *Purchaser* may have recourse to the *security*.

23.7 Further conditions for payment claims

a) When making a payment pursuant to clause 20.1, the *Purchaser* may include a provisional assessment of the amount then provisionally due by way of liquidated damages.

b) If the *Purchaser* requests further information or evidence about a payment claim, the *Purchaser* shall not be obliged to make the relevant payment to the *Supplier* until the number of days stated in Item 33 after the further information or evidence is received by it.

24 Default or insolvency

24.1 Preservation of other rights

If a party breaches (including repudiates) the *Contract*, nothing in this clause shall prejudice the right of the other party to recover damages or exercise any other right or remedy.

24.2 Supplier's default

If the *Supplier* commits a substantial breach of the *Contract*, the *Purchaser* may, by hand or by registered post, give the *Supplier* a written notice to show cause.

Substantial breaches include, but are not limited to:

a) failing to:

   i) provide *security*;

   ii) provide evidence of insurance;

   iii) comply with subclause 20.6;

   iv) use the materials or standards of work required by the *Contract*; or

   v) pass unencumbered title in the *Equipment*;

b) wrongful suspension;

c) substantial departure from a *delivery program* without reasonable cause or the *Purchaser's* approval; and

d) where there is no *delivery program*, failing to proceed with due expedition and without delay.

24.3 Purchaser's notice to show cause

A notice under subclause 24.2 shall state:

a) that it is a notice under clause 24 of this contract;

b) the alleged substantial breach;

c) that the *Supplier* is required to show cause in writing why the *Purchaser* should not exercise a right referred to in subclause 24.4;

d) the date and time by which the *Supplier* must show cause (which shall not be less than 7 clear days after the notice is received by the *Supplier*); and

e) the place at which cause must be shown.

25.4 Purchaser's rights

If the *Supplier* fails to show reasonable cause by the stated date and time, the *Purchaser* may by written notice to the *Supplier* terminate the *Contract*. If the *Contract* is so terminated, the *Purchaser* may take possession of the *Equipment* or any part of the *Equipment* (including that which is in the course of manufacture or to be imported) paid for by the *Purchaser*, notwithstanding that it has not yet been *delivered*.

24.4A Purchaser's rights on expiry of time for delivery

Despite any other clause of the *Contract*, if the *Supplier* fails to *deliver* the *Equipment* by the *delivery date*, the *Purchaser* may, without prejudice to any other rights, by written notice to the *Supplier*, terminate the *Contract*. It the *Contract* is so terminated the *Purchaser* may take possession of the *Equipment* or any part of the *Equipment* (including that which is in the course of manufacture or yet to be imported) paid for by the *Purchaser*, notwithstanding that it has not yet been *delivered*;

24.4B Purchaser may remedy Supplier's default at Supplier's expense

Despite any other clause in the *Contract* and in addition to any other rights of the *Purchaser*, the *Purchaser* may perform or have others perform any obligation of the *Supplier* which the *Supplier* has failed to perform after reasonable notice from the *Purchaser* requiring such performance and the costs incurred by the *Purchaser* shall be a debt due from the *Supplier* to the *Purchaser*.

Nothing in this clause 24.4B or any other provision of the *Contract* shall limit or exclude the *Purchaser's* common law rights with respect to *defects* in the *Equipment* (including work which is not in accordance with the *Contract*) and the *Purchaser* shall be entitled to recover as damages the costs and expenses incurred by it in rectifying any *defect* in the *Equipment* (including work which is not in accordance with the *Contract*) disregarding whether it was reasonable by comparison to the diminution in value incurred or suffered as a consequence of the *defect*.

24.5 Purchaser's default

If the *Purchaser* commits a substantial breach of the *Contract*, the *Supplier* may, by hand or by registered post, give the *Purchaser* a written notice to show cause.

Substantial breaches include, but are not limited to failing to:

a) provide *security*; and

b) make a payment due and payable pursuant to the *Contract*.

24.6 Supplier's notice to show cause

A notice given under subclause 24.5 shall state:

a) that it is a notice under clause 24 of this contract;

b) the alleged substantial breach;

c) that the *Purchaser* is required to show cause in writing why the *Supplier* should not exercise a right referred to in subclause 24.7;

d) the date and time by which the *Purchaser* must show cause (which shall not be less than 7 clear days after the notice is received by the *Purchaser*); and

e) the place at which cause must be shown.

24.7 Supplier's rights

If the *Purchaser* fails to show reasonable cause by the stated date and time, the *Supplier* may, by written notice to the *Purchaser*, suspend the whole or any part of the performance of the *Contract*.

The *Supplier* shall remove the suspension if the *Purchaser* remedies the breach.

The *Supplier* may, by written notice to the *Purchaser*, terminate the *Contract*, if within 28 days of the date of suspension under this subclause the *Purchaser* fails:

a) to remedy the breach; or

b) if the breach is not capable of remedy, to make other arrangements to the reasonable satisfaction of the *Supplier*.

The *Supplier* shall be entitled to damages reasonably incurred by reason of the suspension.

24.8 Termination

If the *Contract* is terminated pursuant to subclause 24.4, 24.4A or 23.7, the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the *Contract* had the defaulting party repudiated the *Contract* and the other party elected to treat the *Contract* as at an end and recover damages.

24.9 Insolvency

If:

a) a party informs the other in writing, or creditors generally, that the party is insolvent or is financially unable to proceed with the *Contract*;

b) execution is levied against a party by a creditor;

c) a party is an individual person or a partnership including an individual person, and if that person:

i) commits an act of bankruptcy;

ii) has a bankruptcy petition presented against him or her or presents his or her own petition;

iii) is made bankrupt;

iv) makes a proposal for a scheme of arrangement or a composition; or

v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under the applicable Bankruptcy legislation or like provision under the law governing the *Contract*; or

d) in relation to a party being a corporation:

i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;

ii) it enters a deed of company arrangement with creditors;

iii) a controller or administrator is appointed;

iv) an application is made to a court for its winding up and not stayed within 14 days;

v) a winding up order is made in respect of it;

vi) it resolves by special resolution that it be wound up voluntarily (other than for a member's voluntary winding up); or

vii) a mortgagee of any of its property takes possession of that property,

then, where the other party is:

A) the *Purchaser*, the *Purchaser* may, without giving a notice to show cause, exercise the right under subclause 25.4; or

B) the *Supplier*, the *Supplier* may, without giving a notice to show cause, exercise the right under subclause 24.7.

The rights and remedies given by this subclause are additional to any other rights and remedies. They may be exercised notwithstanding that there has been no breach of contract.

25 Termination for convenience

The *Purchaser* may at any time terminate the *Contract* for its convenience (including where there has been no default or insolvency of the *Supplier*) by providing 7 days prior notice to the *Supplier* in which case the *Supplier* shall, upon receipt of the notice:

a) cease carrying out work under the *Contract*;

b) if and to the extent directed by the *Purchaser* to do so:

i) assign or novate in favour of the *Purchaser* any subcontracts (including, without limitation, for the provision of any materials) or rights under any subcontracts entered into or

obtained by the *Supplier* in connection with the carrying out of the work under the *Contract* or completion of the *Equipment*; and

ii) terminate any other outstanding subcontracts and recover from the subcontractor any property, documentation, material or information of the *Purchaser*;

c) deliver to the *Purchaser*, all property, documentation or information that the *Purchaser* provided to the *Supplier* in connection with it carrying out the work under the *Contract*; and

d) deliver to the *Purchaser* any of the materials or the work under the *Contract* which under the *Contract* have been paid for by the Purchaser or become the property of the *Purchaser*.

Upon termination of the *Contract* under this clause 25:

a) the *Purchaser* shall assess the value of the work performed under the *Contract* to the date of termination, evidencing the amount which would have been payable had the *Contract* not been terminated and had the *Supplier* been entitled to and rendered an invoice on the date of frustration;

b) the *Purchaser* shall pay the *Supplier*:

i)the amount due to the *Supplier* evidenced by all unpaid invoices as assessed by the *Purchaser* under subclause 24.1;

ii) the cost of materials and *Equipment* reasonably ordered by the *Supplier* which the *Supplier* is liable to accept, but only if they will become the *Purchaser's* property upon payment; and

iii) the costs reasonably incurred by the *Supplier* in expectation of completing the *Contract* and not included in any other payment; and

c) each party shall promptly release and return all *security* provided by the other.

d) the *Supplier* shall have no other *Claim* against the *Purchaser* for any overhead, loss of profits, costs, expenses, damages, losses or other liabilities arising from or in connection with the termination; and

e) any rights of the *Purchaser* arising from prior breaches by the *Supplier* shall not be affected.

26 Notification of claims

26.1 Communication of claims

The *prescribed notice* is a written notice of the general basis and quantum of the claim.

As soon as practicable after a party becomes aware of any claim in connection with the subject matter of the *Contract*, that party shall give to the other party the *prescribed notice* or a notice of *Dispute* under subclause 27.1.

This subclause and subclause 26.3 shall not apply to any claim, including a claim for payment (except for claims which would, other than for this

subclause, have been included in the *final payment claim*), the communication of which is required by another provision of the *Contract*.

26.2 Liability for failure to communicate

If the *Supplier* does not:

a) give to the *Purchaser* a prescribed notice of a Claim to which subclause 26.1 applies within 28 days of the *Supplier* first becoming aware of the circumstances giving rise to the Claim; or

b) give to the *Purchaser* in accordance with the requirements of the *Contract* any *Claim* required or contemplated to be communicated by a provision of the *Contract* (other than subclause 26.1) either:

   i) within the time specified by the Contract; or

   ii) if no time is specified, within 28 days of the Supplier first becoming aware of the circumstances giving rise to the *Claim*

   the *Supplier* shall not be entitled to the relevant *Claim*.

For the avoidance of doubt, if the *Supplier* does not make any *Claim* for an *EOT* within the time specified in subclause 16.2, the *Supplier* shall not be entitled to an *EOT*.

26.2B. Provisions to continue after termination

Unless the context otherwise required, rights and obligations (including warranties and indemnities) of the parties capable of taking effect after the expiration or termination of this *Contract* shall do so.

26.3 Unresolved claims

If within 28 days of giving a *prescribed notice* the claim has not been resolved, the *prescribed notice* shall be deemed to be a notice of *dispute* under subclause 27.1.

27 Dispute resolution

27.1 Notice of dispute

If a difference or dispute (together, ***Dispute***) between the parties arises in connection with the subject matter of the *Contract*, including a *Dispute* concerning a claim:

a) in tort;

b) under statute;

c) for restitution based on unjust enrichment or other quantum meruit; or

d) for rectification or frustration,

or like claim available under the law governing the *Contract*, then either party shall, by hand or by registered post, give the other a written notice of *Dispute* adequately identifying and providing details of the *Dispute*.

Notwithstanding the existence of a *Dispute*, the parties shall, subject to clauses 24 and 25 and subclause 27.4, continue to perform the *Contract*.

27.2 Conference

Within 14 days after receiving a notice of *Dispute*, the parties shall confer at least once to resolve the *Dispute* or to agree on methods of doing so. At every such conference each party shall be represented by a person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the *Dispute* has not been resolved within 28 days of service of the notice of *Dispute*, the parties shall refer the *Dispute* to arbitration, to be conducted in accordance with clause 27.3.

27.3 Arbitration

a) Any dispute, controversy or claim arising out of or relating to this Agreement, which is not resolved as specified in Sub-clause 27.2 above during a ten (10) day period from the date of written notice of a dispute by a party, shall be submitted by either Party for expedited arbitration and final resolution in accordance with this Clause and the rules of International Chamber of Commerce (Paris). The Party referring the dispute to arbitration shall, on the date of the referral, give the other Party written notice thereof.

b) The arbitration shall be conducted by a single arbitrator appointed as follows. Each Party shall within 8 (eight) days of receipt of the notice of referral of the dispute to arbitration appoint a representative and so advise the other Party and these two representatives shall designate the single neutral arbitrator. If the representatives nominated by the Parties fail to agree on the single neutral arbitrator within 8 (eight) days following the appointment of the latter of the two representatives, or if a Party fails to appoint a representative within 10 (ten) days after the other Party has duly designated his nominated representative, such arbitrator shall, if the Parties do not otherwise agree, be appointed by the ICC Dispute Board Centre (Paris).

c) Any sole neutral arbitrator appointed pursuant to this Clause shall have no professional or business connection with the Parties, or any Affiliate of the Parties. If for any reason an arbitrator is unable to perform his functions, a substitute shall be chosen in the same manner as the original arbitrator.

d) In the event the Parties' representatives fail to appoint such sole neutral arbitrator or expert within 8 (eight) days after receipt of the written notice from any Party proposing the appointment of an expert or sole arbitrator, the expert or sole arbitrator shall be appointed in accordance with ICC Rules. The arbitration will be made under administration and in accordance with the rules of the International Chamber of Commerce. The arbitration shall take place in Maputo, Mozambique. The language of the arbitration will be the language of this Contract.

e) The arbitration court shall decide the dispute presented to its consideration in the stated period of 30 (thirty) days from the date of its appointment.

f) The decision of the arbitration court to the dispute presented to its consideration shall be binding and final and having legal authority.

g) The Supplier agrees to continue performance supply of the Equipment during negotiation and legal or arbitration proceedings unless such supply is otherwise suspended by the Purchaser in accordance with the provisions of this Contract.

27.4 Urgent or injunctive relief

Nothing herein shall prejudice the right of a party to institute proceedings to seek injunctive or urgent declaratory relief.

28 General limitation of liability

28.1 Limitation of liability

Subject to subclause 28.2, the total liability of each party arising in connection with the subject matter of the *Contract* including a claim:

a) in tort;

b) under statute; or

c) for rectification or frustration,

or like claim available under the law governing the *Contract*, is limited to the amount of the *contract sum*.

This limitation shall continue to apply notwithstanding fundamental breach, breach of a fundamental term, rescission, repudiation or termination for any reason or frustration, whether unintentional or by operation of law.

28.2 Exclusion of limitation of liability

Despite any other clause of the *Contract*, any clause in the *Contract* that has the effect of limiting or excluding the *Supplier's* liability shall not apply to:

a) liability, in respect of, or arising out of, death or personal injury;

b) liability for liquidated damages;

c) liability for infringement of *intellectual property rights*;

d) liability out of which by law the party liable cannot contract;

e) liability of the *Supplier* for fraud, or illegal or malicious acts or omissions;

f) liability for amounts recoverable from any third parties; and

g) liability of the *Supplier* to the extent the *Supplier* is entitled to claim indemnity in respect of such liability under any policy of insurance or would have been entitled to claim indemnity in respect of such

liability had the *Supplier* complied with the *Contract* and the terms and conditions of the relevant policy.

Liability in respect of damages 28.2(a) to (g) above shall not be included in, or countered towards the limitation of liability under this clause 28.

29 Waiver of conditions

Except as provided at law or in equity or elsewhere in the *Contract*, none of the provisions of the *Contract* shall be varied, waived, discharged or released, except with the prior written consent of the parties.

Failure by a party at any time or from time to time to enforce or require strict compliance with, or performance of any terms or conditions of the *Contract* shall not of itself constitute waiver of, or affect, or impair such terms or conditions in any way, nor shall such failure of itself affect the right of the party to avail itself at any time of such remedies it may have for any subsequent breach of the terms by the other party.

30 Site requirements

30.1 Identification

Where required by the *Purchaser*, the *Supplier* and its employees and agents shall wear or carry at all times whilst on or entering the *Site* or the *Purchaser's* premises, badges or passes for the purpose of identification and shall comply with all other security arrangements or procedures prescribed by the *Purchaser*.

30.2 Access to Site

The *Supplier* shall:

a) before accessing the Site have in place insurances required to be effected by the *Supplier* pursuant to the *Contract*;

b) not enter upon any place notified by the *Purchaser* to the *Supplier* in writing as a place to which the *Supplier* is not to have access, without the prior written consent of the *Purchaser*;

c) ensure that any person (including its employees, *subcontractors* and their respective agents and invitees) entering upon the *Site*:

   i) has complied with the applicable law regarding immigration and labour issues;

   ii) completes such safety or other training or induction as the *Purchaser* in its discretion from time to time directs; and

   iii) leaves the Site promptly upon reasonable request by the *Purchaser* for any reason;

d) ensure that any vehicle taken onto the *Site* (including by any of its employees, subcontractor's suppliers and their employees) complies with the *Purchaser's* procedures and standards applying to vehicles taken onto the *Site* and is in compliance with all applicable laws.

e) take all reasonable steps to ensure that all persons for whom it is responsible or over whom it is capable or exercising control, whilst upon the *Site*, comply with the *Site* safety regulations, any campsite rules or regulations and with all reasonable directions given by the *Purchaser*.

30.3 Use of Site

The *Supplier* shall ensure that the *Supplier*, its officers, employees, subcontractors and their respective agents and invitees:

a) in providing the *Equipment*, do all things necessary to avoid causing nuisance to or interference with the *Purchaser's* use of the *Site* or any areas near the *Site* or the occupants or properties in the vicinity of the *Site*;

b) co-operate fully with any other contractors, suppliers, employees or agents of the *Purchaser* on or about the *Site*; and

c) at all times:

   i) keep themselves informed as to the requirements of, comply with and not do anything which may place the *Purchaser* in breach of *legislative requirements* applying to the *Site* or the *Project*;

   ii) comply with all procedures, policies or rules adopted from time to time by the *Purchaser* in connection with the *Site* (including the *Purchaser's* standard *Site* procedures for *Contractors* as amended, varied or substituted from time to time); and

   iii) comply with the directions (if any) given to the *Supplier* by the *Purchaser* at any time in connection with the *Site* (including access to and use of the *Site*).

   iv) shall while on site take preventive actions to minimise and mitigate its impact on the Site, restore and rehabilitate the Site land, vegetation and any man-made improvements to its previous condition and shall remove from job site and the vicinity thereof, and promptly dispose of, all debris, rubbish and surplus materials resulting from the Supplier's operations. Should the *Supplier* not perform clean-up promptly after receipt of notice from the *Purchaser*, the Client may, after giving fourteen (14) days notice in writing to the *Supplier*, perform or have others perform the clean-up on behalf of the *Supplier* and at the expense of the *Supplier*.

   v) without prejudice to any other provisions of this Contract, the *Supplier* shall, in carrying out its obligations under this Contract, comply with all national and municipal laws, statutes, regulations, by-laws, ordinances orders, and policies pertaining to the protection of the environment, and shall bear all costs arising from any violation thereof. The *Supplier* shall take all reasonable and prudent precautions to minimize the impact of its works on the environment and shall adhere to the terms and conditions as well as the spirit and intent of the *Purchaser*'s Environmental Management Plan, Programme and Policy, without prejudice to the requirements of the applicable law.

   vi) without prejudice to any other provisions of this Contract, the *Supplier* shall, in carrying out its obligations under this Contract, comply with all national and municipal laws, statutes, regulations, by-laws, ordinances orders, and policies

pertaining to host community relations, including prior notice and authorisation by the land titleholder or the *Purchaser* for execution of the works, respect for local property rights and compensation for any damages to land, property or persons, and shall bear all costs arising from any violation thereof. The *Supplier* shall take all reasonable precautions to minimize the impact of its operations on the local host community and shall adhere to the *Purchaser*'s Procedures and Policies for host community engagement and relationships.

vii) shall immediately report to the *Purchaser* any incident which results in, or has the potential to result in, material damage to the environment or host community land or property damage or injury to persons or a breach of any national or municipal laws, statutes, regulations, by-laws, orders concerning the protection of the environment.

viii) other Service necessary for the completion of the entire project but not included in the Contract may be performed by others concurrently with the performance of the works under this Contract. The *Supplier* recognises that the works may be performed under joint occupancy conditions and agrees to co-operate with the *Purchaser* and other users on the Site so that the project as a whole will progress smoothly with a minimum of delays due to interference between various users on Site.

31 Occupational health, safety and environment (OHS&E) & security

The *Supplier*:

a) is responsible for the OHS&E management and security of its work site;

b) shall comply with all applicable environmental laws, regulations, codes of practice and standards in carrying out works under the *Contract*;

c) shall have environmental management systems and procedures in place to identify, assess, control and minimise environmental risks arising from activities, products or services associated with the *Contract*;

d) must immediately notify the *Purchaser* of all OHS&E and security incidents in respect of the *Contract* or the *Equipment*.

33 TAXES

All fees and costs shall comply with and be subject to all direct and retained at source taxes, duties fees or charges of whatever nature required by any law, ordinance, regulation or by-law made or hereafter made by any government, provincial, municipal, local or other authority and applicable to the services and this contract.

Value Added Tax, if any, assessed in accordance with applicable law, shall be additional to the contract fees.

ANNEXURE A

DESCRIPTION OF EQUIPMENT

. Specification

Main Performance Parameter		
Item	***Description***	***Parameter***
1	Designation type	Gondola with underframe
2	Payload	61.5 Tones
3	Axle load	21 tones
4	Tare weight	20.5 tones
5	Gross weight	82 tones
6	Cubic capacity	73 m^3
7	Maximum running speed	90 Km/h
8	Track gauge	1067 mm
9	Radius of minimum curve negotiated	85 m
Body main dimension		
10	Body type material	3CR12 Steel
11	Body length over couplers	13200 mm
12	Height from coupler center line to top of rail	895mm ± 6mm
13	Maximum width of wagon	3004 mm
Bogie		
14	Type	HS MK VII Self-steering
15	Wheel diameter	863 mm (34``)
16	Airbrake system	AAR Air brake
17	Brake pressure (empty/loaded)	(500/ 550) KPA
18	Bearing type	Timken AAR grade D (5 1/2``x10)

ANNEXURE B

CONTRACT SUM AND PAYMENT TERMS

ANNEXURE C

FORM OF BOND

Bond no. ...

In the name of and at the request of (1) _____, (2) _____ issues by means of this document a bank guarantee/insurance guarantee in favour of Minas de Benga, Lda, which is aimed to ensure the exact and punctual compliance with the obligations of the Supplier in the contract for (*insert references*), to the value of _____ (*value in full*).

(2) _____ declares that it is obliged on account of this bank guarantee/insurance guarantee for which it takes full responsibility, to immediately deliver to Minas de Benga, Lda any amounts, to the limit of the present guarantee, that turn out to be necessary and that are requested, irrespective of judicial decisions, in cases of non-compliance with the legal, contractual or pre-contractual obligations of the contracting party.

Furthermore (2) _____ declares that, in case it is called upon to honour the present guarantee, it cannot take into consideration any objections from the guaranteed contractor, limiting itself to execute the payment "at first request" in terms of the contract.

This bank guarantee/insurance guarantee will remain valid until its release is explicitly authorized by Minas de Benga, Lda, and it cannot be cancelled or changed without its consent and irrespective from the payment of any premiums that are due.

Any dispute will be decided by the laws in force in the Republic of Mozambique, electing as competent forum the Judicial Court of the Province of Maputo, with the explicit waiver to any other forum.

****

(1) – Full name and identification of Supplier;

(2) - Full name and identification of Institution standing surety;