

**DRAFT AGREEMENT**

**MADE AND ENTERED INTO BETWEEN**

**ARCELORMITTAL SOUTH AFRICA LIMITED**

**AND**

**SUCCESSFUL TENDERER**

**FOR**

**THE INTERNAL RAIL SHUNTING OPERATION,  
INCLUDING THE SUPPLY AND MAINTENANCE OF A  
LOCOMOTIVE, AS WELL AS THE MAINTENANCE OF  
THE APPLICABLE INTERNAL RAIL TRACKS AT  
ARCELORMITTAL, PRETORIA WORKS**

**AGREEMENT NO. LOG 0503**

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## 1 DEFINITIONS AND INTERPRETATION

In this Agreement:

- 1.1 the singular includes the plural and *vice versa*;
- 1.2 a reference to one gender includes the other;
- 1.3 a reference to a firm or body corporate includes a natural person and *vice versa*;
- 1.4 clause headings are for convenience only and shall not be taken into consideration in the interpretation of the Agreement;
- 1.5 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 1.6 where figures are referred to in numerals and in words, if there is any conflict, the words shall prevail;
- 1.7 all schedules and annexures hereto shall be deemed to be incorporated herein and shall form an integral part hereof;
- 1.8 reference to days, months or years shall be construed as Gregorian calendar days, months or years;
- 1.9 where a number of days are prescribed, it shall be reckoned exclusively of the 1st (first) and inclusively of the last day;
- 1.10 expressions defined in the Agreement shall bear the same meanings in schedules or annexures to the Agreement, which do not contain their own definitions.
- 1.11 The following expressions bear the meanings assigned to them below and cognate expressions bear corresponding meanings, unless inconsistent with or otherwise expressly indicated in the Agreement:
  - 1.11.1 “Agreement” means this agreement as contained in this document and all its annexures or schedules;
  - 1.11.2 “**ArcelorMittal**” means ArcelorMittal South Africa Limited, a public company registered in the Republic of South Africa, (Registration No. 1989/002164/06);

- 1.11.3 “**AMPW**” means ArcelorMittal Pretoriwa Works that is situated in Pretoria West.
- 1.11.4 “**AMCC**” means ArcelorMittal Coke and Chemicals situated at ArcelorMittal’s Pretoria Works site;
- 1.11.5 “**BBEE**” means Broad Based Black Economic Empowerment in as defined in the Broad Based Black Economic Empowerment Act 53 of 2003 terms and amended from time to time
- 1.11.6 “**Business Day**” means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 1.11.7 “**Contractor**” means **Successfull Tenderer situated in** ;
- 1.11.8 “**Contractor Employees**” means employees of the Contractor, including, but not limited to the Contractor’s directors, members, officers, third parties, contractors, sub-contractors and other persons who have a contractual relationship (in writing or otherwise) with the Contractor entrusted with the duty to deliver or render services in relation with the delivery of the Products on behalf of the Contractor;
- 1.11.9 “**Day**” means the consecutive period of 24 hours commencing at 00h00;
- 1.11.10 “**Dispatch Point**” means the area where the Product/s will be handed over by either AMCC or the Contractor to the other. This point may either be the Cor Delfos siding or the area designated by AMCC;
- 1.11.11 “**Effective Date**” means **XXXXXXXX**..notwithstanding the Signature Date;
- 1.11.12 “**Month**” means a calendar month which commences on 00h00 of the first day of the month until 24:00 of the last day of the month;
- 1.11.13 “**NRSR**” means the National Railway Safety Regulator;
- 1.11.14 “**Party**” means ArcelorMittal or the Contractor;
- 1.11.15 “**Parties**” means ArcelorMittal and the Contractor;
- 1.11.16 “**Plant**” means ArcelorMittal Coke and Chemicals;
- 1.11.17 “**Premises**” means the rail network situated at ArcelorMittal on the Remainder of Portions 124 of Portion 6, Pretoria Town and Townlands 351 JR, inclusive of the Cor Delfos Siding.

- 1.11.18 “**Product**” or “**Product/s**” means coal, coke and benzol to be shunted by the Contractor;
- 1.11.19 “**Receiving Point**” means the area where the Product/s will be accepted by either TFR, ArcelorMittal or the Contractor. This point may either be the Cor Delfos siding or the area designated by AMCC;
- 1.11.20 “**Service**” means the shunting service as well as the maintenance of railway tracks to be rendered by the Contractor to ArcelorMittal in terms of this Agreement;
- 1.11.21 “**Shunt/-ing/-ed**” means the movement of rail wagons by means of a locomotive, including labour, equipment, fuel and other facilities, necessary for the safe movement of the Products between the Receiving Point and the Dispatch Point within the Premises;
- 1.11.22 “**Signature Date**” means the date of signature of this Agreement by the Party signing last;
- 1.11.23 “**Termination Date**” means **XXXXXX**;
- 1.11.24 “**TFR**” means Transnet Freight Rail; and
- 1.11.25 “**VAT**” means value added tax in terms of the Value-Added Tax Act No. 89 of 1991 and as levied in terms of the Income Tax Act No 58 of 1962, both as amended from time to time.

The principle of *contra proferentem* shall not apply in so far as interpretation of this Agreement is concerned.

Words importing persons or parties shall include firms, corporations, companies and associations.

## **2 APPOINTMENT**

- 2.1 ArcelorMittal hereby appoints the Contractor to render and perform the Shunting service for ArcelorMittal at Pretoria Works and the Contractor hereby accepts this appointment on the terms and conditions stated in this Agreement.
- 2.2 It is specifically recorded that ArcelorMittal provides no warranties, undertakings or representations as to the tonnages of Product/s which shall be available for the Shunting service during the term of this Agreement. The quantities of Product/s to be handled are **estimated** quantities and are only given as a guide to indicate the extent of the work to be performed. The estimated quantities are given without any obligation on the part of

ArcelorMittal and may vary from time to time in accordance with the requirements of ArcelorMittal and in ArcelorMittal's sole discretion. The Contractor shall provide the Shunting service of any such quantities of the Product/s as may be specified by ArcelorMittal from time to time.

- 2.3 ArcelorMittal shall under no circumstances be held accountable for any costs incurred by the Contractor such as the purchase of equipment or material or recruitment of staff in order to give effect to this Agreement.

### **3 DURATION**

- 3.1 This Agreement shall notwithstanding the Signature Date, commence on the Effective Date and will continue to be in force until the Termination Date.

- 3.2 ArcelorMittal shall be entitled to extend the period of this Agreement by giving written notice to the Contractor of its intention to do so prior to the date of termination of this Agreement.

- 3.3 The terms and conditions applicable to the renewal period shall be the same as the terms contained in this Agreement save as otherwise agreed by the Parties.

- 3.4 ArcelorMittal shall be entitled to terminate the Agreement immediately should the Contractor's contractual Shunting service be less than 40 wagons within 24 hours after arrival of a train at Cor Delfos.

- 3.5 ArcelorMittal shall further be entitled to terminate the Agreement at any time by giving the Contractor 1(one) month's prior written notice to such effect without incurring any further liability, loss or claim of whatsoever nature including any labour related claims.

### **4 CONTRACTOR AND ARCELORMITTAL'S OBLIGATIONS AND SERVICE TO BE RENDERED**

- 4.1 **The Contractor shall:**

- 4.1.1 provide sufficient personnel for the proper performance of the Shunting service as quickly as the constraints of the TFR train carrying the Product/s and safety allow;

- 4.1.2 supply all the relevant Shunting vehicles/locomotive, labour, equipment, fuel and other facilities, necessary for the safe Shunting of the Products between the respective Receiving Points and Dispatch Points as well as the rail maintenance in terms of this Agreement. The Contractor shall use vehicles and equipment suitable in every respect for the Shunting of the Products;

- 4.1.3 at its sole expense supply and maintain in good working order all labour, equipment that includes a locomotive, and all other facilities necessary for the proper and timeous performance of the Shunting service;
- 4.1.4 perform the Shunting service with due care, efficiency and diligence;
- 4.1.5 perform the Shunting services to the satisfaction and approval of AMCC;
- 4.1.6 ensure that all Contractor Employees that operate the Contractor's locomotive and equipment are fully licenced to operate such locomotive and/or equipment;
- 4.1.7 supply a locomotive and equipment suitable in every respect for the proper performance of the Shunting service;
- 4.1.8 take all precautions that may be necessary for the protection of life, property and the environment whilst performing the Shunting service.
- 4.2 The Contractor shall familiarize itself beforehand of the geographical Receiving Points and Dispatch Points and shall be capable, able and equipped to comply with the terms of this Agreement.
- 4.3 When receiving the rail wagons and Product at the Dispatch Point and/or Receiving Point, the Contractor shall ensure that all damage and/or discrepancies observed are noted and shall notify AMCC in immediately verbally and in writing, but no later than 6 (six) hours of the Contractor becoming aware of any such damages and/or discrepancies. The Contractor undertakes not to handle any damaged Product until AMCC has inspected such damaged Product or discrepancy. AMCC shall carry out such inspection without delay.
- 4.4 The Contractor shall arrange for adequate security measures and shall be liable for loss or damage to AMCC's Products whilst the Products are under its control. The Products will be considered to be in the Contractor's custody and under its control from the time of receipt until delivered to the applicable Receiving Point or Dispatch Point.
- 4.5 The Contractor hereby undertakes to Shunt AMCC's Products from or to the respective Receiving Point or Dispatch Point, subject to the following:
  - 4.5.1 the Contractor shall deliver the Product timeously in terms of the requirements of AMCC as may be stipulated from time to time by AMSA;
  - 4.5.2 the Contractor shall deliver all Products to the respective Dispatch Point or Receiving Point in the same good order and condition as the Product was received by the Contractor;



- 4.5.3 the Products become the Contractor's responsibility when accepted by the Contractor until delivered to the respective Receiving Point or Dispatch Point.
- 4.6 The Contractor shall at all times perform a professional service in terms of this Agreement to uphold and promote ArcelorMittal's reputation and image with its clients and other service providers.
- 4.7 In the event of a strike, the Contractor undertakes to ensure that the following procedures are followed:
- 4.7.1 the Contractor shall notify ArcelorMittal of any prior knowledge of a strike as soon as reasonably possible;
- 4.7.2 the Contractor shall attempt to resolve the dispute prior to a strike or as soon as reasonably possible;
- 4.7.3 notwithstanding the above, the Contractor shall endeavour through the following steps to fulfil the emergency Shunting services of ArcelorMittal as far as reasonably possible by:
- 4.7.3.1 drawing on other employees who are qualified and competent from other operations to perform Shunting service as required by ArcelorMittal; or
- 4.7.3.2 employing other acceptable, competent and qualified contractors to perform the Shunting service.
- 4.8 If none of the Contractor's endeavours lead to the fulfilment of ArcelorMittal's Shunting service at any point, ArcelorMittal shall (to the extent of the shortcoming) be entitled to seek and contract alternative help concerning the Products requiring Shunting.
- 4.9 The Contractor shall comply with all reasonable written requests of ArcelorMittal from time to time in relation to this Agreement, it being recorded that ArcelorMittal shall provide the Contractor with all necessary information and data required by the Contractor to perform its obligations under the Agreement. It shall be the responsibility of the Contractor to request from ArcelorMittal information relevant to the execution of its obligations in terms of the Agreement.
- 4.10 The Contractor shall report to ArcelorMittal in writing from time to time as may be reasonably required.
- 4.11 The Contractor shall comply and agrees to ensure that the Contractor Employees comply with all of the provisions of applicable policies of ArcelorMittal in regard to fraud, anti-bribery, conflict of interest declaration

and corruption which are available upon request from ArcelorMittal and by signature hereto acknowledge to have read and understood same.

- 4.12 The Contractor undertakes in all matters to act in good faith towards ArcelorMittal and to work co-operatively and constructively with ArcelorMittal's representatives and employees.
- 4.13 The Contractor shall duly comply with all statutory control measures and applicable regulations governing the Shunting service.
- 4.14 The Contractor shall avoid unnecessary delays in the Shunting service, attend to any breakdowns and provide sufficient back up service to ensure a continuous service and timeous Shunting service as anticipated herein.
- 4.15 The Contractor in performance of its obligations in terms of this Agreement, do so in a professional manner and uphold ArcelorMittal's reputation and image with its Suppliers and other service providers.
- 4.16 The Contractor shall at its own expense train and provide suitable personnel and Contractor Employees for the purposes of this Agreement.
- 4.17 The Contractor shall not offer, give or agree to any person in the service of ArcelorMittal or any member of their family or any person claiming to act on behalf of any such person, any gifts or consideration of any kind as an inducement or reward for doing or for bearing to do or for having done or forborne to do acts in relation to the obtaining or execution of the Agreement.
- 4.18 The Contractor shall at all times comply with, *inter alia*, all the safety, health and environmental laws, regulations, policies and specifications including all the procedural and technical requirements of ArcelorMittal regarding the Shunting service in terms of this Agreement, which the Contractor shall be obliged to acquaint itself with, failing which, ArcelorMittal shall in its sole and absolute discretion and without prejudice to other remedies it may have in law or in terms of the Agreement without notice, bar the Contractor from continuing the Shunting service until all such requirements are met to the satisfaction of ArcelorMittal. The Contractor acknowledges that given the nature of ArcelorMittal's business that Health, Safety and Environmental concerns are of paramount importance and that ArcelorMittal will be entitled to exercise its sole and absolute discretion in that regard in the interest of the other employees on its sites and its business requirements.
- 4.19 The Contractor shall have a competent contact person on standby on a 24 (twenty four) hour basis, 7 (seven) days a week.
- 4.20 The Successful Tenderer's Business Continuity Plan will be added –refer Enquiry LE 0503, page 6, Clause 2.7.11.

**4.21 ArcelorMittal shall:**

- 4.21.1 ArcelorMittal shall furnish the Operator with at least 12 (twelve) hours written notice of its Shunting requirements. ArcelorMittal however, reserves the right to request the Operator to do Shunting on 3 (three) hours' notice of the intended Shunt
- 4.21.2 ArcelorMittal shall ensure that the Operator's locomotives are permitted proper ingress to and egress from the relevant points.

**5 WARRANTIES**

The Contractor certifies and warrants that it:

- 5.1 shall devote its time, attention and abilities as may be necessary for the provision of the required Shunting service to the satisfaction of ArcelorMittal;
- 5.2 will perform the required Shunting service in a professional manner to suit ArcelorMittal's business purposes;
- 5.3 shall advise and assist with respect to all aspects of the Shunting service;
- 5.4 possesses all licences and permits that are required by law and are necessary to perform in terms of this Agreement and that all such licenses and permits will be in effect for the term of the Agreement or any extension thereof;
- 5.5 has the ability, experience, expertise and skills necessary to perform the required Shunting service. For avoidance of doubt, the Contractor shall use all reasonable skill and care, to a standard to be reasonably expected from a first class and professional firm and provider of similar services at all times in performing all its obligations under the Agreement; and
- 5.6 has the full right, power, authority and capacity and has taken or caused to be taken all steps, actions and corporate procedures necessary to enter into, execute, deliver and perform all of its obligations in terms of the Agreement and no services, materials or reports furnished by the Contractor in terms of the Agreement shall in any way infringe upon or violate any applicable law, rule or regulation, any contract with a third party or any rights of any third person, including, without limitation, rights of patent, trade secret, trademark or copyright.

## 6 TARIFFS

- 6.1 The tariffs applicable to the Shunting service rendered by the Contractor to ArcelorMittal in terms of this Agreement shall be as set out in Annexure C hereto – Annexure C will be added after agreement has been reached with the Successful Tenderer.
- 6.2 The tariffs quoted are exclusive of VAT. The Contractor must calculate VAT in accordance to relevant statutory provision and indicate it separately on its invoices to ArcelorMittal.
- 6.3 Should there be any changes to the original Agreement, such as tariff changes, it will be confirmed in writing by ArcelorMittal after agreement with the Contractor, which amendment to the Agreement will be signed by both parties.

## 7 PRICE BASIS

- 7.1 The tariffs as reflected in Annexure C shall remain fixed for a period of **XXXXXXX**.
- 7.2 Refer to **clause 3.3 of the Enquiry document**. Whatever agreement is reached with the Successful Tenderer, i.e. fixed tariffs for the duration of the Agreement or escalation formula, will be reflected in this clause 7 prior to signing of the Agreement.

## 8 CONDITIONS OF PAYMENT

- 8.1 Payment shall be made on the first day of the second month following the month in which the Shunting service were rendered, provided **original** monthly statements of account, shall in all instances reach ArcelorMittal's Corporate Finance Department, Accounts Payable, situated in Vanderbijlpark, not later than the seventh day of the month following the month in which the services were rendered.
- 8.2 The Contractor shall ensure that ArcelorMittal's and its VAT numbers are reflected on all related invoices. ArcelorMittal's VAT number is **4920114990**.
- 8.3 The Contractor shall ensure that its vendor number is reflected on all related invoices. Successful Tenderer's vendor number with ArcelorMittal is **XXXXXXXXXX**
- 8.4 ArcelorMittal shall not be accountable to pay any interest or penalties of any sort due to the Contractor's failure to submit its invoices on time. Invoices that are submitted by the Contractor 6 (six) months after applicable service was rendered shall not be accommodated and will not be paid by ArcelorMittal.

**9 ESTIMATED TONNAGES AND WORKING HOURS**

- 9.1 The quantities of Products to be handled by the Contractor in terms of this Agreement are subject to the provisions of Clause 2.2 and will be allocated as and when available.
- 9.2 ArcelorMittal reserves the right to provide such tonnages of Products for Shunting service as and when required by ArcelorMittal at its sole discretion.
- 9.3 No claim whatsoever shall lie against ArcelorMittal for any change in the tonnages that form the subject of this Agreement from any cause whatsoever
- 9.4 The Contractor will provide the Shunting service 24-hours per day, 7 days per week.

**10 MANAGEMENT AND PRODUCTIVITY IMPROVEMENT PLAN**

- 10.1 The Contractor shall independently manage this Agreement in order to provide ArcelorMittal with an effective Shunting service which service must be to the mutual benefit of both Parties.
- 10.2 ArcelorMittal shall review the Contractor's performance at its monthly meetings against performance standards agreed upon by the Parties.

**11 MEETINGS**

- 11.1 The Parties jointly agree to hold a monthly meeting for purposes of assessing the performance of the Contractor in terms of this Agreement, to share information concerning past and future volumes, and to settle any commercial or technical disputes that may arise between the Parties. This meeting shall be convened by ArcelorMittal and shall cover the following set agenda:
- 1.11.1 the review of the performance of the Contractor during the previous month as measured against the requirements as contained in this Agreement;
- 1.11.2 previous month's volumes and forecasted volumes for the following month;
- 1.11.3 technical disputes;
- 1.11.4 commercial disputes;
- 1.11.5 complaints; and
- 1.11.6 miscellaneous matters.

- 1.12 ArcelorMittal shall advise the Contractor timeously of the time of arrival (ETA) of a train at AMPW and shall update the Contractor in the event of changes in the ETA.

## **12 EQUIPMENT TO BE USED**

- 12.1 The Contractor shall provide a 70-ton locomotive for the execution of the Agreement.
- 12.2 The Contractor will provide adequate and safe equipment where necessary in the execution of the shunting service.
- 12.3 The Contractor will provide adequate and qualified laborers to execute the contractual shunting services. Any and all training required will be provided by the Contractor.
- 12.4 Also refer to Annexure B – Scope of Work.

## **13 SAFETY PROCEDURES**

- 13.1 The Contractor will have the right to advise relevant authorities of any unsafe conditions and will not be liable for any costs, delays, damages or losses incurred as a result of the non-performance of the Shunting service as a result of the existence of unsafe conditions unless the unsafe conditions was created by the Contractor.
- 13.2 The Contractor shall, in respect of all matters arising in the fulfilment of this Agreement, conform to all safety and operating procedures prescribed by ArcelorMittal, which safety and operating procedures the Contractor by signature hereto warrants it is familiar with, has read and has understood and the Contractor acknowledges that it is its duty to keep itself informed of any updates or changes in procedure. All Contractor Employees must be trained by the Contractor in the workings and application of the Occupational Health and Safety Act as well as any ArcelorMittal safety rules, applicable policies and regulations, and where so required, that of TFR.
- 13.3 The Contractor will be compelled to supply all Contractor Employees with adequate PPE (Personal Protective Equipment, i.e. overall, hard-hat, safety shoes and safety glasses, hearing protection, etc.) for the work they must perform and in accordance with the requirements of General Safety Regulations of the OHS Act. The Contractor shall further ensure that its Contractor Employees wear the PPE issued to them at all times during the Shunting service provided.
- 13.4 All costs related to Contractor Employees' training shall be for the account of the Contractor.

**14 SHE INCIDENTS (SAFETY, HEALTH AND ENVIRONMENTAL)**

- 14.1 For the purposes of this clause, a “SHE Incident” shall mean a safety fatality, occupational health fatality, major occupational hygiene incident or major environmental incident as defined by ArcelorMittal from time to time.
- 14.2 In the event of a SHE Incident occurring on ArcelorMittal’ premises, the Contractor shall submit within 3 (three) days of the occurrence of such a SHE Incident a report to the Plant Manager where the SHE Incident took place detailing the following information:
- 14.2.1 the background to the occurrence of the SHE Incident;
  - 14.2.2 a description of the SHE Incident;
  - 14.2.3 possible causes of the SHE Incident; and
  - 14.2.4 remedial, corrective or preventative actions taken.
- 14.3 In addition to the foregoing the Contractor shall upon reasonable notice from ArcelorMittal prepare and present a presentation detailing the information required in terms of clause 14.2 above to the ArcelorMittal SHE Committee and attend all meetings, investigations in this regard as may be required by ArcelorMittal.
- 14.4 Notwithstanding the above ArcelorMittal reserves the right to request from the Contractor an incident report setting out the information contained in clauses 14.2 and 14.3, in respect of any incident that occurs during the course of the Shunting service, which report must be supplied to ArcelorMittal within three days of the request for same.

**15 INSURANCE**

- 15.1 The Contractor shall have and maintain at its sole cost and expense throughout the term of the Agreement, comprehensive general liability or commercial general liability insurance and all risk insurance, including goods in transit, fire, theft, its material, equipment or property (“Insurance Cover”) from a reputable insurance company acceptable to ArcelorMittal.
- 15.2 This Insurance Cover shall *inter alia*, cover for its indemnity obligations in terms of clause 20 and any liability whether bodily injury, public liability and/or contractual liability which may arise as a result of the Agreement or the Contractor and Contractor Employees’ wilful misconduct, negligent acts and/or omissions.

- 15.3 The Insurance Cover shall not be cancelled or amended in any manner which restricts the existing coverage or renewed without the Contractor giving ArcelorMittal at least 30 (thirty) days prior written notice to that effect.
- 15.4 The cost of insurance is included in the tariffs above and the Contractor shall be responsible for payment of all insurance premiums and any excess in respect of the Insurance Cover and the Contractor shall strictly comply with all terms and conditions of the insurance policy.
- 15.5 The Contractor shall furnish ArcelorMittal with a certificate of insurance evidencing the Insurance Cover prior to the Effective Date.
- 15.6 Compliance by the Contractor with this insurance provision shall not relieve the Contractor from liability under the indemnity provisions of this Agreement.

## **16 RISK AND LIABILITY**

- 16.1 ArcelorMittal shall cause the Products to be delivered to the relevant Siding and the risk in and to the Product shall pass to the Contractor from the time that the Contractor hook his locomotive to the TFR wagons carrying the Products.
- 16.2 The Contractor shall indemnify ArcelorMittal against all actions, suits, demands, claims, injury, costs or expenses, relating to any persons or property arising in connection with the performance of the Shunting service to the extent to or for which the Contractor is liable.

## **17 BROAD BASED BLACK ECONOMIC EMPOWERMENT**

- 17.1 The Contractor must be BBBEE compliant and must be at least a level 5 for the purposes of this Agreement. The Contractor further undertakes to comply with Broad Based Black Economic Empowerment policies of ArcelorMittal amended from time to time and is required to improve its BBBEE compliance status by at least one contribution level every year for the duration of the Agreement until such time as a BBBEE compliance level 3 is reached. After reaching BBBEE compliance level 3, it must be maintained for the remainder of the Agreement.
- 17.2 The Contractor will supply ArcelorMittal with their valid BBBEE certificate on an annual basis or at any time when requested by ArcelorMittal.
- 17.3 ArcelorMittal reserves the right to audit the Contractor's BBBEE status on a regular basis and the Contractor shall afford ArcelorMittal reasonable access to all documents and other information necessary to conduct such audit(s).



**18 CONFIDENTIALITY**

- 18.1 Except as otherwise provided in this clause, the terms and conditions of this Agreement, all data, reports, records and other information of any kind whatsoever developed or acquired by any Party in connection with this Agreement ("Confidential Information") shall be treated by the Parties as confidential. No Party shall reveal or otherwise disclose such Confidential Information to any third party without the prior written consent of the other Party. The foregoing restrictions shall not apply to the disclosure of necessary Confidential Information to employees and advisors of the Parties. Any third party that may become privy to such information must undertake in writing to protect the confidential nature thereof.
- 18.2 The confidentiality undertakings in this Agreement shall not apply in respect of Confidential Information within the public domain or a Party's knowledge at the commencement of this Agreement or to disclosure required to satisfy the order of a court of competent jurisdiction or to comply with the provisions of any law or regulation in force from time to time.

**19 ANTI-BRIBERY AND FRAUD**

- 19.1 The Contractor undertakes:
- 19.1.1 to comply with ArcelorMittal's anti-fraud or corruption guidelines and policies as amended from time to time and available upon request at any time from ArcelorMittal, which constitute, *inter alia*, the applicable provisions of the U.S. Foreign Corrupt Practices Act ("FCPA"), the United Nations Anti-bribery Conventions and the laws of the Republic of South Africa relating to fraud and corruption, and in particular but not limited to, the Prevention and Combatting of Corrupt Activities Act of 2004, all together hereinafter referred to as ("Fraud Guidelines") which the Contractor by virtue of its signature hereto warrants that they are familiar with and that they have read and understood them;
- 19.1.2 not to make any payments on behalf of ArcelorMittal to any person and in particular to a government official, employee or department without obtaining prior written approval from ArcelorMittal. A written accounting must be kept of all payments made by the Contractor on behalf of ArcelorMittal, or out of funds provided by ArcelorMittal. A copy of this account must be provided to ArcelorMittal upon request. At no time shall any payment be made by the Contractor or its authorized agents or employees and officers on behalf of ArcelorMittal to any undisclosed third party; and
- 19.1.3 not to make, or attempt to make, any payment, loan, giving of a gift, service, favour or advantage to an employee, family member, contractor, sub-contractor, consultant, agent and/or advisor of ArcelorMittal.

- 19.1.4 to further ensure that any agreements entered into with its contractors, sub-contractors, consultants, agents, advisors or any other party responsible for the execution of this Agreement contain fraud and anti-corruption provisions, are broadly in line with this Agreement and particularly this clause 19 and that all such contractors, sub-contractors, consultants, agents and advisors comply with those provisions.
- 19.2 The Contractor represents and warrants that no money paid to it as compensation or otherwise for the Shunting service has been or will be used to pay any bribe or kickback in violation of the Fraud Guidelines.
- 19.3 The Contractor or the Contractor's Employees' failure to comply with this clause 19 or by them committing any act/s of bribery and/or acts constituting fraudulent activities, as determined by ArcelorMittal in its sole discretion, in contravention of this clause 19 and/or the Fraud Guidelines, shall be deemed to be a material breach of the Agreement entitling ArcelorMittal in its sole discretion, without prejudice to any of the remedies available to it in law, including but not limited to, the remedies set out below or a combination of the remedies as are set out below, to
- 19.3.1 immediately terminate the Agreement and in so doing, bar the Contractor access to ArcelorMittal's premises, and in that event the Contractor shall notwithstanding anything contained in the Agreement to the contrary, also be precluded from making any claim for payment under this Agreement including payment for services previously performed;
- 19.3.2 to suspend the Agreement and in so doing bar the Contractor access to ArcelorMittal's premises, pending the outcome of an internal investigation into the matter, and ArcelorMittal's final and binding decision in regard thereto;
- 19.3.3 to institute a claim against the Contractor for any and all damages suffered as a result thereof;
- 19.3.4 to set off, or withhold payment under the Contract;
- 19.3.5 to blacklist the Contractor permanently or for certain period from doing further business with ArcelorMittal.
- 19.4 The onus will be on the Contractor to prove that it has not committed fraud or violated, intends to violate, or has caused a violation of any Fraud Guidelines.
- 19.5 ArcelorMittal shall not be liable for any claims, losses or damages arising from fraud or related to failure by the Contractor or Contractor Employees to comply with this clause 19 and Contractor indemnifies and holds ArcelorMittal harmless against any such claims, losses or damages.

- 19.6 ArcelorMittal reserves the right at any time to audit the Contractor's compliance with the terms of this clause 19 and the Contractor hereby agrees to co-operate with such audit requirements and provide documentation that maybe requested by ArcelorMittal.
- 19.7 The Contractor agrees to provide prompt certification of its continuing compliance with the Fraud Guidelines whenever so requested by ArcelorMittal.

## **20 INDEMNITY**

- 20.1 The Contractor hereby indemnifies and agrees to defend, keep indemnified and hold harmless ArcelorMittal, its parent company, affiliated and associated companies, in respect of all losses (including attorneys' fees and costs on a scale as between attorney and client), liability, damage or expense, suffered or incurred by ArcelorMittal or any person arising:
- 20.1.1 out of the performance of the Contractor's obligations under or by the Contractor and Contractor Employees of any of the terms of this Agreement;
- 20.1.2 from any alleged defamation, or any similar delict, or breach of any contractual right of a third party, or infringement of any Intellectual Property right of a third party, including rights under patents, trademarks, copyright, trade secret, or confidentiality obligations, or rights of privacy and publicity resulting from, relating to or arising out of the performance of the Agreement, except where any such claim relates to or arises out of any material furnished by ArcelorMittal;
- 20.1.3 any breach of the provisions of the Agreement documents or agreement between the Contractor and the Contractor Employees;
- 20.1.4 injury or death of the Contractor's Employees for any reason;
- 20.1.5 any loss to or caused by the Contractor and the Contractor's Employees;
- 20.1.6 any acts or omissions including fraud and criminal acts of the Contractor and the Contractor's Employees; and
- 20.1.7 damage to property or equipment by the Contractor and the Contractor's Employees.
- 20.2 ArcelorMittal's use or approval of any materials must not be construed as ArcelorMittal's waiver of its rights under this clause 20.

- 20.3 ArcelorMittal will co-operate with the Contractor in the conduct of any proceedings arising pursuant to this clause 20 and shall have the right (but not the obligation) to participate in such proceedings, provided that the cost thereof shall be borne by the Contractor.
- 20.4 The Contractor will not enter into any settlement or compromise, or make any settlement or compromise offer, without the prior written approval of ArcelorMittal. ArcelorMittal will be entitled to give or withhold approval for itself and its officers, agents, employees, directors and affiliated entities, with respect to any settlement or compromise, or settlement or compromise offers made by the Contractor.
- 20.5 The indemnification under this clause 20 shall survive termination of this Agreement for any reason whatsoever.

## **21 CONFLICT OF INTEREST**

- 21.1 The Contractor agrees and undertakes to declare to ArcelorMittal in the form attached hereto as Annexure "B", any personal or business relationship with any employee or supplier of ArcelorMittal (whether arising as a result of a financial interest or investment or other business engagements with such employee or supplier) that might represent a Conflict of Interest.
- 21.2 For purposes of the Agreement, a Conflict of Interest arises:
- 21.2.1 when the personal or business relationships between an employee of ArcelorMittal and a supplier interfere or appear to interfere, with ability of the employee dealing with such supplier to act in the best interest of ArcelorMittal; and/or
- 21.2.2 when an activity detrimentally affects the contractual relationship between the Parties and will have a negative impact on the business relationships of ArcelorMittal as a whole.
- 21.3 The Contractor shall not, and shall furthermore ensure that none of the Contractor's Employees engage in business relationships or engagements or activities which when reasonably determined conflict with the interests of ArcelorMittal under the Agreement without declaration contemplated in 21.1 and the prior written consent of ArcelorMittal.
- 21.4 Any breach of this clause 21, shall entitle ArcelorMittal in its sole discretion to immediately cancel this Agreement without prejudice to any other remedies in may have herein or in law.

## 22 INSPECTION AND AUDITING OF RECORDS

- 22.1 **Inspection and Auditing.** At any time during the term of the Agreement and within a 2 (two) year period after the expiration or termination of this Agreement, ArcelorMittal or its third-party auditor may conduct an audit of the Contractor's business records, operations, and facilities, including business processes in relation to this Agreement.
- 22.2 The Contractor shall permit ArcelorMittal or its third-party auditor to audit, inspect and copy the Contractor's books, records, accounts, timesheets, underlying and backup records and accounting materials, delivery receipts, methods and controls as may pertain (in the reasonable determination of ArcelorMittal) to any costs, expenses, and fees incurred for or charged to ArcelorMittal either directly or indirectly under this Agreement. Salary information of the Contractor's employees will be accepted by ArcelorMittal on an aggregated basis characterized by function, provided that Contractor furnishes ArcelorMittal with an annual certification, issued by the Contractor's independent auditing firm at its expense, verifying the accuracy of the salary information on an individual and aggregated basis. ArcelorMittal will be entitled to the personnel records of the Contractor's Employees and to salary information regarding subcontractors on an individual basis if such salary is charged to ArcelorMittal as an expense. ArcelorMittal will provide at least 30 (thirty) days' notice to the Contractor prior to the audit, and the Contractor shall fully cooperate with ArcelorMittal or its third-party auditor to by inter alia making the required records, information and personnel available. ArcelorMittal's right to audit is limited to no more than once in a 12 (twelve) month period, however ArcelorMittal shall have the right to re-audit more frequently if material irregularities are discovered in the initial audit. The audits will be conducted during normal business hours and will be at the sole cost of ArcelorMittal. Notwithstanding the foregoing, the Contractor shall be responsible for all costs related to any additional audits performed during a 12 (twelve) month period due to irregularities reported in the initial audit.
- 22.3 **Retention of Records.** The Contractor shall at its own cost make and retain, during the term of the Agreement and for a period of 2 (two) years thereafter records, in form and substance consistent with Generally Accepted Accounting Principles (GAAP), of all services performed by Contractor and all costs and expenses related thereto.
- 22.4 **Changes in Accounting Procedures.** The Contractor shall notify ArcelorMittal, 90 (ninety) days in advance of any changes in its accounting methods if the change will affect the Contractor's charges to ArcelorMittal.

- 22.5 If ArcelorMittal elects to perform an inspection and audit on the Contractor's records in accordance with this clause 22, ArcelorMittal agrees to enter into a confidentiality agreement with the Contractor in a form mutually agreed by the Parties with regarding confidential information of the Contractor that maybe disclosed during such inspection and audit.

### **23 BREACH**

- 23.1 Either Party may at any time give notice in writing to make good any failure or default should it appear that:
- 23.1.1 the other Party is not executing its obligations in accordance with this Agreement;
  - 23.1.2 the other Party is refusing or delaying to carry out its obligations in accordance with this Agreement;
  - 23.1.3 the other Party is in breach of the terms or conditions of this Agreement and/or is responsible for any other failure or default with regard to its obligations
- 23.2 Should the defaulting Party fail to take positive steps which are acceptable to the aggrieved Party to remedy the failure or default complained of within 14 (fourteen) days from the date of receipt of written notice calling for remedy of such complaint, the aggrieved Party shall, without prejudice to any of its rights under common law and particularly its rights under this Agreement hereof be at liberty to:
- 23.2.1 claim specific performance; and/or
  - 23.2.2 immediately and without further notice cancel the Agreement forthwith and claim damages

### **24 TERMINATION**

- 24.1 Either Party will have the right, in addition to any other rights that it may have in Law, to terminate this Agreement immediately forthwith on written notice in any of the following events, if:
- 24.1.1 any of the Parties commits an act of which fraud and/or bribery is a component as contemplated in clause 19 above
  - 24.1.2 any of the Parties become commercially insolvent or commits any act of insolvency; or;
  - 24.1.3 any of the Parties is placed in provisional or final liquidation; or

- 24.1.4 any of the Parties is placed under business rescue proceedings; or
- 24.1.5 any of the Parties commences a procedure with a view to the winding-up or re-organisation, save that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction without the prior written consent of the other Party; or
- 24.1.6 any procedure is commenced with a view to the appointment of a business rescue practitioner, an administrator, receiver or trustee in bankruptcy of all or substantially all of the assets of the other Party;
- 24.1.7 either Party or its board passes or cause to be passed any resolution for the Commencement of Business Rescue Proceedings as contemplated in Chapter 6 of the Companies Act No. 71 of 2008, as amended;
- 24.1.8 anything analogous to any of the events described in clauses 24.1.1 to
- 24.1.9 occurs in relation to either Party.
- 24.1.10 any of the parties fail to adhere to safety, health, and environmental laws, regulations and policies, which failure to adhere places persons and/or property at such risk, and that such risk, in the sole discretion of ArcelorMittal, warrants immediate termination of the Agreement.
- 24.1.11 the Contractor, after written notice in that regard has been received from ArcelorMittal, fails, to the satisfaction of ArcelorMittal, to adequately remedy repeated similar offences from occurring, notwithstanding that the offences may, when viewed in isolation, not be considered serious offences, from re-occurring.
- 24.2 Notwithstanding anything contained in this Agreement which is to the contrary, the termination or expiry of this Agreement shall not affect any rights of either Party in respect of any antecedent breach of this Agreement by the other Party nor shall it affect any accrued rights or liabilities (or the coming into force of any accrued rights or liabilities) of either Party.

## **25 PERMITS**

- 25.1 The Contractor shall be solely responsible for obtaining all the necessary authority's licences and permits for the Shunting service from the relevant authorities concerned and shall provide proof thereof to ArcelorMittal's satisfaction prior to the commencement of this Agreement and at any time during the duration of the Agreement when called upon to do so.

25.2 Any failure to adhere to the relevant licencing and permitting legislation, policies, by laws, notices and any other lawful requirement will be viewed as a transgression of the necessary safety, health and environmental obligations of the Contractor which may in the sole discretion of ArcelorMittal warrant immediate termination under clause 24.

## **26 LAWS AND REGULATIONS TO BE COMPLIED WITH**

26.1 The Contractor shall in respect of all matters arising from the fulfilment of this Agreement, comply and ensure that the Contractor Employees comply with all laws, regulations, by-laws and/or requirements of local or other authorities which are applicable to this Agreement.

26.2 In this regard special reference is *inter alia* made to the following acts that do not constitute an exhaustive list:

- Occupational Health and Safety Act No 85 of 1993. (Also refer to Annexure A);
- Hazardous Substances Act; and
- Dangerous Goods Act.

26.3 National Railway Safety Regulator Act, Act No. 16 of 2002

26.3.1 In accordance with the provisions of Chapter 4 of this Act, the Contractor will have to apply and be in possession of a safety permit. The Contractor shall supply ArcelorMittal with a copy of this permit prior to the Effective Date.

26.3.2 The Act requires amongst others, that all railway operators design and implement Safety Management Systems and Standards (Chapter 5) in accordance with the relevant sections of the Act. The Contractor warrants that it has such Safety Management Systems and Standards in place and shall supply a copy thereof to ArcelorMittal on demand.

26.4 Trade Metrology Act, Act 77 of 1973

26.5 The Contractor shall be responsible for the operation, maintenance and certification of the dual platform rail weighbridge in terms of the Trade Metrology Act, Act 77 of 1973. Notwithstanding the provisions of this Act, an annual certification of calibration shall be done during the month of July of each year by an SABS accredited weighbridge calibrator and the cost of such calibration shall be for the account of the Contractor. In addition, the Contractor shall shunt a test wagon (test mass) provided by ArcelorMittal, at least once a week on the weighbridge and keep records of recorded masses. These records must be available to the AMSA on request and all certificates and records must be handed to ArcelorMittal when this Agreement terminates.



- 26.6 The Contractor further undertakes to ensure that its agreements with its Employee/s shall *mutatis mutandis* contain the same stipulations as provided for above and shall upon request submit written proof to ArcelorMittal that it has complied with this stipulation.
- 26.7 In the event of the Contractor failing to comply with the abovementioned, such failure shall amount to a breach of the terms and conditions of this Agreement and shall entitle ArcelorMittal to act in accordance with clause 23 and/or 24 above.

## **27 FORCE MAJEURE**

- 27.1 Notwithstanding anything to the contrary herein contained, neither party shall be liable in respect of failure to fulfil its obligations under this Agreement when the reason for such failure is caused by or arising from force majeure.
- 27.2 Force majeure means any circumstances or conditions beyond the control of a party or any circumstances or conditions, which is not reasonably practicable for a party to control or alleviate and shall include, but shall not be limited to:
- an act of God, storm, tempest or flood;
  - fire, spontaneous combustion, explosion, smoke, ionising, radiation, radio-active contamination;
  - war, revolution or political disturbance;
  - major Production breakdowns of Production facilities of ArcelorMittal, if due to unforeseen circumstances;
  - production stoppages or losses resulting from the failure of ArcelorMittal's customers of materials or services due to factors beyond the reasonable control of the relevant party;
  - restrictions imposed directly or indirectly by Government or any person, corporation or body acting under statutory power; and
  - abnormal economic recessions.
- 27.3 The Party claiming a suspension of its obligations shall immediately notify the other in writing of the circumstances relating thereto, and shall estimate in good faith the period during which the said circumstances are likely to prevail and shall thereafter do everything reasonably necessary to reduce or terminate the period of suspension and to restore performance of its obligations.

## **28 CONTRACTOR EMPLOYEES**

- 28.1 The Contractor shall at all times employ only fully competent and reliable Employees. ArcelorMittal shall be at liberty to object to any workman or

person employed by the Contractor in the execution of the work to be performed, who in the opinion of ArcelorMittal misconduct himself, or is incompetent or negligent or otherwise unsatisfactory, and the Contractor shall, subject to industrial relations practices, immediately replace the person so objected to, upon receipt from ArcelorMittal of notice in writing requiring it to do so.

- 28.2 The Contractor shall insure under the Compensation for Occupational Injuries and Diseases Act no 130 of 1993, or any amendments thereto, or any Act passed in substitution thereof, against all claims by workmen employed by it and also under the common law, with an Insurance Company to be approved by ArcelorMittal, for an amount or amounts sufficient to satisfy any and all claims for compensation which any of its workmen or their dependants may make under the said Act or Common Law and shall continue such insurance uninterruptedly for the duration of this Agreement, provided always that in the event of the Contractor employing any sub-contractor, the Contractor's obligations to insure as aforesaid under this sub-clause shall be deemed to have been satisfied if the sub-contractor shall have insured as provided for in this sub-clause in such a manner that ArcelorMittal shall be indemnified.
- 28.3 In addition, the Contractor shall at its own expense insure and keep insured all persons employed by it, who do not fall within the ambit of the provisions of the Compensation for Occupational Injuries and Diseases Act, against all risks arising out of their employment.
- 28.4 The Contractor shall from time to time, when so required by ArcelorMittal, submit to ArcelorMittal all policies required in terms of this Agreement, as well as proof that all premiums have been paid.
- 28.5 ArcelorMittal shall not be liable for, or in respect of, or in consequence of, any accident or injury to any employee of the Contractor or any sub-contractor and the Contractor shall indemnify ArcelorMittal against all damages and compensation against all claims, demands, proceedings, costs, charges and expenses, whatsoever, in respect thereof or in relation thereto.

## **29 LIMITATION OF LIABILITY**

- 29.1 Notwithstanding anything to the contrary contained in this Agreement, ArcelorMittal shall not be liable to any person for any indirect or consequential loss or damage, including without limitation, loss of profit, revenue, anticipated savings, business transactions or goodwill or other agreement whether arising from negligence or breach of contract by any person including the Contractor or Contractor Employees.

- 29.2 Any claim by the Contractor Employee arising out of this Agreement for any reason whatsoever shall be directed to the Contractor and the Contractor hereby and for avoidance of doubt indemnifies ArcelorMittal against such claims.

### **30 NON-EXCLUSIVITY**

This Agreement does not confer on the Contractor any exclusive right to perform the Shunting service or obligation on the part of ArcelorMittal to hire the Contractor to render the same or similar services from time to time. ArcelorMittal shall be entitled to contract with any other party to render a similar type of service, during the term of this Agreement or after its expiry.

### **31 RELATIONSHIP BETWEEN PARTIES**

This Agreement does not create a partnership or joint venture in any shape or form between the Parties and neither Party shall be liable for the debts of the other Party, howsoever incurred.

### **32 ASSIGNMENT OF AGREEMENT**

- 32.1 The Contractor shall not assign or make over this Agreement or any part thereof, or any share or interest therein, to any other person without the written consent of ArcelorMittal that may be refused without any reason being assigned therefore. This condition also applies to the use of sub-contractors by the Contractor.
- 32.2 This Agreement, or any part thereof, which part may be determined by ArcelorMittal in its sole discretion, may be ceded, assigned and/or transferred to any third party without the consent of the Contractor.

### **33 DISPUTE RESOLUTION**

- 33.1 Save as otherwise provided in this Agreement, if any dispute arises between the Parties in relation to any matter pertaining to this Agreement or any cancellation thereof, then such dispute shall be dealt with in the manner hereinafter prescribed.
- 33.2 The aggrieved party must raise the dispute by way of written notice to the other party setting out clearly and concisely the dispute that has been raised.
- 33.3 The dispute shall then be immediately referred by the parties to a joint committee of a director or partner or duly appointed representative of each Party, who will use their best endeavours to resolve the dispute within 14 (fourteen) days of the dispute having been referred to them.

- 33.4 Should the joint committee, be unable to resolve a dispute in accordance with the foregoing, such dispute will in the sole discretion of ArcelorMittal's representative, be submitted to and decided by arbitration in terms of this clause 33, or, before a court of competent jurisdiction.
- 33.5 The dispute shall be decided in accordance with the Rules for Expedited Arbitrations of the Arbitration Foundation of Southern Africa ("AFSA"), unless otherwise agreed between the parties.
- 33.6 The party raising the dispute shall be the claimant in accordance with the AFSA rules and shall comply with all the obligations of a claimant thereunder.
- 33.7 The parties hereby undertake to comply with all the obligations under the AFSA expedited rules and in particular the prompt payment of all the necessary fees required.
- 33.8 The parties will appoint an arbitrator by agreement with 7 days of the joint committee meeting referring the matter to arbitration alternatively and in the event that an arbitrator cannot be agreed upon between the parties, an arbitrator will be appointed in accordance with the Rules for Expedited Arbitrations provided for by AFSA.
- 33.9 Nothing in this clause shall prevent any Party from obtaining interim relief in a court pending the outcome of the arbitration.
- 33.10 In the event that the Contractor raises a dispute, ArcelorMittal in its sole discretion is entitled, notwithstanding that notice may not have been given or that a dispute has been raised by the Contractor, to bar the Contractor from access to the works, where the Contractor has, in the opinion of ArcelorMittal, committed an act that may constitute grounds for immediate termination under clause 24 pending the outcome of the arbitration proceedings.
- 33.11 Any such meeting of the joint committee under clause 33.3, and/or arbitration shall be held in Johannesburg.

#### **34 NOTICES AND DOMICILLIUM**

- 34.1 The parties choose as their respective *domicillium citandi et executandi* for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this Agreement, the following addresses:

**SUCCESSFUL TENDERER**

<b>Physical Address</b>	<b>Postal Address</b>	<b>Tel. and Fax No's</b>
		<b>Tel:</b>
		<b>Fax:</b>

**ARCELORMITTAL SOUTH AFRICA**

<b>Physical Address</b>	<b>Postal Address</b>	<b>Tel. and Fax No's</b>
Vanderbijlpark Steel	PO Box 2	<b>Tel: 016 889 2773</b>
Room N3-5, Main Building	VANDERBIJLPARK	<b>Fax: 016 889 3643</b>
Delfos Boulevard	1900	
VANDERBIJLPARK		

Provided that a party may change its domicillium to any other physical address, postal address or telefax number by written notice to the other party to that effect. Such change of address will be effective seven days after receipt of notice of the change of domicillium.

- 34.2 All notices to be given in terms of this Agreement will:
- 34.2.1 be given in writing or by telefax;
  - 34.2.2 be delivered or sent by prepaid registered post or by telefax;
  - 34.2.3 if delivered, be presumed to have been received on the date of delivery;
  - 34.2.4 if sent by prepaid registered post, be presumed to have been received within 7 (seven)-business days of posting unless the contrary is proved; and
  - 34.2.5 if sent by telefax, be presumed to have been received on the first business day following the date of sending of the telefax unless the contrary is proved.

**35 WHOLE AGREEMENT AND VARIATION**

- 35.1 This Agreement constitutes the whole of the agreement between the parties hereto relating to the subject matter hereof and save as otherwise provided herein no modification amendment, alteration, addition, variation or consensual cancellation will be of any force or effect unless reduced to writing and signed by the Parties or their duly authorised representatives.
- 35.2 The Parties agree that no other terms or conditions, whether oral or written, and whether express or implied will apply hereto.

### 36 WAIVER

No waiver of any of the terms and conditions of this Agreement will be binding or effectual for any purpose unless expressed in writing and signed by the party hereto giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party hereto in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

### 37 LIENS

No lien shall be established over the Products. The Contractor shall not in any way permit any lien to arise in respect of the Products and hereby waives any right of retention which it may have over the Products pursuant to this Agreement or as a consequence of any legal enactment or trade usage or by operation of common law.

### 38 SET OFF

- 38.1 Upon the occurrence of a Breach of the terms of this Agreement by the Contractor, and to the fullest extent permissible in law, any amount due and payable by ArcelorMittal to the Contractor under this Agreement and in respect of any Transactions envisaged under this Agreement may, at the option of ArcelorMittal (and without prior notice to the Contractor) be set-off against any other amount(s) due and payable (whether by acceleration or otherwise) by the Contractor to ArcelorMittal, under any other agreement(s) between ArcelorMittal and the Contractor or instrument(s) or undertaking(s) issued or executed by the Contractor to, or in favour of, ArcelorMittal ("the Other Agreement Amounts").
- 38.2 Any Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off.
- 38.3 ArcelorMittal will give notice to the Contractor of any set-off affected under this clause. However, failure to give notice shall not affect the validity of any set-off affected under this clause.
- 38.4 Notwithstanding the preceding provisions, ArcelorMittal shall not be obliged to pay any amount payable by it to the Contractor under this Agreement until and unless the Contractor has discharged any Other Agreement Amounts to ArcelorMittal in full.

**39 SUPERSESSION**

This Agreement cancels and supersedes all prior negotiations and agreements entered into between the Parties relating to the matters set forth herein.

**40 GOVERNING LAW**

The laws of the Republic of South Africa shall govern the validity, interpretation and performance of this Agreement and the courts of South Africa shall have sole jurisdiction.

**41 AUTHORITY**

Each person signing this Agreement for and on behalf of a Party warrants that he or she is duly authorized by such Party to do so.

THUS DONE AND SIGNED BY ARCELORMITTAL SOUTH AFRICA LIMITED AT VANDERBIJLPARK ON THIS..... DAY OF ..... 2014

AS WITNESSES: .....

For: ARCELORMITTAL SOUTH AFRICA LIMITED

.....  
**SENIOR PROCUREMENT  
SPECIALIST, LOGISTICS**

.....  
**MANAGER LOGISTICS,  
GROUP CONTRACTS**

THUS DONE AND SIGNED BY **SUCCESSFUL TENDERER** AT ..... ON THIS ..... DAY OF ..... 2014

AS WITNESSES:

1 .....

2 .....

.....  
For: **SUCCESSFUL TENDERER**

Date: .....

**ANNEXURE A – OCCUPATION HEALTH & SAFETY ACT, ACT NO 85 OF 1993**

This Annexure is incorporated in and forms part of the Conditions of the Agreement, setting out the arrangements and procedures agreed to in order to ensure that the Contractor complies with the Occupational Health and Safety Act, Act No 85 of 1993, (herein referred to as the Act) as amended from time to time.

- 1 Should the Chief Inspector give a direction in terms of section 7 of the Act to the Contractor to prepare a health and safety policy as contemplated in that section, the Contractor shall within 30 days from the date of Instructions forward a copy of such a policy document to ArcelorMittal and hereby undertakes to display a copy as contemplated in section 7(3) of the Act.
- 2 The Contractor shall throughout the duration of the Agreement, provide ArcelorMittal with the necessary information to enable ArcelorMittal to establish the Contractor's compliance with the Act.
- 3 The Contractor shall as far as is reasonably practicable comply with the following in the execution of this Agreement:
  - (a) provide and maintain, systems of work, plant and machinery that are safe and without risks to health and safety;
  - (b) institute precautionary measures necessary to eliminate or mitigate any hazard or potential hazard to the safety and health of employees, before resorting to protective equipment;
  - (c) make arrangements to ensure the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transportation of articles and substances, where applicable;
  - (d) establish the hazards to the health or safety of persons attached to any work which is performed in terms of this Agreement, any article or substance which is used, handled, stored or transported. In any plant or any machinery which is used in the Agreement the Contractor shall further establish precautionary measures to be taken in respect of such work, article, plant or machinery as is applicable in order to protect the health and safety of persons involved during the execution of the Agreement. The Contractor shall further provide the necessary means to apply such precautionary measures;
  - (e) provide such information, instructions, training and supervision as may be necessary to ensure the health and safety of ArcelorMittal's employees, its employees and Contractor Employees involved in the execution of the Agreement;



- (f) not permit any employee to do any work or to produce, process, use, handle, store or transport any article or substance, where applicable, nor to operate any plant or machinery, unless the necessary precautionary measures contemplated in clause 3 of this Annexure or prescribed by the Chief Inspector, have been taken;
- (g) implement all the necessary measures to ensure that the requirements of the Act are complied with by every person in his employment or on site of the Agreement Customers where plant or machinery is used;
- (h) enforce such measures as may be necessary, in the promotion of health and safety;
- (i) ensure that work is performed and that plant, machinery or equipment is used under the general supervision of a person trained to understand the hazards associated with it and who have the authority to ensure that precautionary measures taken by ArcelorMittal and the Contractor are implemented;
- (j) ensure that all employees are informed regarding the scope of their authority in the execution of the Agreement and in terms of the Act;
- (k) execute the Agreement in such a manner as to ensure that no person other than those in his or her employment who may be directly affected by the Contractor's activities, is exposed to hazards to health and safety;
- (l) ensure that nothing about the manner in which any plant, article, machinery or equipment for use at ArcelorMittal or on ArcelorMittal's premises is erected or installed makes it unsafe or creates a risk to health and safety when properly used;
- (m) ensure that every employee is conversant with the hazards to such employee's health and safety attached to the work to be performed at ArcelorMittal, as well as with the precautionary measures which should be taken and observed in respect to those hazards;
- (n) inform ArcelorMittal beforehand of any inspections, investigations or formal inquiries of which he has been notified by an inspector in terms of the Act and of any application for exemption made by him in terms of the Act;
- (o) inform ArcelorMittal of the occurrence of an incident in the work place or section of the work place where the Contractor is performing work in terms of the Agreement.

4 The Contractor shall ensure that its employees and any sub-Contractor's employees comply with the following:

- (a) take reasonable care for the health and safety of any employee and of other persons who may be affected by the employee's acts or omissions;
  - (b) co-operate with ArcelorMittal or any person designated for this purpose by ArcelorMittal to enable ArcelorMittal to comply with any obligation or requirement to be performed or complied with in terms of the Act;
  - (c) carry out any lawful order given to him or her and obey the health and safety rules and procedures laid down by ArcelorMittal or any person authorised thereto by ArcelorMittal or the Contractor in the interest of health and safety;
  - (d) if any situation which is unsafe or unhealthy comes to the employee's attention, as soon as reasonably practicable, report such situation to the Contractor as well as to ArcelorMittal;
  - (e) if an employee is involved in any accident which may affect his or her health or which has caused an injury to him or her, report such incident to the Contractor as well as ArcelorMittal or anyone authorised thereto by ArcelorMittal as soon as reasonably practicable;
  - (f) not to intentionally or recklessly interfere with, damage or misuse anything which is provided for in the interest of promoting health or safety.
- 5 The Contractor hereby confirms that its Chief Executive Officer, as defined in the Act, has as far as is reasonably practicable ensured that the duties of the Contractor in the execution of the Agreement and as contemplated in the Act, have been properly discharged.
- 6 If the number of employees employed by the Contractor in terms of the Agreement exceeds 20 (twenty), the Contractor shall within 14 (fourteen) days of the commencement of the Agreement provide ArcelorMittal with full particulars of the safety representatives at the Agreement Customers. The Contractor shall simultaneously confirm that it complies with section 17 (2) of the Act in the appointment of the safety representatives and that such health and safety representatives received the necessary facilities, assistance and training to fulfill their duties and functions as health and safety representatives.
- 7 If two or more health and safety representatives are involved in the work covered by the Agreement, the Contractor shall, within 7 (seven) days from the date of a meeting between such health and safety representatives, send a copy of the minutes of such a meeting, as well as a copy of any recommendation made by the Health and Safety Committee to ArcelorMittal.
- 8 The Contractor shall not make any deduction from any employee's remuneration- or require- or permit any employee to contribute towards any payment to him or her or any other person in respect of anything which the Contractor is in terms of this

Agreement, or in terms of the Act required to provide or to do in the interest of the health and safety of any employee covered by the Agreement.

- 9 The Contractor shall immediately report to ArcelorMittal any incidents occurring at the place or places where the Contractor performs any work in terms of the Agreement, in which or in consequence of which:
  - (a) any person dies, becomes unconscious, suffers the loss of a limb or part of a limb or is otherwise injured or becomes ill to such a degree that he or she is likely either to die or to suffer a permanent physical defect or is likely to be unfit for a period of at least 14 (fourteen) days either to work or to continue with the activity for which such employee was employed or is usually employed
  - (b) an occurrence of catastrophic proportions, as defined in the Act resulting from the use of plant or machinery or from any activity in the performance of this Agreement has taken place; or
  - (c) the health or safety of any person was endangered and where:
    - (i) the uncontrolled release of any substance or pressure took place;
    - (ii) machinery or any part thereof fractured or failed, resulting in flying, falling or uncontrolled moving objects; or
    - (iii) machinery ran out of control.
- 10 The Contractor or any of the Contractor's employees shall not without the consent of an inspector disturb the site at which any incident occurred in which a person died or was injured to such an extent that that person is likely to die or suffer the loss of a limb or part of a limb, provided that such action as is necessary may be taken to prevent a further incident, or to remove the injured or dead or to rescue a person from danger.
- 11 The Contractor shall in no way whatsoever victimise any of its employees because the Contractor suspects or believes, whether or not the suspicion or belief is justified or correct, that one of his employees has given information to ArcelorMittal in respect of any matter concerning the health and safety of employees.
- 12 If an inspector of the Department of Labour wishes to perform any of his or her duties in terms of the Act at the Agreement Customers, the Contractor shall at all times provide such facilities as are reasonably required by the inspector to enable him or her and his or her assistant (if any) to perform effectively and safely his or her function under the Act.
- 13 The Contractor or any of its employees shall not interfere with or remove any blocking, bar, barricade or fence placed on the instruction of an inspector in terms of the Act.

- 14 The Contractor shall forthwith bring to the attention of ArcelorMittal the contents of any prohibition, direction or notice given by an inspector to the Contractor or a sub-Contractor or any of the Contractor's or sub-Contractor's employees in terms of the Act.
- 15 The Contractor shall fully co-operate in respect of any investigation or inquiry by an inspector and provide all necessary assistance, as envisaged in section 34 of the Act in the event of such an inspector investigating or inquiring into any matter related to the Contractor's or sub-Contractor's execution of the Agreement.
- 16 The Contractor shall not disclose any information concerning the affairs of ArcelorMittal without the prior approval of ArcelorMittal, which shall not be unreasonably withheld.
- 17 The Contractor shall not :
  - (a) in any record, application, statement or other document, referred to in the Act, wilfully furnish information or make a statement which is false in any material respect;
  - (b) hinder or obstruct an inspector in the performance of his or her functions;
  - (c) refuse or fail to comply to the best of his or her ability, with any requirement or request made by an inspector in terms of the Act;
  - (d) refuse or fail to answer to the best of his or her ability to any question which an inspector in the performance of his or her functions in terms of the Act, put to him or her;
  - (e) give himself out as an inspector;
  - (f) tamper with or discourage, threaten, deceive or in any way unduly influence any person with regard to evidence to be given in respect of any investigation in terms of the Act
  - (g) prejudice, influence or anticipate the proceedings of any finding or inquiry in terms of the Act;
  - (h) tamper with or misuse any safety equipment installed or provided to any person by ArcelorMittal or the Contractor;
  - (i) fail to use safety equipment at any work place in terms of the Agreement or in the cause of his or her employment or in connection with the use of plant or machinery

- (j) wilfully or recklessly do anything at a work place in connection with the use of plant or machinery in terms of the Agreement which shall threaten the health or safety of any person.

Words used in this Annexure shall have the same meaning as words defined in the Agreement.

**ANNEXURE B - DECLARATION OF CONFLICT OF INTEREST**

**TO:** ARCELORMITTAL SOUTH AFRICA LIMITED  
**FROM:** **SUCCESSFUL TENDERER**.....  
**DATE:** .....

**SUBJECT: DECLARATION OF CONFLICT OF INTEREST**

The Contractor agrees and undertakes to declare to ArcelorMittal any personal or business relationship with any employee or supplier of ArcelorMittal (whether arising as a result of a financial interest or investment or other business engagements with such employee or supplier) that might represent a Conflict of Interest.

Accordingly, I, the undersigned, ..... (name of authorized representative of Contractor), acting in my capacity as .....of the above named Contractor declare that neither I, nor the Contractor or any of its officers, directors, employees and authorized representative have any relationship with any employee or supplier of ArcelorMittal that raises a real or potential Conflict of Interest. Further, we undertake to disclose to ArcelorMittal any relationships that might exist for the duration of the Agreement that raises a Conflict of Interest.

Or

I, the undersigned, ..... (name of authorized representative of Contractor), acting in my capacity as ..... of the above named Contractor wish to declare and disclose the following relationships involving the Contractor and/or any of its officers, directors, employees and authorized representative that raise a real or potential Conflict of Interest.

.....

For and on behalf of **SUCCESSFUL TENDERER**:

.....  
(Authorised Signatory)

Date: .....

**END OF THIS DOCUMENT**

