

**MSR TERMS AND CONDITIONS OF PURCHASE****1. DEFINITIONS**

Unless the context otherwise requires:

**Company** means Mineral Sands Resources (Pty) Ltd, registration number 2001/016755/07, located at 1st Floor, Block A, The Forum, North Bank Lane, Century City, Cape Town, Republic of South Africa, 7441.

**Contractor** means the Contractor, consultant or supplier specified in this Purchase Order.

**Contractor Safety Requirements Manual** means the manual available on request from the Company.

**Confidential Information** means the terms of this Purchase Order and any information concerning the business, operations, finances, plans or customers of the Company which is disclosed to or acquired by the Contractor, but does not include information which:

- (a) is or becomes public knowledge other than through a breach of this Purchase Order; or
- (b) has been independently developed or acquired by the Contractor.

**Date for Delivery** means the date for delivery specified in this Purchase Order.

**Delivery Point** means the delivery point specified in this Purchase Order.

**Goods** mean any goods or equipment to be supplied by the Contractor pursuant to this Purchase Order.

**IP Rights** means all intellectual property rights, including rights in respect of or in connection with any confidential information, copyright, moral rights, inventions, trademarks, service marks, patents, design, semiconductors, circuit layouts and performance protection and other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation dated 16 July 1967 (as amended from time to time) and includes any right to apply for the registration or renewal of such rights.

**Policies** means those policies set out at clause 32 and such other policies and procedures which the Company may introduce or amend from time to time.

**Price** means the price specified in the purchase order form as the 'Unit Price' or 'Total (excluding VAT)', as the context required.

**Purchase Order** means the agreement between the Company and the Contractor comprising:

- (a) these terms and conditions;
- (b) the purchase order form to which these terms and conditions are attached; and
- (c) any attachments, schedules or annexures referred to in the purchase order form or terms and conditions.

**Services** mean any services to be performed by the Contractor pursuant to this Purchase Order.

**Site** means any land or building that the Company makes available to the Contractor for the purpose of performing its obligations under this Purchase Order.

**Supply** has the meaning given in the VAT Act.

**Tax Invoice** has the same meaning as in the VAT Act.

**VAT** is the value-added tax as imposed by section 7 of the VAT Act.

**VAT Act** means the *Value-Added Tax Act 89 of 1991* as amended.

**2. INTERPRETATION**

Unless the context otherwise requires:

- (a) a reference to 'including', 'includes' or 'include' must be read as if it is followed by '(without limitation)';
- (b) headings are for convenience only and do not affect interpretation;
- (c) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns;
- (d) all monetary amounts are in South African Rands; and
- (e) no rule of construction applies to the disadvantage of the party on the basis that the party drafted this Purchase Order or any part of it.

**3. SUPPLY OF GOODS AND SERVICES**

The Contractor agrees to supply the Goods and provide the Services to the Company in accordance with this Purchase Order.

**4. TIME FOR PERFORMANCE**

The Contractor must deliver the Goods and perform the Services to the Company within the time period agreed to in this Purchase Order.

**5. ACCEPTANCE OF THIS PURCHASE ORDER**

The delivery of any Goods or performance of any Services to the Company will constitute acceptance by the Contractor of all terms and conditions in this Purchase Order.

**6. CONTRACTOR'S OBLIGATIONS ON DELIVERY OR PERFORMANCE**

The Contractor must, in delivering the Goods or performing the Services:

- (a) not interfere or cause disruption to the Company's activities.
- (b) be aware of and comply with, and ensure that the Contractor's employees are aware of and comply with:
  - (i) all applicable laws ;
  - (ii) the Company's Contractor Safety Requirements Manual and any other standards or procedures notified to the Contractor by the Company;
  - (iii) all lawful directions and orders given by the Company, its authorised representatives or its employees;
  - (iv) the provisions of the *Mine Health and Safety Act 29 of 1996* where applicable; and
  - (v) the provisions of the *Occupational Health and Safety Act 85 of 1993*, where applicable
- (c) ensure that the Contractor's employees entering the Site undergo the necessary inductions to enter the Site or Delivery Point, perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
  - (i) safe working practices;
  - (ii) care of property;
  - (iii) continuity of work; and
  - (iv) undergo the necessary induction to enter the Site or Delivery Point
- (d) leave the site secure, clean, orderly and fit for immediate use having regard to the condition of the Site immediately prior to the delivery of Goods or the performance of Services;
- (e) cooperate with any other contractor engaged by the Company;
- (f) access the Site only through access points designated by the Company;
- (g) not interfere with the occupation of land adjacent to the Site, or normal access to, from or within that land by third parties;
- (h) not bring onto or use on the Site any dangerous substances or carry out any dangerous or reckless activities on Site, without first obtaining the Company's written consent;
- (i) advise the Company of any special equipment the Contractor will use on the Site, such as cutting or drilling equipment or any other equipment that is not used in the ordinary course of business;
- (j) take all proper precautions when using dangerous substances or special equipment or carrying out dangerous activities;
- (k) use its best endeavours to minimise nuisance or disturbance or special equipment or carrying out dangerous activities;
- (l) coordinate the timing of its activities with the Company; and
- (m) comply with all directions given by the Company relating to the Site or activities carried out on the Site.

**7. CONDITIONS AS TO QUALITY OF SERVICES**

The Contractor must ensure that:

- (a) the Services match and are commensurate with the description of the Services in this Purchase Order;
- (b) if the Contractor provided the Company with a demonstration or representation of the Services before the Company issued this Purchase Order whether orally or in writing, the Services correspond in nature and quality with the Services demonstrated and represented;
- (c) if the Contractor demonstrated or represented to the Company a result achieved by the Services before the Company issued this Purchase Order whether orally or in writing, the Services correspond in nature and quality with the services that achieved that result;
- (d) the Services are performed by appropriately qualified and trained Contractor employees, and with due care and skill; and
- (e) the Services are fit for the purposes for which those type of Services are commonly bought and for any other purpose described in this Purchase Order.

**8. CONDITIONS AS TO QUALITY OF GOODS**

The Contractor must ensure that:

- (a) the Goods match the description of the Goods in this Purchase Order;
- (b) if the Contractor provided the Company a sample of the Goods before the Company issued this Purchase Order, the Goods correspond to and are identical in all material respects to the sample;
- (c) the Goods comply with any relevant standard of the South African Bureau of Standards and any other standards specified in the Purchase Order as requested by the Company;

- (d) the Goods are fit for the purpose for which Goods of the same kind are commonly supplied and for any other purpose described in this Purchase Order;
- (e) the Goods are new and of merchantable quality;
- (f) the Goods are free of all encumbrances and security interests whatsoever and the Company will at the Delivery Point have unencumbered legal title to the Goods; and
- (g) the Company has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must pursue any manufacturer's warranties on the Company's behalf if the Company requests).

#### 9. PACKAGING OF GOODS

The Contractor must:

- (a) suitably pack the Goods to avoid damage during loading, transit, delivery, unloading or storage having regard to the transport and climatic conditions through which the Goods will pass during transport;
- (b) pack and transport the Goods in accordance with applicable regulations and industry codes;
- (c) clearly mark all packages of the Goods for delivery and the delivery documents for the Goods with this Purchase Order number and ensure that the delivery documents accompany the Goods to the Delivery Point;
- (d) include a packing list in each package of Goods for delivery;
- (e) insure the Goods until they are delivered to the Site; and
- (f) assist the Company in obtaining documents and other information required for the resolution of any transport dispute.

#### 10. LABOUR PLANT AND EQUIPMENT

- (a) Unless this Purchase Order provides otherwise, the Contractor must supply, at its own expense, all labour, plant, equipment, tools, appliances or other property and items the Contractor requires to fulfil its obligations under this Purchase Order.
- (b) Any plant, equipment, tools, appliances or other property and items that the Company provides to the Contractor to enable it to complete this Purchase Order remain the Company's property and must only be used for the purposes of fulfilling the Contractor's obligations under this Purchase Order.
- (c) The Contractor must keep the Company's property in good order and condition and immediately report any damage to the Company. The Contractor agrees to repair, replace and fix all damage caused to the Company's property and indemnifies the Company for any such losses.

#### 11. DEFECTS

- (a) If the Goods do not meet the requirements and standards set out in this Purchase Order, the Company may, at its absolute discretion, reject the Goods, or require the Contractor to repair the Goods at no additional cost to the Company or terminate the agreement constituted by this Purchase Order.
- (b) The Contractor agrees to cure all defects with respect to the Goods and Services within 12 months of the Delivery date.
- (c) If the Services do not meet the requirements of this Purchase Order, the Company may, at its discretion:
  - (i) require the Contractor to re-perform the Services at no additional cost to the Company;
  - (ii) terminate this Purchase Order; or
  - (iii) procure another person to carry out those Services, the cost of which will be a debt due by the Contractor to the Company.

#### 12. PRICE

Unless this Purchase Order provides otherwise, the Price is inclusive of:

- (a) all charges for packaging, packing, insurance and delivery of the Goods in accordance with this Purchase Order;
- (b) the cost of any miscellaneous services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in conjunction with the Services; and
- (c) the Contractor's compliance with its obligations under this Purchase Order.

#### 13. INVOICING

- (a) The Contractor must, as a precondition for payment, submit within 30 days of delivery of the Goods or performance of the Services:
  - (i) a Tax Invoice, which contains sufficient information for the Company to determine if the Goods and Services have been provided; and
  - (ii) (if applicable) copies of tax invoices issued to third parties, which contain sufficient information for the Company to determine if the Goods and Services have been provided.
- (b) Should the Contractor use the services of a sub-contractor, the Contractor must provide a written waiver of ownership of the Goods supplied by the sub-contractor.
- (c) Tax Invoices must show the Purchase Order number and be sent:
  - (i) by email to [ap@mncm.com.au](mailto:ap@mncm.com.au); or

- (ii) by mail, to:

Accounts Payable  
Mineral Sands Resources (Pty) Ltd  
PO Box 235  
Welshpool DC 6986  
Western Australia

- (d) If the Company disputes any item or items in the Tax Invoice, the Company shall:
  - (i) notify the Contractor specifying the reasons for the dispute;
  - (ii) withhold payment of the disputed item or items until settlement of the dispute; and
  - (iii) pay the undisputed portion of the Tax Invoice in accordance with clause 14.
- (e) For a period of 12 months after payment of a Tax Invoice pursuant to this Purchase Order, the Company shall have the right to query any Tax Invoice presented by the Contractor and to require correction of any error notwithstanding that the Tax Invoice may relate to a payment which the Company has already made.
- (f) Where the Price is calculated on a 'cost plus', 'schedule of rates' or 'per day' basis, the Company may audit the Contractor's records to determine if the Price has been correctly calculated. This right continues for 12 months after submission of any Tax Invoice.

#### 14. PAYMENT

Unless this Purchase Order otherwise provides:

- (a) the Contractor will be paid in one lump sum on completion of its obligations under this Purchase Order;
- (b) subject to clauses 13(c) and 14(a), the Company will pay the Contractor within 30 days of the end of the month in which the Contractor submits a valid Tax Invoice and sufficient supporting information; and
- (c) without limiting the Contractor's rights under any other provision of this Purchase Order or generally, all monies due to the Company by the Contractor and all losses, costs, charges, damages or expenses which the Company may have incurred or paid and for which the Contractor is liable, may be deducted by the Company from any amount due under this Purchase Order to the Contractor.

#### 15. VARIATION

- (a) The Company may at any time vary this Purchase Order by written notice to the Contractor and the variation is effective on receipt by the Contractor.
- (b) Within 7 days of receipt of a notice issued pursuant to clause 15(a), the Contractor must advise the Company of any change in Price arising from the variation, which change must be based on agreed rates (if any) or reasonable rates and prices in the market at that time.

#### 16. CANCELLATION OF THIS PURCHASE ORDER

The Company may terminate and cancel the agreement constituted by this Purchase Order at any time by giving written notice to the Contractor and the termination will be effective from the date of receipt provided that:

- (a) the Company must pay for any part of the Goods delivered or Services performed prior to the termination or cancellation;
- (b) if the Contractor has shipped any Goods before cancellation but the Goods have not been delivered to the Delivery Point at the time of cancellation, the Company must either:
  - (i) accept those Goods when delivered and pay for them; or
  - (ii) return the Goods to the Contractor at the Company's expense;
- (c) if the Contractor has not shipped the Goods at the time of cancellation, on receiving the written notice of termination and cancellation the Contractor must stop manufacture of the Goods, and do everything possible to mitigate any costs incurred in relation to the Goods; and
- (d) if clause 16(b)(ii) or 16(c) applies:
  - (i) to the extent the Goods were manufactured or fabricated in accordance with Company specifications, the Company must reimburse the Contractor in respect of expenditure reasonably incurred by the Contractor prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and which the Contractor is not able to recoup in some other way; and
  - (ii) the Contractor is not entitled to be paid for those Goods or Services, or to any compensation for the cancellation other than as specified in clause 16(d)(i).

#### 17. TITLE AND RISK IN GOODS

- (a) The Company obtains ownership of and legal title to the Goods upon Delivery of the Goods at the Delivery Point.
- (b) The Company does not bear risk in any Goods until the Company takes delivery of those Goods at the Delivery Point.
- (c) The Contractor warrants that:

- (i) it has complete ownership of the goods free of any liens, charges and encumbrances and will provide the Goods to the Company on that basis; and
  - (ii) the Company will be entitled to clear, complete and quiet possession of the Goods.
- (d) Should the Contractor use the services of a sub-contractor, the Contractor warrants that any Goods produced or delivered by the sub-contractor shall be free of any encumbrance, lien or title that would prevent the Company from taking ownership of the Goods.
- (e) The Contractor warrants that it brought the terms and conditions of this Purchase order to the attention of the sub-contractor.

#### 18. INSURANCE

- (a) The Contractor must procure and maintain the following minimum insurance with a reputable insurer and on terms approved by the Company, which approval must not be unreasonably withheld:
- (i) public liability insurance for not less than ZAR100,000,000 for any one occurrence for liability to any third party arising out of the performance of this Purchase Order (including the provision of Goods and Services) and which covers:
    - (A) the Company as a named insured;
    - (B) the Contractor; and
    - (C) the Contractor's sub-contractors;
  - (ii) where professional services are provided, professional indemnity insurance for not less than ZAR50,000,000;
  - (iii) insurance suitably covering the Contractor's employees, and if so requested be able to produce a certificate of good standing with the compensation fund;
  - (iv) insurance against loss or damage to the Company's property used in conjunction with the provision of Services under this Agreement. This includes items which are hired, leased or otherwise acquired by the Contractor;
  - (v) insurance which covers the Goods for not less than the replacement value of the Goods, which insurance must be maintained up until the Goods are accepted by the Company at the Delivery Point; and
  - (vi) any other insurances required by law or reasonably required by the Company.
- (b) Insurances required by clause 18(a)(i) must:
- (i) name the Company as principal;
  - (ii) include a cross liability clause in which the insurer accepts the term "insured" as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them;
  - (iii) include a waiver of subrogation in which the insurer agrees to waive all rights of subrogation or action against the principal;
  - (iv) contain a provision that failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;
  - (v) the policies contain provisions to the effect that a notice of disclosure to the insurer by one insured party is deemed to be notice of disclosure by all insured parties; and
  - (vi) the policies contain provisions to the effect that whenever the Contractor fails to renew the policy or pay the premium or a premium element in full when due, the insurer is required to forthwith promptly provide notice in writing to the Principal's Representative of the Contractor's default and in any event at least 21 days prior to issuing a notice of cancellation.
- (c) Insurances required by clause 18(a)(iii) must contain:
- (i) a principal's indemnity extension for both statutory liability and common law liability in favour of the Company and its respective officers and employees; and
  - (ii) a waiver of subrogation in favour of the Company and its respective officers and employees.
- (d) The Contractor must, at the request of the Company, allow the Company to inspect the policies and certificates of currency for the insurances required by this Purchase Order.

#### 19. LIABILITY AND INDEMNITY

- (a) The Contractor agrees to indemnify and keep indemnified the Company its, subsidiaries, directors, shareholders and all employees from and against all claims, proceedings, expenses, costs (including legal costs on an attorney and own client basis), damages, losses and other liabilities of any kind arising directly or indirectly from a breach of any term or condition of this Purchase Order by the Contractor; or the negligence of the Contractor in providing the Services.

- (b) The Contractor indemnifies the Company against the payment of any damages resulting from a concurrent claim instituted against the Contractor and the Company. In the instance, the Contractor will be liable for the full amount of awarded damages.

#### 20. INTELLECTUAL PROPERTY

- (a) All IP Rights (present of future) created, discovered or in connection with the provision of Goods or Services under this Purchase Order will be vested in the Company and will be the Company's property as and when created.
- (b) The Contractor must, and must ensure that its employees execute all documents and do all things required to give the Company full legal ownership and title to the IP Rights described in paragraph (a) and to protect those rights.

#### 21. CONFIDENTIALITY

The Contractor must not, and must ensure that its employees do not, use or disclose Confidential Information other than:

- (a) as strictly necessary for the provision of the Goods and Services under this Purchase Order; or
- (b) as required by law (including disclosure to a stock exchange), or where required for the making or defending of any claim pursuant to this Purchase Order, where such requirement has been notified to the Company.

The Contractor must, within 7 days after a direction from the Company's representative to do so, return or destroy all Confidential Information in the Contractor's possession or control.

#### 22. NOTICES

- (a) A notice, consent, approval or other communication under this Purchase Order is only effective if it is in writing, signed and either delivered personally to the addressee's address or sent to the addressee by mail, email or fax. If it is personally delivered on a business day, it is taken to have been received on that business day. If it sent by mail, it is taken to have been received 3 business days after it is posted. If it is sent by fax or email, it is taken to have been received when the addressee actually receives it in full and legible form.
- (b) The parties' addresses and fax numbers are those set out on the Purchase Order form, or as otherwise notified.
- (c) The party's addresses and fax numbers as provided on the Purchase Order form shall be deemed to be the *domicilium citandi et executandi*.

#### 23. VALUE ADDED TAX

- (a) If VAT is imposed on any Supply made under this Purchase Order by a party (**Supplier**) to another party (**Recipient**), then the Recipient must pay to the Supplier an amount equal to that VAT in addition to any other amount payable or other consideration provided for the Supply.
- (b) The Supplier must give the Recipient a Tax Invoice for the Supply that details the relevant amount in respect of which VAT is payable and the amount of that VAT.
- (c) The amount payable as VAT must be calculated in terms of the VAT Act.

#### 24. ENTIRE AGREEMENT

- (a) This Purchase Order constitutes the entire agreement between the parties and supersedes any prior understandings (whether oral or written) regarding the subject matter.
- (b) To the extent that the Contractor's terms and conditions are supplied with the Goods and Services (including as printed on consignment notes or other documents), those terms and conditions will have no legal effect and will not form part of this Purchase Order, even if any of the Company's employees sign those terms and conditions or annex those terms and conditions to this Purchase Order.

#### 25. CESSION AND ASSIGNMENT

- (a) The Contractor may not cede or assign its rights or transfer its obligations under this Purchase Order without the prior written consent of the Company.
- (b) The Company may cede or assign its rights or transfer its obligations under this Purchase Order without the prior written consent of the Contractor.

#### 26. SUB-CONTRACTING

The Contractor must not sub-contract the whole or any part of its obligations under this Purchase Order without the prior written approval of the Company.

#### 27. SEVERABILITY

The invalidity or enforceability of one or more of the provisions of this Purchase Order will not invalidate, or render unenforceable, the remaining provisions of this Purchase Order.

#### 28. RELATIONSHIP BETWEEN THE PARTIES

Nothing in this Purchase Order constitutes a joint venture, agency, partnership or other fiduciary relationship between the parties. At all times when performing its obligations under this Purchase Order, the Contractor is an independent Contractor and not an employee or agent of the Company.

#### 29. LAW AND JURISDICTION

This Purchase Order is governed by the laws of South Africa. Each party submits to the jurisdiction of the courts of the South Africa.

**30. WAIVER**

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No failure to exercise and no delay in exercising any right, power or remedy under this Purchase Order will operate as an election not to exercise that right, power or remedy. A single or partial exercise of any right, power or remedy will not preclude any other or further exercise of that right, power or remedy.

**31. AMENDMENT**

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Except as expressly provided in this Purchase Order, this Purchase Order may be amended or varied only by agreement in writing signed by the parties.

**32. POLICIES**

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Policies with which the Contractor must comply include:

- Contractor Safety Requirements Manual
- Anti-Bribery and Corruption Policy
- Code of Conduct - the Company's Obligations to Stakeholders
- MRC Securities Trading Policy
- Social Media Policy
- Operational Procedure Safe Operation of Vehicles
- Information Security Policy