

AGREEMENT FOR THE INTERNATIONAL SUPPLY OF GOODS



<<ENTER CONTRACT DESCRIPTION AND MC NUMBER>>

**SHELL & BP SOUTH AFRICAN PETROLEUM
REFINERIES (PTY) LTD
("SAPREF")**

REG.NO.1960/000007/07

AND

(SUPPLIER)

REG.NO

AGREEMENT FOR THE INTERNATIONAL SUPPLY OF GOODS

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AGREEMENT FOR THE INTERNATIONAL SUPPLY OF GOODS**PART 1****GENERAL FORM OF AGREEMENT**

This **agreement** made between:

SHELL & BP SOUTH AFRICAN PETROLEUM REFINERIES (PTY) LTD

REGISTRATION NUMBER 1960/000007/07

("SAPREF")

and

SUPPLIER

REGISTRATION NUMBER << ENTER NUMBER >>

("the contractor")

WHEREAS SAPREF operates a Crude Oil Refinery at its plant in Prospecton, Durban, South Africa and regards its business as highly specialised in nature;

AND WHEREAS SAPREF requires, in the course of its business, a **contractor** with the necessary knowledge and expertise to supply << DESCRIPTION OF **GOODS**>> for **SAPREF** meeting the minimum specifications and requirements as set out in **Part 4** ("the **goods**");

AND WHEREAS the contractor has carefully examined **Part 4** and, having the necessary expertise and resources, is willing and able to supply the **goods** according to the detailed specifications as set out in **Part 4** for the consideration set out in and in accordance with this **agreement**.

The parties hereby agree as follows:

1. DEFINITIONS

- 1.1 Unless otherwise specified, words and expressions used in this **agreement** shall have the meaning set out in clause 1 of **Part 2**.

2. STRUCTURE AND ORDER OF PRECEDENCE

- 2.1 The following documents shall be read as one document and form the **agreement**:

2.1.1 Part 1 General Form of Agreement

2.1.2 Part 2 Legal Terms and Conditions

2.1.3 Part 3 Parties Representatives

2.1.4 Part 4 Purchase Order Confirmation

2.1.5 Part 5 Supplementary commercial terms and specifications

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- 2.2 The parts shall be read as one document and in the event of ambiguity or contradiction between any of these documents the order of precedence shall be as listed above with the exception that any **amendments**, reduced to writing and signed by the parties, to the Legal Terms and Conditions will take precedence over **Part 2**.

3. DURATION

- 3.1 Despite the date the parties sign this **agreement**; this **agreement** will commence on the issue to the supplier of the approved purchase order and will terminate the date that each party has fulfilled its obligations in terms of the **agreement**.

4. DELIVERY OF THE GOODS

- 4.1 The **contractor** must deliver the **goods** to **SAPREF** in accordance with the relevant Incoterm stipulated in the purchase order and on the dates set out therein as may be amended by **SAPREF**.
- 4.2 If the **contractor** has any quantity of the **goods** ready for delivery prior to the dates stipulated in the purchase order, the **contractor** may deliver them to **SAPREF** early provided it has received prior written consent from **SAPREF**.
- 4.3 The provisions of clause 4.2 above do not release the **contractor** of the **contractor's** obligations to deliver the total quantity of the **goods** ordered by no later than the dates stipulated in the purchase order.
- 4.4 The **goods** must be delivered in packaging as defined in **Part 4**, which will become the property of **SAPREF**.
- 4.5 Immediately after loading the **goods**, or any portion thereof, the **contractor** must send to **SAPREF's** fax or email address set out in **Part 3** and to **SAPREF's** current clearing and forwarding agents the following documents for customs clearance:
- 4.5.1 the **contractor's** commercial invoice that complies with clause 5 below;
 - 4.5.2 the packing list, if the **goods** are containerised;
 - 4.5.3 the relevant transport document, i.e. bill of lading or airway bill; and
 - 4.5.4 a certificate of origin of the **goods**.

5. SHIPPING REQUIREMENTS

- 5.1 Unless agreed otherwise, all freight forwarding is to be carried out by **SAPREF's** nominated forwarding agents. 5.2. It is hereby recorded that the nominated agent has been duly authorised by **SAPREF** as **SAPREF's** clearing and forwarding agent to administer and expedite the delivery of the **goods**.
- 5.3 All **goods** must be packed and dispatched in the manner set out in **Part 4**.
- 5.4 On delivery of the **goods** at the delivery location stipulated by the relevant Incoterm selected according to clause 4.1.2 of **Part 2** of the **agreement**, the **contractor** must forward copies of the original **delivery documents** to **SAPREF**, at the address set out in **Part 3**, by way of courier or, on written request of **SAPREF**, by way of fax or electronic dispatch.

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- 5.5 The **contractor** must:
- 5.5.1 record **SAPREF** and the clearing and forwarding agent as the notifying parties on the bill of lading or other relevant document;
 - 5.5.2 ensure that the **delivery documents** are received in sufficient time for **SAPREF** to effect clearance prior to the arrival of the designated vessel or other means of transportation.
- 5.7 Any charges or other liabilities which may arise from the late arrival of the **delivery documents** for a reason under the **contractor's** responsibility will be for the **contractor's** account.
- 5.8 Nothing in this clause 5 will relieve the **contractor** of any of its obligations under the Incoterm stipulated in clause 4.1.2 of **Part 2** of the **agreement**.

6. PARTIES OBLIGATIONS

- 6.1 In accordance with the terms and conditions of the **agreement**, the **contractor** shall supply the **goods** and **SAPREF** shall pay the **contract price**.

7. ENTIRE AGREEMENT

- 7.1 The **agreement** constitutes the entire **agreement** between the parties and, save where otherwise stated in the **agreement**, supersedes all prior negotiations, representations or **agreements** related to the **agreement**, either written or oral. No amendments to the **agreements** shall be effective unless evidenced in writing and signed by the parties.

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THUS DONE AND SIGNED ATON THIS THE.....DAY OF 20

.....

Signature

.....

Name

.....

Designation

Duly authorized to act & bind the **Contractor**

AS WITNESSES:

1.

2.

THUS DONE AND SIGNED ATON THIS THE.....DAY OF 20

.....

Signature

.....

Name

.....

Designation

Duly authorized to act & bind **SAPREF**

AS WITNESSES:

1.

2.

AGREEMENT FOR THE INTERNATIONAL SUPPLY OF GOODS**PART 2****LEGAL TERMS AND CONDITIONS****1. DEFINITIONS**

- 1.1. The following definitions shall have the meanings hereby assigned to them and shall be used for the purpose of interpreting **Part 2** of this **agreement**:
- 1.1.1. "**Amendment**" shall mean any change to the contract other than a **variation**;
- 1.1.2. "this **Agreement**" means all the parts of this **agreement** as described in **Part 1** together with all annexures thereto;
- 1.1.3. "**Business Day**" means any day other than a Saturday, Sunday or South African Public Holiday;
- 1.1.6. "**Confidential Information**" shall include but not be limited to the terms of this **agreement**, trade information, know-how, financial records, records of any past, present or prospective employee/s, technical data, commercial information, formulae, processes, manufacturing methods and confidential information as to the business and affairs of **SAPREF** or **contractor** or any other information which is not readily available to the public;
- 1.1.7. "**Contractor's Personnel**" means the **Contractor's** employees, agents, **contractors** and **sub-contractors**, and their employees;
- 1.1.8. "**Contract price**" shall mean the price payable by **SAPREF** to the **contractor** for the punctual and satisfactory supply of the **goods** as set out in **Part 4**;
- 1.1.9. "**Contractor representative**" shall mean that person named in **Part 3**;
- 1.1.10. "**Days**" means a calendar **Day**;
- 1.1.11. "**Delivery documents**" shall mean copies of the of the **contractor's** invoice, packing slip and bill of lading which must be forwarded to **SAPREF** and **SAPREF's** clearing and forwarding agent on delivery of the **goods** at the delivery location stipulated by the relevant Incoterm;
- 1.1.12. "**Force Majeure**" will include fire, explosion, flood, riot, war, terrorist attack, accident, act of God, embargo, legislation, regulation or directive having the force of law, civil commotion, unrest or disturbance, compliance with any order or instruction of any port, local or other authority, non-availability or rationing of raw material worldwide, non-availability of electricity to **SAPREF**, failure of **SAPREF's contractor** to supply raw materials to **SAPREF** or a breakdown or malfunction of **SAPREF's** plant, strikes, labour disputes, lock-out or any other cause resulting in the impossibility of supply which is beyond the control of the

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affected party whether similar or dissimilar to the causes described above.

- 1.1.13. **"Goods"** shall mean the **goods** as specified in **Part 4**;
- 1.1.14. **"Intellectual Property (IP) Rights"** include, without limitation, the protected rights attaching to inventions, patents, registered designs, trademarks, copyright, circuit layouts and confidential information and may include;
- 1.1.14.1. Background IP means any **Intellectual Property Rights** of the **contractor** which:
- 1.1.14.1.1. is in existence at the date of this **agreement**; or
- 1.1.14.1.2. comes into existence after the date of this **agreement** otherwise than in connection with this **agreement**.
- 1.1.14.2. Principal Background IP means any **Intellectual Property Rights** of **SAPREF** which:
- 1.1.14.2.1. is in existence at the date of this agreement; or
- 1.1.14.2.2. comes into existence after the date of this **agreement** otherwise than in connection with this **agreement**.
- 1.1.14.3. **Project IP** means all **Intellectual Property Rights** (present or future) created, discovered or coming into existence as a result of, for the purpose of or in connection with the supply of the **goods** or this **agreement** (including without limitation all **Intellectual Property Rights** developed by the **contractor** in supplying the goods and any **Intellectual Property Rights** in the technical materials provided by **SAPREF** to the **contractor**) and any system or software developed, information processes and technology used in devising, developing or implementing the supply of the **goods**, any improvements or discoveries in relation thereto and all records, data, documents, drawings, plans and electronic or other information prepared or used by the **contractor** or by its personnel pursuant to this **agreement**;
- 1.1.14.4. Technical Materials include plans, designs, drawings, engineering information, data, specifications, reports, accounts and any other material specified in this **agreement**;
- 1.1.16. **"Month"** means a **month** calculated from a particular **day** in one **month** to the **day** before the **day** numerically corresponding to it in the following **month**;

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- 1.1.17. "SAPREF representative" shall mean that person named in **Part 3**;
- 1.1.18. "Sub-contract" shall mean any contract between the **contractor** and any party (other than the company or any employees of the **contractor**) for the supply of any part of the **goods**;
- 1.1.19. "Sub-contractor" shall mean any party (other than the **contractor**) to a **sub-contract**;
- 1.1.20. "Third party" shall mean any party other than the company and the **contractor**, unless expressly stated otherwise in the **agreement**;
- 1.1.21. "Variation" shall mean any change to the **goods** as described in clause 12 of **Part 2**;
- 1.2 Whenever any number of **days** is prescribed, it excludes the first and includes the last **day**.
- 1.3 Unless inconsistent with the context, words signifying any one gender must include the other, words signifying the singular must include the plural and *vice versa* and words signifying natural persons will include artificial persons and *vice versa*.
- 1.4 Clause headings are for convenience only and are not to be used in the interpretation of the clause to which they relate.

2. APPOINTMENT OF CONTRACTOR

- 2.1 **SAPREF** appoints the **contractor**, to supply the **goods** to **SAPREF** in accordance with and as specified in this **agreement**.
- 2.2 The **contractor** acknowledges that the **contractor** is an independent **contractor** and is not an employee or agent of **SAPREF**. The **contractor** must ensure that it does not represent to any **third party** that the **contractor** is **SAPREF's** employee or agent.
- 2.3 **SAPREF** appoints the **contractor** on a non-exclusive basis to supply the **goods**.

3. PARTIES' REPRESENTATIVES

- 3.1 The parties' representatives are reflected in **Part 3**.
- 3.2 Either party may, by written notice to the other, change their respective representatives.
- 3.3 The **contractor** must ensure that the person appointed in terms of **Part 3** has authority from the **contractor** to represent it in all matters and is at all times during normal business hours, and after hours in the case of an emergency, available to liaise with **SAPREF's representative**.

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4. OBLIGATIONS OF THE CONTRACTOR

- 4.1 The **contractor** must, at the **contractor's** cost:
- 4.1.1 supply the **goods** in accordance with **Part 4**;
 - 4.1.2 subject to clause 4.4 below, supply the goods <<Incoterm: EXW, FCA, FOB, CIF etc>> as defined in the Incoterms 2000 published by the International Chamber of Commerce;
 - 4.1.3 supply the **goods** timeously, time being of the essence to the delivery of the **goods**. If the **goods** are not timeously supplied, **SAPREF** may either:
 - 4.1.3.1 claim a penalty of 1% (one percent) of the value of the delayed shipment per full week delay, limited to 10% (ten percent) of the price of the delayed shipment; or
 - 4.1.3.2 cancel this **agreement** in whole or in part and recover the penalty set forth in clause 4.1.3.1 above if the delay exceeds 30 (thirty) days;
 - 4.1.4 ensure that the supply of the **goods** is rendered with due care and skill;
 - 4.1.5 ensure that if the **contractor** provided **SAPREF** with a demonstration or a result (which may include any electronic presentation, data or information, any tender documents or request for quotation document) of the **goods** before the conclusion of this **agreement**, the **goods** must, in addition to conforming with the scope of supply of the **goods** in **Part 4**, correspond in nature and quality with the supply of the **goods** so demonstrated or that achieved such result;
 - 4.1.6 ensure that the **goods** are manufactured using materials acceptable to **SAPREF** or as specified in this **agreement** or its annexures;
 - 4.1.7 ensure that the **goods** are delivered in accordance with the delivery, shipping and packaging requirements in clauses 4 and 5 of **Part 1** and **Part 4**;
 - 4.1.8 ensure that the materials used to manufacture the **goods** are of sound quality and that the **goods** are fit for the purpose for which they are intended;
 - 4.1.9 where the **contractor** is required to design something exclusively for **SAPREF**, ensure that the designs are the **contractor's** original work and the result of the **contractor's** own efforts and expertise and such designs do not infringe any intellectual property rights of any person;

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- 4.1.10 ensure that the **goods** which the **contractor** supplies to **SAPREF** are free from defects in design, materials and workmanship, whether latent or patent;
 - 4.1.11 ensure that the **goods** which the contractor supplies to **SAPREF** are new and are manufactured using only first class new materials and in all respects comply with and meet **SAPREF's** specifications and requirements as agreed upon;
 - 4.1.12 ensure that the **contractor** owns all **goods** supplied, until ownership passes to **SAPREF**, and that such **goods** will not be subject to any pledge, bond, hypothec or legal encumbrance;
 - 4.1.13 immediately notify **SAPREF** if the **goods** which the **contractor** supplies are dangerous or hazardous in any manner and, if so, the **contractor** must provide **SAPREF** with Safety Data Sheets for such **goods** before bringing it onto any of **SAPREF's** premises.
- 4.2 If the **contractor** is required, for whatever reason, to source and purchase the **goods** from an alternative **contractor**, the **contractor** must obtain **SAPREF's** prior approval and supply the **goods** at the price set out in **Part 4**.
 - 4.3 If the **contractor** is unable to supply the **goods** for whatever reason, except in circumstances of force majeure, **SAPREF** reserves the right to purchase the **goods** from an alternative source of supply and the **contractor** must pay the difference (if any) in price between the price paid by **SAPREF** to the alternative **contractor** and the price set out in **Part 4**.
 - 4.4 If the Incoterm or Port of Lading reflected in clause 41.2 above is changed by **SAPREF** in circumstances including but not limited to vessel availability, vessel type, break bulk or containerised cargo, **SAPREF** will notify the **contractor** and the **goods** are required to be delivered in terms of such changed Incoterm.

5. CONTRACT PRICE

- 5.1 Subject to proper compliance by the **contractor** with the provisions of this **agreement**, the **contract price** payable by **SAPREF** to the **contractor** for the punctual and satisfactory supply of the **goods** is set out in **Part 4**.
- 5.3 Unless agreed otherwise, the price is fixed and firm and will not be subject to escalation or adjustment for the full duration of this **agreement**.
- 5.4 The price includes the total amount payable by **SAPREF** to the **contractor** for the supply of the **goods** including, but not limited to packaging, transportation, delivery, storage, insurance and all taxes, duties, clearance charges, royalties and the like.

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6. CONDITIONS OF PAYMENT

- 6.1 The **contractor** must, with each shipment, provide **SAPREF** with an original tax invoice for the **goods** supplied which must include or be supported by the following details:
- 6.1.1. **SAPREF's** purchase order number;
 - 6.1.2. the **goods** and/or material mescode;
 - 6.1.3. the total price in respect of the supply of the **goods**;
 - 6.1.4. the amount due in respect of VAT;
 - 6.1.5. the **contractor's** VAT registration number;
 - 6.1.6. **SAPREF's** VAT registration number;
 - 6.1.7. **SAPREF** conformance checklist;
 - 6.1.8. such additional information/documentation as **SAPREF** may reasonably require.
- 6.2 In addition to clause 6.1 above, the **contractor** must attach the original bill of lading or other transport documentation, if applicable, to the invoice.
- 6.3 Subject to the other provisions of this **agreement**, payments shall be made by bank transfer within 30 **days** of the date of receipt of the **contractor's** original tax invoice.
- 6.4 The **contractor** may not under any circumstances, including late or non-payment by **SAPREF**, suspend deliveries to **SAPREF** unless this **agreement** is terminated in terms of its other provisions.
- 6.5 In circumstances where **SAPREF** disputes an invoice due to the **contractor** not fulfilling any of its obligations in terms of this **agreement** or **SAPREF** exercises its right to retain part of the price, **SAPREF** may request that the **contractor** provide **SAPREF** with a new original tax invoice for the undisputed amount or **SAPREF** may request that the contractor pass a credit for the disputed amount in favour of **SAPREF** and **SAPREF** will make payment to the **contractor** such undisputed amount according to the payment terms in clause 6.3.
- 6.6 If upon resolution of the disputed balance **SAPREF** is required to pay such disputed balance, the **contractor** must provide **SAPREF** with an original tax invoice for such disputed balance whereupon **SAPREF** will pay such disputed balance according to the payment terms clause 6.3 above.
- 6.7 Payment for the **goods** does not constitute acceptance of the **goods**.

7. SET OFF

- 7.1 **SAPREF** may withhold, deduct or offset from any monies due and owing to the **contractor** either in terms of this **agreement** or any other **agreement** that the **contractor** may have with **SAPREF**, an amount equal to the amount of any outstanding claims that **SAPREF** may have against the

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contractor for damages, costs or any other indebtedness arising out this **agreement**: provided that **SAPREF** will first provide the **contractor** with written notice of its intent to offset, supported by reasonable detail of the actual damages, costs or indebtedness incurred by **SAPREF**.

- 7.2 If such indebtedness is not liquidated, a certificate signed by **SAPREF's** Finance Manager specifying the amount due in terms of or arising out of this **agreement** shall be prima facie proof thereof.

8. OWNERSHIP AND RISK

- 8.1 Ownership of the **goods** passes to **SAPREF** on payment to the **contractor**.
- 8.2 Risk passes to **SAPREF** according to the selected Incoterm.

9. INSPECTION OF THE GOODS

- 9.1 **SAPREF** may at any time either prior to delivery or after delivery of the **goods**, at its cost, after 7 **days** prior notice to the **contractor**, require that tests and inspections on the **goods** be carried out by **SAPREF**, its appointed agent or the **contractor** itself to ensure that the **goods** comply with **Part 4** and the other provisions of this **agreement**. Such tests and inspections shall be carried out in accordance with **SAPREF's** requirements and specifications. The **contractor** must supply all reports or documentation as required by **SAPREF** relating to or having a bearing on such inspections or testing.
- 9.2 Despite the provisions of clause 9.1 above, if any of the **goods** do not comply with **Part 4** or the provisions of this **agreement**; and **SAPREF** requires the **goods** to be inspected or tested either prior to, during or after supply of the **goods**, the **contractor** must, either procure such **third parties** or the **contractor** itself to inspect or test the **goods**. The **contractor** must supply all reports or documentation as required by **SAPREF** relating to such inspections or testing. The **contractor** will be liable for all costs in this regard.
- 9.3 No such testing or inspection, or failure of **SAPREF** to identify any defects during such testing or inspection, will relieve the **contractor** of any of its obligations to **SAPREF** or be deemed to constitute acceptance of the **goods**.
- 9.4 Without prejudice to **SAPREF's** rights in terms of this **agreement**, **SAPREF** may either before or within 30 days after supply of the **goods**, reject the **goods** either in whole or in part, which during testing or inspection in terms of this clause 9, do not comply with the requirements of this **agreement** or are, or will be otherwise defective, in which event the provisions of clause 10 below shall apply.

10. WARRANTIES - DEFECTIVE AND REJECTED GOODS

- 10.1 The **contractor** warrants that for the term of 18 **months** following the delivery of the **goods** or alternatively for 12 **months** after installation of the goods whichever is the earlier, that the **goods** supplied will conform to the specifications set out in **Part 4**.

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- 10.2 The **contractor** must immediately upon receipt of a notice from **SAPREF**, at its own risk and expense, promptly start to and diligently proceed to repair, replace or re-execute, at **SAPREF's** option, any portion of the **goods** which, within the periods stated in clause 10.1 above, is found to be defective in design, workmanship, material or suffer from any non-conformity with this **agreement**. The foregoing shall constitute the sole and exclusive remedy of **SAPREF** and the sole liability of **contractor** for breach of warranty.
- 10.3 The obligations of the **contractor** in terms of clause 10.2 above must, in respect of all repaired, replaced or re-executed **goods**, be extended for a further period of twelve (12) **months** from the date of **completion** of such repair, replacement or re-execution however with a final cut off period of 24 **months** after original delivery.
- 10.4 The **contractor** shall assume no warranty responsibility in the event of:
- 10.4.1 improper handling, storage or use of the **goods**;
 - 10.4.2 attempted renovation, repair, calibration or replacement of parts by any third party other than authorized by means of prior written approval by **contractor**;
 - 10.4.3 normal wear and tear; or
 - 10.4.4 any other cause of defect not exclusively attributable to **contractor**.
- 10.5 Notwithstanding the time period mentioned in clause 10.1 above, the obligations of the **contractor** as contained in clause 10.2 in respect of latent or other defects shall be applicable until 18 **months** after delivery of the goods to **SAPREF**.

11. OTHER WARRANTIES AND REPRESENTATIONS

- 11.1 The **contractor** warrants that:
- 11.1.1 the **contractor** has the capacity to timeously deliver the **goods**,
 - 11.1.2 the **goods** on delivery will be free from defects in design and will have been manufactured using first class new materials and will comply with the highest standards of workmanship;
 - 11.1.3 the **goods** will comply with specifications set forth in **Part 4** and any departure from such specifications is a breach of the warranty under clause 11;
 - 11.1.4 the **goods** are fit for the purposes for which the **goods** are intended;
 - 11.1.5 the **goods** do not infringe any **intellectual property** rights of any **third parties**; and
 - 11.1.6 the **goods**, are prior to delivery to **SAPREF**, owned by the **contractor** and are free from any claim by any person.

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12. VARIATIONS

- 12.1 The **contractor** shall not alter, amend, omit, add to or otherwise vary any part of the supply of the **goods** unless so instructed by **SAPREF** by means of:
- 12.1.1 a written instruction given by **SAPREF** at any time; or
 - 12.1.2 a written **variation** order; or.
 - 12.1.3 a formal contract **amendment**.
- 12.2 The **contractor** shall promptly carry out **SAPREF** instructions given in terms of clause 12.1 above. The **contractor** and **SAPREF** shall endeavour to agree the effect of such variation on the time for delivery and/or the **contract price**. Should **SAPREF** and the **contractor** agree thereon then **SAPREF** shall issue a suitable **variation** order. Should **SAPREF** and the **contractor** fail to agree then the matter shall be determined in accordance with clause 12.3 below.
- 12.3 If, resulting from a **SAPREF** instruction or **variation** order or the formal **amendment** of this **agreement**, the **contractor** and **SAPREF** are unable to agree on the adjustment of the **contract price**, and then the **contractor** shall submit a claim in accordance with the provisions of clause 13 below.
- 12.4 For the avoidance of doubt, delivery of the **goods** shall not be delayed pending **agreement** between the **contractor** and **SAPREF** regarding any extension of the time for delivery or adjustment to the **contract price** or pending the contractor proceeding in terms of clause 13 below
- 12.5 In any case where the **contractor** is instructed to proceed with a **SAPREF** instruction or a **variation** in circumstances as outlined in clause 12.4 above, the **contractor** shall keep accurate records of the cost of undertaking the relevant instruction or **variation** and of time expended thereon. Such records shall be open to inspection by **SAPREF** at all reasonable times.

13. CLAIMS

- 13.1 The procedure to be followed in respect of claims arising out of this **agreement** shall be as follows:
- 13.1.1 The **contractor** shall submit to **SAPREF** a notice in writing within 14 **days** of any event occurring which could give rise to a claim against **SAPREF** or which the **contractor** reasonably believes will delay the supply or **completion** of the **goods** and/or increase the **contract price**.
 - 13.1.2 The notice referred to in clause 13.1.1 above, shall contain the details and circumstances of such event and, where applicable, the **contractor's** estimate of the extension of the time for delivery of the **goods** and/or the increase in the **contract price**.
 - 13.1.3 The **contractor** shall, within 14 **days** of such notification, provide **SAPREF** with a fully detailed and substantiated claim together with all and any supporting proof of such claim. No claim shall be granted unless the validity thereof has been proved to the satisfaction of **SAPREF**.

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- 13.1.4 **SAPREF** shall within a reasonable time of receiving the information indicated in clause 13.1.3 above, and any such further information as **SAPREF** may have requested, determine whether the **contractor's** claim is approved or rejected and shall notify the **contractor** accordingly.
- 13.1.5 The **contractor** shall continue with the supply of the **goods** while a claim is being assessed in terms of clause 13.1.4 above.
- 13.1.6 **SAPREF** may reject any claim for additional payment and/or extensions of time which does not comply with the requirements of clause 13.1.3 above.
- 13.1.7 Should the **contractor** be dissatisfied with **SAPREF's** determination in terms of clause 13.1.4 above the matter shall be dealt with in terms of clause 22 below.
- 13.1.8 The **contractor** hereby waives and **SAPREF** shall not be liable for any claim which the **contractor** knew of or should reasonably have known of and which has not been reported to **SAPREF** in accordance with the provisions of this clause.

14. LIMITATION OF LIABILITY

- 14.1 Neither party nor its officers, employees, agents or assignees will be liable to the other party under this **agreement** for indirect, special or consequential damages including but not limited to loss of profits, loss of use, loss of time, loss of revenue, loss of goodwill or any business interruption of any kind except despite anything to the contrary contained in this **agreement**, to the extent to which such claims, losses, damages and costs arise out of the wilful misconduct or the gross negligent act or omission of such party.

15. INDEMNITIES

- 15.1 Each party will be liable for and will indemnify and keep the other party harmless from and against any liability and/or any loss or damage of any kind whatsoever, arising directly or indirectly from illness, injury or death to any person or any of either parties' employees, agents, **contractors** and/or **sub-contractors** arising out of or in connection with this **agreement** except to the extent that any liability, loss or damage is caused by a party's unlawful or wilful misconduct or gross negligence or that of its employees, agents, **contractors** and **sub-contractors**.
- 15.2 Despite anything to the contrary contained in this **agreement**, the **contractor** will be liable for, and will indemnify **SAPREF** and keep **SAPREF** indemnified from and against any liability, claims and/or any loss or damage of any kind whatsoever, arising directly or indirectly from any breach of any warranty or any of the terms or conditions of this **agreement** by the **contractor**.
- 15.3 Each indemnity in this clause 15 is a continuing obligation separate and independent from the parties' other obligations and survives termination of this **agreement**.

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16. INSURANCE

- 16.1 Subject to the Incoterm stipulated in clause 4.1.2 above, the **contractor** must insure the **goods** against any loss or damage of any nature whatsoever until the delivery at contractual point as defined by the selected Incoterms.
- 16.2 If the **contractor** is required to obtain insurance in terms of the relevant Incoterm stipulated in clause 4.1.2 above, it must insure the **goods** to their full replacement value and ensure that **SAPREF** is named as the beneficiary of such insurance policy. The **contractor** must fax or email **SAPREF** a copy of such insurance policy as soon as reasonably possible but before shipment.

17. SUB-CONTRACTING, CESSION AND ASSIGNMENT

- 17.1 Neither party may, without the prior written consent of either party, **sub-contract**, cede or assign any of its rights or obligations in terms of this **agreement** to any other party.

18. CONFIDENTIALITY

- 18.1 Each party undertakes that it will not disclose to any person any **confidential information** belonging to the other party which it has become possessed as a result of this **agreement** or the negotiations preceding this **agreement**. The parties agree that the terms of this **agreement** may be disclosed to any legal, financial and other adviser of a party; the auditor of a party; or a bona fide prospective purchaser of a party or the business of that party provided that such bona fide prospective purchaser agrees to keep the terms of this **agreement** confidential in accordance with this clause 18.
- 18.2 The provision of this clause 18 will survive the cancellation or termination of this **agreement** for any reason whatsoever and remain binding on both parties for a period of 5 years following the termination of this **agreement**.

19. INTELLECTUAL PROPERTY RIGHTS

- 19.1 **SAPREF** acknowledges that the **contractor** will remain the owner of all Background IP.
- 19.2 The **contractor** acknowledges that **SAPREF** will remain the owner of all Principal Background IP.
- 19.3 The **contractor** warrants that:
- 19.3.1 the provision of the **goods** does not and will not infringe the rights (including, but not limited to **Intellectual Property Rights**) of any third party. Accordingly the **contractor** hereby agrees to indemnify **SAPREF** and hold it harmless against all damages, losses, claims and costs (including legal costs on an attorney and own client scale) which may be incurred or suffered by **SAPREF** as a result of a breach by the **contractor** of this clause 19;

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- 19.3.2 the **contractor** will, at no further cost to **SAPREF**, procure all licences and consents to use any **Intellectual Property Rights** of a third party which are necessary to provide the **goods**.
- 19.4 The parties agree that in the event of Project IP being created, the parties will enter into a separate **agreement** to deal with such Project IP.
- 19.5 The obligations in this clause 19 will survive the cancellation or termination of this **agreement** for any reason, and will remain binding on both parties in perpetuity.

20. FORCE MAJEURE

- 20.1 If either party, despite all reasonable efforts, be prevented or hindered directly or indirectly by circumstances beyond its control from performing, except to the extent that such liability is covered in terms of appropriate insurance cover, all or any of its obligations under this **agreement** other than the obligation to make monetary payments, the party so affected ("the affected party") must be relieved of performance of its obligations hereunder other than the obligation to make monetary payments during the period that such circumstances and the consequences thereof will continue, but only to the extent so prevented or hindered, and will not be liable for any delay or failure in the performance of any of its obligations in terms of this **agreement** or loss or damage whether direct, general, special, or consequential which the other party ("the unaffected party") may suffer due to or resulting from such delay or failure, provided that notice must be given by the affected party to the unaffected party promptly upon the occurrence of the event constituting force majeure, together with details thereof and an estimate of the period of time for which it will endure.
- 20.2 If force majeure is of such a nature that it will result in impossibility of performance of an obligation going to the root of this **agreement**, the unaffected party is entitled, despite any provision to the contrary contained in this clause 20, to immediately terminate the **agreement** but shall not be entitled to recover any damages which it may suffer as a result of such premature termination.
- 20.3 If force majeure is of such a nature that it will not result in impossibility of performance of the obligation in question but will delay the performance thereof, the affected party is entitled to such extension of time in which to perform that obligation as may be reasonable in the circumstances, taking into account the interests of both parties, provided that if such force majeure situation persists for a period in excess of 60 **days** the other party may be entitled to terminate this **agreement** but is not entitled to recover any damages which it may suffer as a result of such premature termination.

21. BREACH AND TERMINATION

- 21.1 Without prejudice to its rights, either party may immediately terminate this **agreement** or claim specific performance and in either event claim damages, if a party:

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- 21.1.1 in any way commits any material breach of this **agreement** which is not capable of being remedied; or
- 21.1.2 in any way breaches any provision of this **agreement** which is capable of being remedied and fails to remedy such breach within **7 days** after receipt of a notice from the other party calling upon it to remedy the breach; or
- 21.1.3 breaches any provision of this **agreement** in circumstances where the aggrieved party has given notice on three or more occasions in the previous **365 day** period calling for the breach to be remedied; or
- 21.1.4 takes steps to enter into a compromise with any of its creditors or takes steps or has steps taken against it for provisional or final liquidation, winding up, de-registration or judicial management or commits an act of insolvency in terms of the law of its incorporation; or
- 21.1.5 commits or participates in any unlawful, dishonest or unethical act in the performance of its obligations under this **agreement**.

22. DISPUTE RESOLUTION

22.1. Mediation

- 22.1.1 In the event of any dispute or difference between the parties in regard to any matter arising out of this **agreement**, including the implementation, interpretation, rectification, termination or cancellation of this **agreement**, or any matter arising out of its cancellation, the parties shall first endeavour to settle such dispute amicably by mediation in accordance with the provisions set out below.
- 22.1.2 Either party shall be entitled to give written notice to the other, requiring a meeting to be convened in terms of this clause and selecting a venue in Durban for the meeting.
- 22.1.3 The other party shall thereupon select a time for the meeting, which time shall be within **14 day** after the date of receipt of the notice given in terms of clause 22.1.2 above.
- 22.1.4 The parties shall authorise their respective representatives that the meeting to enter into any **agreement** or make such other arrangements as may be negotiated at the meeting as a means of resolving the dispute;
- 22.1.5 Should the parties fail to reach an amicable settlement at a meeting held in terms of clause 22.1.2 above then the matter shall be referred to arbitration in terms of clause 22.2 below.
- 22.1.6 Should either party unnecessarily delay a meeting held or to be held in terms of clause 22.1.2 above or if it is clear to either party that the dispute cannot be amicably resolved, then that party shall be free to refer the matter to arbitration in terms of clause 22.2 below.

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22.2. Arbitration

- 22.2.1 Subject to clause 22.1 above, any dispute or difference between the parties in regard to any matter arising out of this **agreement**, including the implementation, interpretation, rectification, termination or cancellation of this **agreement**, or any matter arising out of its cancellation, shall be submitted to and decided by arbitration in accordance with the provisions set out below.
- 22.2.2 Such arbitration shall be held at Durban and in a summary manner on the basis that it shall not be necessary to observe or carry out the strict rules of evidence or the strict formalities or procedures prescribed under the arbitration laws so that there shall be no written pleadings or evidence or formal discovery of documents, except insofar as required by the arbitrator, but otherwise the arbitration shall be conducted according to the procedures prescribed by the arbitration laws of the Republic of South Africa.
- 22.2.3 Such arbitration shall be held as soon as practicably possible and with a view to it being completed within 60 (sixty) **Business Days** after it is demanded, having regard to any urgency with respect to the matter in issue.
- 22.2.4 The Parties undertake to co-operate with one another with a view to expeditiously concluding any arbitration in terms of this clause 22.
- 22.2.5 The arbitrator shall be a senior advocate who has been an advocate for at least 10 (ten) years.
- 22.2.6 The Parties to the arbitration shall jointly appoint the arbitrator and, should they fail to agree on a joint appointment, the arbitrator shall be appointed by the president for the time being of the Kwa-Zulu Natal Bar Council.
- 22.2.7 The decision of the arbitrator shall be final and binding.
- 22.2.8 Any Party shall be entitled to require that the decision of the arbitrator be made an Order of Court in the Republic of South Africa.
- 22.2.9 Nothing contained in this clause 22 shall prevent a Party from bringing an urgent application, in any appropriate court of law, for a temporary interdict or injunction pending the determination of any matter in accordance with the provisions of this clause 22.
- 22.2.10 The foregoing arbitration provisions shall continue to be binding on the Parties notwithstanding any termination or cancellation of this **agreement**.

23. GOVERNING LAW AND JURISDICTION

- 23.1 This **agreement** will be construed and interpreted in accordance with South African law.

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- 23.2 The place of arbitration shall be Durban, South Africa and the proceedings shall be conducted in English.

24. NOTICES AND ADDRESSES FOR SERVICE

- 24.1 Unless otherwise specified any notice or communication in terms of this **agreement**:
- 24.1.1 must be in writing to be effective;
- 24.1.2 must be sent by hand or fax to the addresses/fax numbers set out in **Part 3** which physical addresses parties select as their respective domicilium citandi et executandi.
- 24.2 Either party may change its address/fax number to any other address/fax number. Such change will only take effect upon receipt of such notice by the other party.
- 24.3 Any notice or communication will:
- 24.3.1 if delivered by hand during business hours to the person designated in **Part 3**, be deemed to have been received on the date of delivery; and
- 24.3.2 if faxed to the selected fax number, be deemed to have been received on the first **business day** following the date of transmission.
- 24.3.3 Any written notice or communication, which has actually been received by a party, shall be regarded as sufficient notice even if it has not been sent in the manner or to the address/fax number provided for above.

25. COMPLIANCE**2.5.1 GENERAL BUSINESS PRINCIPLES**

- 25.1.1. The **contractor** confirms having received a copy of the **SAPREF's** General Business Principles and **SAPREF's** Code of Conduct.
- 25.1.2. The **contractor** fully accepts that observance by the **contractor** of **SAPREF's** General Business Principles is a material condition of the agreement, and commits therefore not to violate any of **SAPREF's** General Business Principles when performing work in connection with this **agreement**.
- 25.1.3. In the event that the **contractor** supplies staff that work on behalf of the **contractor**, the **contractor** also commits that such staff will behave in a manner that is consistent with **SAPREF's** Code of Conduct.
- 25.1.4. Without prejudice to any rights that **SAPREF** may have by operation of law or in terms of this **agreement**, **SAPREF** may invoke the provisions of clause 21 above and terminate this

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agreement with immediate effect upon notice in writing to the **contractor** should the **contractor** violate the provisions of this clause 25.

26. MISCELLANEOUS LEGAL PROVISIONS

- 26.1 This **agreement** constitutes the whole **agreement** between the parties as to the subject matter hereof and no contracts, representations or warranties, other than those set out herein, are binding on the parties.
- 26.2 The terms and conditions contained on the **contractor's** tender, delivery note, order acceptance forms and/or invoices or any other documentation will not apply to, supplement or supersede any provision of this **agreement** and will be of no force and effect.
- 26.3 Subject to its other provisions, no **agreement** varying, adding to, deleting from or cancelling this **agreement** and no waiver of any right under this **agreement** is effective unless the formal amendment thereto is made in writing and signed by or on behalf of the parties.
- 26.4 No party may rely on any other representations which allegedly induced that party to enter into this **agreement**, unless the representation is recorded in this **agreement**.
- 26.5 This **agreement** may be signed by the parties in any number of counterparts, each of which will be deemed to be an original, but all of which will together constitute one and the same **agreement**.
- 26.6 Since the provisions of this **agreement** have been settled by negotiation, the rule of construction that clauses must be interpreted against the party principally responsible for drafting will not apply.
- 26.7 No relaxation by a party of any of its rights in terms of this **agreement** at any time will prejudice or constitute a waiver of a party's rights, unless reduced to writing and signed by both parties; a party is entitled to exercise its rights thereafter as if such relaxation had not taken place.
- 26.8 In the event that any of the terms of this **agreement** are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining provisions, which will remain in full force and effect. If any invalid term is capable of amendment to render it valid, the parties agree to negotiate in good faith an amendment to remove the invalidity.
- 26.9 The annexures and appendices to this **agreement** form an integral part of this **agreement** and words and expressions defined in this **agreement** will bear, unless the context otherwise requires, the same meaning in such annexures and appendices and are to be taken as mutually explanatory of one another. In the event of a contradiction or ambiguity between the annexures or appendices with this **agreement**, the terms and conditions of this **agreement** will prevail.

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PART 3

PARTIES' REPRESENTATIVES

SAPREF's representative for the purpose of giving effect to this **agreement** and his/her contact particulars are as follows:

Name: _____
Designation _____
office tel _____
cell _____
E-mail _____

The **contractor's representative** for the purpose of giving effect to this **agreement** and his/her contact particulars are as follows:

Name: _____
Designation _____
office tel _____
cell _____
E-mail _____

Either party may, by written notice to the other, change their respective **representatives**.

PARTIES' PHYSICAL ADDRESSES

SAPREF	1 Refinery Road Prospecton 4000
The Contractor	

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PART 4

PURCHASE ORDER CONFIRMATION

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**PART 5
SUPPLEMENTARY COMMERCIAL TERMS AND
SPECIFICATIONS**

None

References (Records, Internal/External References)

Record/Doc. ID	Title
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