

# GOLD FIELDS PURCHASE ORDER TERMS AND CONDITIONS

## (Supply of Goods and/or Services)

### 1. Interpretation

#### 1.1 Definitions

**Affiliate** means, with respect to any person, any corporation, company, division, or other entity that is directly or indirectly owned, controlled, or under common control with that person, and includes a body corporate and, where applicable, its parent corporation.

**Agreement** means the Purchase Order, Special Conditions, if any, and these Purchase Order Terms and Conditions.

**Anti-Corruption Laws** means all laws, regulations, and legal requirements related to bribery, corruption, and unethical conduct that apply to the Parties in connection with this Agreement, including: the Criminal Code (Canada) and related anti-corruption provisions, the Corruption of Foreign Public Officials Act, Quebec's Charter of Human Rights and Freedoms and relevant procurement integrity laws, anti-money laundering and counter-terrorist financing laws and any other applicable federal, provincial, or local anti-corruption laws or codes, as well as foreign equivalent laws or codes all of which may be created or amended from time to time.

**Authorization** includes any authorization, approval, agreement, indemnity, guarantee, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration or exemption required by Law or an Authority.

**Authority** means a federal, provincial, territorial, regional, municipal, or local governmental or quasi-governmental authority or body; a court; a commission; an office; a board; a regulatory, administrative, or other agency; or a subdivision or department, of any of the aforementioned entities, having jurisdiction in any way over the Parties and/or an aspect of the supply of Goods or performance of Services under applicable Law.

**Business Day** means any day other than a Saturday, Sunday, or statutory holiday on which financial institutions in Montreal, Quebec, Canada, are open to the public for business.

**Claim** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

**Confidential Information** means all information which is not in the public domain and which is reasonably regarded by Gold Fields as confidential relating in any way to Gold Fields which the Supplier is or becomes aware of in the course of providing the Goods and/or Services, regardless of whether acquired or developed by Gold Fields, the Supplier, or a third party including:

- (a) inventions, know-how, product designs, secret formulae and secret processes;
- (b) business methods and management systems;
- (c) financial and business information of any kind or including balance sheets, profit and loss accounts, working papers and the results of any analysis, reports, study or projection;
- (d) strategic information such as information concerning operations, projects and marketing strategies, development plans, raw data regarding the ore body; and
- (e) the Purchase Order and any Special Conditions, and the contents thereof.

**Date of Delivery** means the date on which the Goods and/or Services are actually delivered or provided on Site or at such other locations as agreed by the Parties.

**Due Date** means the date, dates or period specified in the Purchase Order for the intended actual delivery or completion of the Goods and/or Services but if a change to the Due Date is directed by Gold Fields, it means the new date.

**Delivery Point** means the location to which the Goods and/or Services are to be delivered or provided as specified in the Purchase Order.

**Encumbrances** means any restrictions, conditions, covenants, liens, charges, hypothecs, mortgages, security interests, Claims by third parties or other encumbrances of any nature.

**GF Representative** means the person specified as such in the Purchase Order or the person otherwise appointed by Gold Fields from time to time to perform the role of the GF Representative pursuant to the Agreement.

**GF Rules** means those standards, policies, regulations, procedures and requirements set out in this Agreement, and any additional rules of Gold Fields published on Gold Fields' website ([www.goldfields.com](http://www.goldfields.com)) or the Windfall Mining Group website ([www.windfallmininggroup.com](http://www.windfallmininggroup.com)) as may be amended from time to time, or as otherwise communicated in writing to the Supplier by Gold Fields.

**Gold Fields** means Windfall Mining Group Inc.

**Goods** means the goods described in the Purchase Order.

**Incoterms** means those trade terms published by the International Chamber of Commerce and entitled Incoterms 2020.

**Indemnified Parties** means Gold Fields, its Affiliates, the participants in any joint venture in respect of which Gold Fields or any Affiliate of Gold Fields is a member, and their respective Personnel.

**Insolvency Event** means any one or combination of the following events or circumstances:

- (a) a Party disposes of the whole or any part of its operations or business other than in the ordinary course of business, including the sale of substantial assets;
- (b) a Party ceases to carry on business or ceases to operate in the manner required by Law;
- (c) a Party ceases to be able to pay its debts as they become due, or is otherwise in state of insolvency under applicable Law;
- (d) any step is taken by a creditor to take possession or dispose of the whole or any part of a Party's assets, operations or business;
- (e) any step is taken to enter into a proposal, arrangement or restructuring between a Party and its creditors;
- (f) any step is taken to appoint a trustee in bankruptcy, receiver, monitor or any analogous officer or representative under Canadian federal or provincial law or equivalent foreign legislation.

**Intellectual Property** means:

- (a) the various rights and property conferred by Law including patents of any kind, inventions, utility models, designs, copyright, trade marks, and trade secrets;

- (b) all applications for registration, extension, renewal or otherwise in respect of the rights and property referred to in paragraph (a) of this definition; and
- (c) all rights of action in respect of the rights or property referred to in paragraph (a) of this definition.

**Law** includes any constitution or provision, treaty, decree, convention, statute, act, regulation, code of practice, rule, ordinance, proclamation, subordinate legislation, delegated legislation, by-law, judgment, rule of common law or equity, ruling or guideline by an Authority exercising jurisdiction in the relevant matter.

**Occupational Health and Safety Requirements** means any occupational health and safety rules under the applicable Laws, the GF Rules, and any directions, notices and the like issued in writing by an Authority, Gold Fields or the GF Representative.

**Party** means a party to the Agreement as named in the Purchase Order and Parties means all of them.

**Personal Information** has the meaning set out in the Privacy Legislation.

**Personnel**, in respect of a person, means that person and its Affiliates and their respective directors, officers, employees, agents, consultants, contractors and subcontractors.

**Plan** means any plan provided by the Supplier and approved by Gold Fields in relation to health and safety, environmental compliance, employee relations, quality assurance or any other matter.

**Price** means the amount set out in the Purchase Order.

**Privacy Legislation** means the Canadian Personal Information Protection and Electronic Documents Act, and the Quebec's Act respecting the protection of personal information in the private sector, and any other applicable federal, provincial, or territorial privacy laws, or regulatory obligations governing the collection, use, disclosure, or protection of Personal Information, as amended from time to time.

**Purchase Order** means one or more documents issued by Gold Fields to the Supplier in respect of the supply and/or delivery of the Goods and/or Services.

**Sales Taxes** means all Canadian sales taxes including goods and services tax, harmonized sales tax, Quebec sales tax and provincial sales that are payable by Gold Fields and collectible by the Supplier in respect of the Price. For clarity, Sales Taxes shall not include Taxes which are imposed on the Supplier or otherwise payable by the Supplier.

**Services** means the services to be provided by the Supplier as described in the Purchase Order.

**Services Term** means the period set out in the Purchase Order for providing the Services.

**Site** means the Gold Fields mine site or any other premises used by Gold Fields in connection with its activities, as specified in the Purchase Order.

**Special Conditions** means any terms and conditions (if any) (i) annexed to this Agreement; and/or (ii) included in the Purchase Order; and/or (iii) agreed in writing between the Parties, which are incorporated into and form part of the Agreement.

**Specification** means the specifications set out in the Purchase Order or Special Conditions.

**Supplier** means the person or party supplying the Goods and/or Services to Gold Fields as specified in the Purchase Order issued by Gold Fields.

**Supplier Personnel** means the Supplier's Personnel who are to supply the Goods and/or the Services in accordance with the Agreement.

**Taxes** means all taxes, fees, levies, duties and charges imposed or assessed in respect of the Goods and/or Services under this Agreement by all local, provincial, national or foreign government Authorities including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory pension contributions and workers' compensation payments and contributions, customs duty, excise tax, and stamp duty, excluding Sales Taxes.

**Warranties** means the warranties in respect of the Goods and/or Services as described in the Agreement.

**Warranty Period** refers to the warranty period provided for in the Purchase Order.

## 1.2 Interpretation

### (a) Reference to:

- (i) one gender includes the other genders;
- (ii) the singular includes the plural and the plural includes the singular;
- (iii) a person includes a natural person, partnership, body corporate, association, Authority or other entity;
- (iv) a party means a party to the Agreement and includes its executors, administrators, successors and permitted assigns;
- (v) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments and replacements of them and all legislation dealing with the same subject matter as them, whether by way of replacement or supplementation.
- (b) If a Party consists of more than one person, the Agreement solidarily binds them jointly and each of them severally.
- (c) Headings are for convenience only and do not affect the interpretation, or form part of the Agreement.
- (d) The word including and similar expressions are not words of limitation and including means 'including, without limitation'.
- (e) The word indemnify means indemnify and agree to defend and hold harmless.
- (f) A word or expression or abbreviated terms defined as the Incoterms has the meaning given to it in the Incoterms 2020, unless specified otherwise.
- (g) Where a word or expression is given a particular meaning, other parts of the speech and grammatical forms of that word or expression have a corresponding meaning.
- (h) If an act must be done on a specified day which is not a Business day, the act must be done on the next Business day instead.
- (i) A reference to \$, CAD or dollar is to Canadian currency, unless specified otherwise.

## 2. Supply

- 2.1 The Supplier must supply the Goods and/or Services to Gold Fields in accordance with the Agreement and further:

- (a) may only supply Goods and/or Services to Gold Fields once a Purchase Order in respect of those Goods and/or Services is accepted or deemed accepted as stipulated in the Purchase Order;
  - (b) the Agreement applies to the exclusion of any terms and conditions proposed by the Supplier except to the extent that the Supplier's proposed terms and conditions are accepted in writing by Gold Fields;
  - (c) acknowledges that Gold Fields makes no warranty or representation as to the minimum quantities of, or requirements for Goods and/or Services by the issue of a Purchase Order; and
  - (d) acknowledges that the supply of Goods and/or Services is non-exclusive and Gold Fields may engage other suppliers or contractors for the supply of the same or similar goods or services.
- 3. Supply of Goods**
- 3.1 The Supplier must, at its own cost:
- (a) On the Due Date, deliver the Goods to the Delivery Point, free from any Encumbrances whatsoever; and
  - (b) ensure that the Goods are accompanied by a delivery document which clearly describes the Goods and specifies the Purchase Order number, the Gold Fields Site, the name of the GF Representative and any other information directed by the GF Representative.
- 3.2 The Supplier must ensure that the Goods and all components of the Goods are new and in good merchantable condition and fit for their intended purpose.
- 4. Delivery of Goods and Services**
- 4.1 Time is of the essence in respect of the delivery of all Goods and performance of all Services, unless otherwise agreed in writing by the GF Representative.
- 4.2 On the Date of Delivery of Goods, the Supplier must promptly unload the Goods as well as all parts or components of the Goods and provide all operating and maintenance manuals (if any) at the Delivery Point or such location as directed by the GF Representative, the Site supervisor or other person nominated by Gold Fields. Gold Fields will only take delivery of the Goods once they are fully unloaded.
- 4.3 Gold Fields may direct the Supplier to change the Due Date. If the Supplier can reasonably comply with the direction, the Supplier must do so. If the Supplier cannot comply, the Supplier must give Gold Fields written notice of the reasons.
- 4.4 If compliance with any direction under clause 4.3, except those directions arising pursuant to the Supplier's default, causes the Supplier to incur more or less costs than otherwise would have been incurred had the Supplier not been given the direction, the difference must be assessed by Gold Fields and, if agreed to by Gold Fields, added to or deducted from the Price.
- 4.5 If, for any reason not attributable to Gold Fields, the Supplier fails to deliver the Goods to the Delivery Point on the Due Date or fails to complete the Services on or before the Due Date, the Supplier must pay Gold Fields such liquidated damages in the amount specified in the Purchase Order commencing from the day following the Due Date until the Date of Delivery (inclusive). If no liquidated damages are specified in the Purchase Order, Gold Fields will be entitled to recover its actual damages.
- 4.6 Unless otherwise specified in the Purchase Order, all deliveries of Goods must occur between 8.00 a.m. and 4.00 p.m, local time at the Delivery Point.
- 5. Packaging and documentation**
- 5.1 Goods must be suitably packaged consistent with all applicable Law and with good industry practice and be weather sealed:
- (a) for long distance sea, road or rail transport to the Delivery Point, if applicable;
  - (b) to provide sufficiently adequate protection to the Goods in handling and storage to prevent damage; and
  - (c) so as to ensure they are compliant with the Specifications when delivered to the Delivery Point.
- 5.2 Any Goods containing hazardous chemicals or oil, fuel or other flammable additives must be made safe for transporting, which may include being drained of those additives (and tagged accordingly) prior to delivery to the Delivery Point, and must in any event comply with all applicable Laws. This includes the provision of any Safety Data Sheet required for the delivery Goods in accordance with any applicable Law.
- 6. Inspection and audit of Goods**
- 6.1 At no additional cost to Gold Fields, Gold Fields may:
- (a) require the Supplier to send all certificates of analysis, documents relating to the identity and quality of Goods to an authorized purchasing representative of Gold Fields prior to arrival of the Goods at the Delivery Point; and
  - (b) audit the Supplier's quality system and inspect the production of the Goods at Supplier's premises or other location using recognized auditing procedures (in which case the Supplier will provide such information and access necessary for Gold Fields' reasonable inspection requirements).
- 6.2 No inspection of the Goods by Gold Fields or action by Gold Fields under clause 6.1 in any way alters the Supplier's responsibility to comply with the Agreement.
- 6.3 When requested by the GF Representative, upon providing reasonable notice, the Supplier will issue to Gold Fields, at no additional cost to Gold Fields, regular reports on the progress of the manufacture or procurement for supply of the Goods in a form approved by Gold Fields. The Supplier must, on a regular basis, confer with the GF Representative for the purpose of receiving instructions, notifications and Authorizations as to performing its obligations pursuant to the Agreement.
- 6.4 The Supplier will maintain its records relating to the Purchase Order and the supply of the Goods and/or Services for a period of six years from the Date of Delivery and will make these available for inspection by Gold Fields when and where reasonably required by Gold Fields.
- 7. Title and risk**
- 7.1 Subject to clause 7.2, title in the Goods will pass from the Supplier to Gold Fields free of any Encumbrances on the earlier of (i) delivery of Goods or (ii) full payment for the Goods by Gold Fields.
- 7.2 If Gold Fields pays all or part of the Price of the Goods prior to their delivery, title in the Goods (or if the Goods are incomplete, title in the partly completed Goods and any materials and parts to be used in their manufacture or assembly) passes to Gold Fields free from Encumbrances, and the Supplier must clearly mark them with Gold Fields' name and the Purchase Order number.

7.3 Risk will pass on delivery of the Goods in accordance with Incoterms specified in the Purchase Order.

## 8. Rejection of Goods

8.1 Without prejudice and in addition to any rights that Gold Fields has under clause 19.1, Gold Fields may reject all or any Goods delivered to Gold Fields where Gold Fields, acting reasonably, determines that:

- (a) the Goods contain a defect;
- (b) the Goods are unfit for use;
- (c) the Goods do not comply with the requirements of the Agreement; or
- (d) the Goods' packaging is damaged or defective to an extent that damage to the Goods is possible.

8.2 To the extent Gold Fields rejects all or any Goods under clause 8.1:

- (a) the Supplier's obligation to deliver those Goods is not satisfied;
- (b) ownership, title and risk in the rejected Goods remains with, or reverts to, the Supplier as the case may be;
- (c) the Supplier must not replace the rejected Goods unless it receives instructions from Gold Fields to do so;
- (d) any monies paid by Gold Fields to the Supplier in respect of rejected Goods prior to their being rejected must be repaid immediately; and
- (e) the Supplier must collect the Goods at its own cost and at a time convenient to Gold Fields.

Without prejudice to the general application of clause 15.7, all monies paid by Gold Fields to the Supplier will be deemed to have been paid on account and subject to the Goods being free of any defects.

## 9. Performance of the Services

9.1 The Supplier must:

- (a) provide the Services for the duration of the Services Term in accordance with the Agreement;
- (b) ensure that the Services are performed, at a minimum, in accordance with best industry practice, the Plans, the Specifications, all applicable Laws and any code of practice applicable to the provision of the Services and in accordance with the Warranties;
- (c) execute and complete the performance of the Services in a proper and workmanlike manner with due skill, care and diligence, having regard to the nature of the Services;
- (d) ensure that the Services are carried out by Supplier Personnel who are suitably qualified, skilled, experienced, certified or accredited in accordance with applicable Law;
- (e) carry out the Services so as not to compromise any benefit under the Warranties;
- (f) comply with any direction given by Gold Fields, the GF Representative and ensure that all its employees, contractors and agents comply with any direction given by the same;
- (g) ensure that the Services are executed in a timely manner consistent with Gold Fields' operating requirements;

- (h) ensure that it has all necessary Authorizations to exercise its rights and perform its obligations pursuant to the Agreement, including any accreditation required under Law and must, upon request by Gold Fields, provide copies of such Authorizations.

9.2 During the Services Term:

- (a) the Supplier must at its cost provide sufficient tools and equipment to enable the Supplier to effectively carry out the Services in accordance with the Agreement;
- (b) the Supplier will be responsible, at its cost, for repairing, maintaining, replacing or upgrading such tools and equipment, as required to enable it to effectively provide the Services in accordance with the Agreement;
- (c) the Supplier must ensure that its tools and equipment comply with the requirements of applicable Law as it relates to the performance of Services;
- (d) risk in the tools and equipment shall remain with the Supplier at all times; and
- (e) the Supplier shall devote sufficient resources to the performance of Services.

9.3 The Supplier acknowledges that the Services provided by it to Gold Fields pursuant to the Agreement may be critical to Gold Fields and its operations and agrees that it may not suspend, withhold or delay the provision of Services due to any dispute arising from or related to the Agreement unless the Services are terminated according to this Agreement and all obligations of the handover by the Supplier have been performed. In addition, the Parties are to continue to perform all other obligations pursuant to the Agreement.

## 10. Supplier Personnel

10.1 The Supplier must:

- (a) ensure that the following information is available at all times for inspection by Gold Fields in respect of each individual Supplier Personnel, subject to applicable Privacy Legislation and employment Laws:

- (i) name and title of Supplier Personnel to access the Site;
- (ii) medical clearance certificates necessary to confirm the individual's fitness for work, and
- (iii) any other information reasonably requested by the GF Representative or the Gold Fields' Site human resources manager from time to time.

10.2 Gold Fields may, in its absolute discretion, withhold approval for access to a Site or any Gold Fields' operation by the Supplier or any Supplier Personnel.

10.3 All Supplier Personnel who have been approved to enter a Gold Fields Site must attend and satisfy Gold Fields' requirements from time to time in respect of all relevant Site safety inductions.

10.4 If Gold Fields is of the opinion that performance of the Services by Supplier or its Personnel may represent a risk to Gold Fields' environment, health, safety or risk of damage to Gold Fields' property, at Gold Fields' instruction, the Supplier shall immediately cease performance of any portion of the Services which Gold Fields considers to be at risk until corrective action satisfactory to Gold Fields is taken by the Supplier, the whole at the Supplier's expense. If the Supplier fails or refuses to take necessary corrective action, Gold Fields may do so at the Supplier's expense. Gold Fields' failure to require immediate suspension of Services which may be hazardous shall in no way constitute a waiver of the Supplier's liability or a consent



by Gold Fields to the Supplier's rendering of such Services in a manner deemed hazardous.

## 11. Compliance

11.1 The Supplier must at all times and its cost comply with:

- (a) all applicable Laws that are current at the time the Goods and/or Services are delivered or provided or the Site is otherwise accessed;
- (b) the Specifications;
- (c) good industry practices; and
- (d) all GF Rules, including any policies in place in respect of responsible procurement, ethics and compliance, health, safety, or the environment;

in relation to the supply of Goods and/or performance of Services to Gold Fields, and must carry out its obligations under this Agreement so as not to cause or contribute to any breach of the foregoing by Gold Fields.

## 12. Ethical Business Practices

12.1 The Supplier must not engage in, supply, support or fund any corrupt or other activities which, directly or indirectly, finance or benefit armed conflict or contribute to abuses of human rights.

12.2 The Supplier must not engage in any activity prohibited by Anti-Corruption Laws or GF Rules. This includes offering, giving, or agreeing to give any employee, agent, or representative of Gold Fields, or any government official, any gift, commission, benefit, or other consideration of any kind as an inducement or reward for performing, omitting, or refraining from performing any act in connection with the issuance of a purchase order or for showing favour or disfavour to any person in relation to the supply of Goods or the provision of Services.

## 13. Health and Safety

13.1 The Supplier must ensure that delivery of the Goods and performance of the Services are carried out safely and at all times comply with applicable Occupational Health and Safety Requirements relating to workplace health and safety.

13.2 The Supplier must, and must ensure that the Supplier Personnel:

- (a) provide any information, training, instruction and supervision that is necessary to protect all persons employed or engaged by it, or on behalf of it, from risks to their health and safety arising from the performance of Services;
- (b) comply with Gold Fields' requirements for Site access, including requirements to obtain a relevant work card, undertake any onboarding prior to entry, and comply with Site policies and procedures;
- (c) have systems in place to identify, assess and mitigate risks and hazards, in accordance with Occupational Health and Safety Requirements;
- (d) make commercially reasonable efforts to eliminate risks, or at a minimum, minimize risks so far as is reasonably possible, associated with the supply of the Goods and performance of the Services in accordance with the Occupational Health and Safety Requirements;
- (e) ensure that the health and safety of other persons is not compromised in connection with the Services.

13.3 The Supplier must:

(a) collaborate and coordinate with Gold Fields, Gold Fields' Personnel and any other parties with shared duties under the Occupational Health and Safety Requirements to ensure compliance with applicable Laws. This includes taking reasonable steps to:

- (i) facilitate and participate in any safety meetings with all concurrent duty holders;
- (ii) provide and maintain the information required to enable Gold Fields to fulfill its duties under the Occupational Health and Safety Requirements; and
- (iii) undertake any additional consultation, cooperation, or coordination measures as reasonably required or agreed with Gold Fields.

(b) consult with workers under its supervision, or likely to be affected by, matters relating to occupational health and safety in connection with Services or the Site, including:

- (i) informing workers of any risks related to their tasks and the safety measures in place;
- (ii) providing opportunities for workers to express concerns or suggestions regarding health and safety; and
- (iii) addressing any concerns raised promptly and in compliance with the Law.

(c) immediately report all incidents or accidents on Site to the GF representative including damage to Gold Fields' property or any third-party property and not disturbing the scene of an accident without Gold Fields' prior approval.

13.4 The Supplier shall and must ensure that the Supplier Personnel fully cooperate with any investigation conducted by (i) Gold Fields in relation to any incident, event, or circumstance occurring in connection with the Services or the Site; or (ii) any Authority exercising its powers under applicable Occupational Health and Safety Requirements.

## 14. Environment

14.1 When providing the Services or otherwise accessing the Site:

(a) The Supplier and Supplier Personnel must:

- (i) perform the Services or conduct itself on the Site in a manner so as to avoid environmental harm, pollution or contamination of or outside the Site; and
- (ii) comply with all applicable environmental Laws and practices, including any Authorization issued in connection therewith and any GF Rules, including ensuring compliance of Supplier's Personnel and agents engaged in the performance of the Services.

(b) The Supplier is responsible for, and must:

- (i) ensure that the Site is at all times free from all waste, residue materials, contaminants, hazardous materials, pollutants and scrap produced during the provision of the Services, and the Supplier undertakes to remove the same or to have the same removed at its own expense immediately following completion of the Services;
- (ii) immediately inform Gold Fields of any environmental harm, pollution, contamination, or other environmental impact caused by the Supplier in the performance of the Services;
- (iii) take all other actions required to clean-up, rehabilitate and remediate any environmental harm,

pollution, contamination or other environmental impact caused by the performance of the Services or access to the Site by the Supplier or Supplier Personnel including any environmental harm, pollution or contamination of or outside of the Site; and

- (iv) comply with all directions of Gold Fields, the GF Representative, a Site supervisor or any Authority regarding such cleaning up, rehabilitation or remediation.

(c) The Supplier must indemnify Gold Fields against:

- (i) any liability to or Claim by a third party; and
- (ii) all costs, penalties, fines, losses and damages suffered or incurred by Gold Fields,

arising out of or in connection with any failure by the Supplier to comply with the requirements of this clause 15.1 or environmental harm caused by the Supplier.

15.2 The Supplier must and must ensure that Supplier Personnel fully cooperate with Gold Fields in any investigation it conducts following any environmental incident on a Site, and, if required, provide a written report to Gold Fields in respect of such incident.

## 15. Payment

15.1 Subject to the Supplier providing the Goods and/or Services in accordance with the Agreement, and otherwise subject to the Agreement, Gold Fields must pay the Price to the Supplier.

15.2 All payments made by Gold Fields must be made by direct electronic deposit into a bank account nominated by the Supplier in a written notice to Gold Fields.

15.3 The Supplier acknowledges that the Price represents the total amount payable by Gold Fields to it in respect of the Goods and/or Services and acknowledges that if it incurs additional costs, it will not be entitled to any increase, in the Price or otherwise to reimbursement or payment of any additional costs.

15.4 The Supplier shall issue an invoice to Gold Fields no later than seven (7) days after the end of the month during which the Goods and/or Services were provided. The invoice must reflect the amount specified as payable in the corresponding Purchase Order.

15.5 The invoice must be dated to reflect the month during which the Goods and/or Services were provided and must include the following information:

- (a) the Date of Delivery and a description of the Goods and/or Services provided to Gold Fields;
- (b) the Price or part thereof payable in respect of the period to which the invoice relates plus applicable Sales Taxes;
- (c) the Purchase Order number issued by Gold Fields in respect of the Goods and/or Services;
- (d) the name of the relevant Gold Fields' location and/or Site;
- (e) the name of the GF Representative in respect of the relevant Purchase Order;
- (f) any other information directed by the GF Representative, and be addressed and forwarded to Gold Fields' accounts payable department at the respective Gold Fields' operation or Site as specified in the Purchase Order.

15.6 Subject to the terms of the Agreement, Gold Fields shall pay the Supplier the undisputed amount of any invoice within 30 days from the end of the month in which the invoice is submitted in accordance with clause 15.4. For the avoidance of doubt, invoices submitted by the Supplier:

- (a) before the end of the month in which the Goods and/or Services were provided, will be paid within 30 days of the end of that month; and
- (b) after the period set out in clause 15.4, will be paid within 30 days of the end of the following month.

15.7 If Gold Fields disputes any amount claimed in an invoice, Gold Fields must nevertheless:

- (a) within 30 days of the Supplier submitting its invoice, notify the Supplier of the amount that it accepts is payable and insofar as an amount claimed is disputed, provide written reasons for disputing the amount; and
- (b) pay the amount (if any) that it accepts as payable.

Gold Fields' payment shall not be construed as acceptance of the Goods and/or Services, nor as an acknowledgement of Gold Fields' obligation to pay the Supplier for the Goods/Services.

15.8 If Gold Fields fails to respond to a payment claim in accordance with clause 15.7 then the amount claimed by the Supplier is deemed to be disputed.

15.9 Gold Fields may deduct from monies otherwise due to the Supplier any:

- (a) debt or other monies due from the Supplier; or
- (b) Claim to money which Gold Fields may have against the Supplier, whether for damages, warranties or otherwise relating to the Goods and/or Services.

15.10 If Gold Fields fails to make payment that is undisputed, due and payable to the Supplier by the due date for that payment, the Supplier may give notice to Gold Fields specifying the failure and requiring rectification. If 30 Business Days have passed following notice from the Supplier under this clause 15.10 and Gold Fields has not paid, the Supplier may suspend, upon written notice to Gold Fields, the supply of Goods and/or performance of Services until the undisputed amount has been paid.

## 16. Warranties

16.1 By issuing an invoice to Gold Fields under clause 15.4, the Supplier warrants to Gold Fields that:

- (a) the Goods and all components or parts of the Goods are free from any Encumbrances;
- (b) the Goods and all components or parts of the Goods are to the quality and standard stipulated by the Agreement, are of merchantable quality, free from defects and fit for their intended purpose;
- (c) all operating and maintenance manuals supplied with the Goods (if any) are correct, complete and fit for their intended purpose;
- (d) the Goods meet the Specifications, if any; and
- (e) the Services have been provided in accordance with the Specifications.

16.2 The Warranties are in addition to and do not derogate from any warranty provided by Law in respect of the Goods and/or the Services.

16.3 During the Warranty Period, the Supplier shall correct any defects, deficiencies or non-conformities ("**Defect**") discovered by Gold Fields and agrees to repair or replace, at Gold Fields' discretion, any Goods delivered or Services rendered to Gold Fields which do not conform to the terms of this Agreement or the Specifications. Regardless of whether the Defect was detected during the initial inspection or subsequently (if the Defect was not identifiable at the time of such initial inspection), in the event that the Supplier fails to promptly correct any Defect or replace the Goods or Services in a timely manner, Gold Fields may, upon a 10 days prior written notice to the Supplier, proceed with the necessary corrections or repair or replace the defective, deficient or non-conforming Goods or Services and charge the Supplier for the costs incurred by Gold Fields as a result. These remedies are not exclusive and do not preclude any other legal remedies to which Gold Fields may be entitled as a result of the Supplier's delivery of deficient, defective or non-conforming Goods and/or Services.

16.4 Where the Goods or any materials, parts or components of the Goods supplied pursuant to the Agreement are manufactured or supplied by a party or parties other than the Supplier, the Supplier must procure from the parties the best reasonably obtainable warranties in respect of the Goods or such materials, parts or components of the Goods that are manufactured or supplied by third parties and must ensure that Gold Fields will have the benefit of those third party warranties.

## 17. Assignment

17.1 Gold Fields may by notice to the Supplier assign, transfer or otherwise deal with all or any part of its rights or obligations under or in connection with the Agreement.

17.2 The Supplier may not assign, transfer or otherwise deal with its rights or obligations under or in connection with the Agreement without the prior written approval of Gold Fields. Such approval may be withheld by Gold Fields for any reason in its discretion.

## 18. Subcontracting

18.1 The Supplier must not subcontract the supply, delivery or unloading of the Goods or the whole or any part of the Services without the prior written approval of Gold Fields.

18.2 The Supplier remains responsible for performing its obligations under this Agreement notwithstanding the Supplier has subcontracted the performance of all or any part of those obligations.

## 19. Indemnity

19.1 The Supplier must, to the extent permitted by Law, be liable for and must indemnify the Indemnified Parties against all Claims and liabilities suffered or incurred by the Indemnified Parties, however arising, that are caused or contributed to by:

- (a) any breach of Law or this Agreement by the Supplier or its Personnel;
- (b) any negligent act or omission or wilful misconduct by the Supplier or its Personnel;
- (c) any third-party Claim arising out of any breach of this Agreement by the Supplier or negligent act or omission or wilful misconduct by the Supplier or its Personnel;
- (d) any breach of any warranty given by the Supplier under this Agreement or by operation of any relevant Laws in respect of the Goods or Services;
- (e) death or personal injury of any person caused by the Supplier or its Personnel; or

(f) any Claim relating to a breach of a third party's Intellectual Property rights as a result of the performance of the Supplier's obligations under this Agreement or in connection with the Goods or Services supplied under this Agreement;

(g) Claim resulting from the Supplier's failure to pay any of its subcontractors;

except that the Supplier's liability will be reduced proportionately to the extent that any such liability results from the negligence or wilful misconduct of Gold Fields or its employees.

## 19.2 Limitation of liability

Subject to clause 19.3, the Parties agree that:

(a) except where this Agreement specifically provides otherwise, such damages or liability is limited to the direct, proximate and foreseeable loss attributable to such act or omission, after taking into account any obligation of the relevant Party to mitigate its loss;

(b) in no event shall either Party be liable for any indirect, incidental, special, punitive or consequential damages.

## 19.3 Exclusion from liability limitations

The limitations of liability in clause 19.2 do not apply to the extent that the liability:

- (a) cannot be limited or excluded at Law;
- (b) arises from Claims made by a third-party related to any breach of this Agreement by the Supplier or negligent act or omission or wilful misconduct by the Supplier or its Personnel;
- (c) arises out of a breach of a confidentiality obligation, intellectual property rights or obligation in respect of privacy and data protection; or
- (d) is directly or indirectly caused by or contributed to by the gross negligence, wilful misconduct, fraud, or criminal conduct.

## 20. Insurance

20.1 Without limiting the liability of the Supplier as to any obligations imposed under this Agreement, the Supplier shall procure and maintain during the term of the Agreement, at Supplier's own expense, with a reputable insurer, reasonable insurance coverage customary in the Supplier's industry to cover claims for all losses, costs and expenses arising out of the provision of the Goods and/or Services to Gold Fields pursuant to the Purchase Order, including (i) workplace safety insurance as required by applicable Law and (ii) commercial general liability insurance (including coverage for public liability, property damage liability, contractual liability and product liability, if applicable), with a minimum limit of \$2,000,000 per occurrence.

20.2 The Supplier shall deliver certificates of insurance evidencing such insurance prior to commencing the supply of the Goods and/or Services and any such evidence that Gold Fields may require from time to time.

20.3 If the Supplier fails to take out any of the insurances required under this Agreement, Gold Fields may at its sole option take out and maintain such insurances and deduct reasonable costs from any moneys due to the Supplier or treat the failure to insure as a breach under clause 25.1(a), which unless remedied within 14 days, Gold Fields may terminate the Purchase Order in whole or in part immediately in writing.

20.4 Where the Supplier has been permitted to assign or subcontract under the Purchase Order, the Supplier must ensure that the assignee or subcontractor obtains the insurances specified in and otherwise complies with the provisions of this clause. Such assignment or subcontract will not relieve the Supplier of its own obligations to fulfill any provisions of this clause.

## 21. Confidential Information

21.1 The Supplier covenants that it will hold all Confidential Information in confidence for Gold Fields for the purposes of performing its obligations under the Agreement and will not directly or indirectly at any time during the supply of the Goods or the provision of the Services, or after the termination or expiry of the Agreement use, and will not permit any Supplier Personnel to use, any Confidential Information or disclose, or permit any Supplier Personnel to disclose, any Confidential Information to any third party except if the use or disclosure:

- (a) is for the purpose of providing the Goods and/or Services;
- (b) relates to information already within the public domain, other than by virtue of a breach of this clause by the Supplier or any Supplier Personnel;
- (c) is required by Law or by any competent Authority; or
- (d) is made with the prior written consent of Gold Fields.

21.2 The Supplier must not, and must procure that its Affiliates do not, publish any media release, photograph, social media post or other public statement in relation to the supply of Goods or the provision of Services to Gold Fields under this Agreement, unless the Supplier has obtained the prior written consent of Gold Fields.

## 22. Privacy and Data Protection

22.1 Each Party agrees to comply with the Privacy Legislation and any other applicable Law related to privacy or Personal Information that may apply to that Party, in respect of any Personal Information processed by it in connection with this Agreement.

22.2 Each Party warrants to the other Party that it has complied with the Privacy Legislation in obtaining any Personal Information disclosed by it pursuant to this Agreement.

22.3 In addition to complying with its obligations under the Privacy Legislation, the Supplier agrees, in relation to Personal Information accessed or collected in connection with this Agreement to:

- (a) only process the Personal Information for the purposes of performing the Supplier's obligations under this Agreement;
- (b) not disclose the Personal Information to any other person without Gold Fields' prior written consent, unless the disclosure is required by Law;
- (c) immediately notify Gold Fields if the Supplier is required by Law to disclose any Personal Information;
- (d) provide reasonable assistance to Gold Fields to enable Gold Fields or another person authorized by Gold Fields to audit compliance with obligations under this clause 22;
- (e) put into place and maintain appropriate technical and organisational measures against unauthorized or unlawful processing of Personal Information and against unauthorized access, loss, destruction, misuse, modification, disclosure or damage to Personal Information;

(f) take all necessary steps to ensure that its processing of the Personal Information of Gold Fields' Personnel will be fair and lawful and, for this purpose, the Supplier may reasonably enquire of Gold Fields as to the manner in which Gold Fields obtained the Personal Information; and

(g) promptly after termination or satisfaction of a Purchase Order, return, destroy, dispose of or de-identify relevant Personal Information of Gold Fields' Personnel, except to the extent applicable Law requires.

## 23. Unauthorized Access or Loss

If the Supplier becomes aware of any accidental loss or destruction of, or unauthorized disclosure of or access to, the Confidential Information or Personal Information of Gold Fields' Personnel or a cyber security or data security breach on any system which has impacted or may impact the Confidential Information or the Personal Information of Gold Fields' Personnel, the Supplier must:

- (a) immediately notify Gold Fields;
- (b) take immediate steps to remedy the breach and/or limit any further loss, destruction or disclosure of, or access;
- (c) mitigate and remediate, to the extent practicable, any harmful impact of the relevant event or occurrence;
- (d) cooperate with Gold Fields in investigating and providing any notices to individuals and Authorities regarding the incident;
- (e) in consultation with Gold Fields, cooperate with any investigation into the incident undertaken by any Authority; and
- (f) take all reasonable steps to prevent any further breaches or incidents of a similar nature.

## 24. Intellectual Property

24.1 Any Intellectual Property rights created by reason of the supply of the Goods or the provision of the Services must vest in Gold Fields.

24.2 Any Intellectual Property rights in any pre-existing materials of the Supplier must remain vested in the Supplier, and the Supplier hereby grants Gold Fields and its Affiliates a royalty free, perpetual, irrevocable licence of any such pre-existing materials and Intellectual Property Rights for the purpose of using the Goods and/or Services in Gold Fields' normal course of business.

24.3 The Supplier warrants that, unless otherwise provided in the Agreement, the Goods and/or Services do not infringe any Intellectual Property rights of any third party.

## 25. Termination by Gold Fields

25.1 If any of the following occur (each of which will be a material breach of the Agreement) then, without prejudice to any other right or remedy which Gold Fields may have against the Supplier for breach or non-observance of the Agreement, Gold Fields may terminate the supply of the Goods and/or Services in whole or in part immediately by notice in writing:

- (a) the Supplier breaches or fails to observe or perform any obligations under this Agreement and such breach, non-observance or non-performance is not remedied within 14 days after Gold Fields gives written notice to remedy the same;
- (b) an Insolvency Event occurs in respect of the Supplier;



- (c) there is a change in ownership or shareholding of the Supplier which in Gold Fields' opinion may affect the quality or delivery of the Goods and/or Services;
  - (d) the Supplier refuses or neglects to comply with any GF Rules, order or direction given by Gold Fields relating to the supply of the Goods or the provision of the Services and such refusal or neglect is not remedied (if remediable) within fourteen (14) days after Gold Fields gives written notice of the same;
  - (e) the Supplier, or any of its directors, is convicted of a criminal offence;
  - (f) the Supplier or Supplier Personnel (in Gold Fields' opinion) wilfully or recklessly injures a person or damages Gold Fields' property.
- 25.2 Notwithstanding any other provision in this Agreement, Gold Fields may terminate in whole or in part the supply of Goods and/or Services at its absolute discretion on giving the Supplier 30 days' written notice. If the supply of Goods and/or Services are terminated under this clause 25.2 the Supplier will be entitled to payment in respect of:
- (a) Goods and / or Services supplied up to the effective date of termination;
  - (b) its direct costs actually and reasonably incurred in demobilising from the Site, if applicable; and
  - (c) the direct cost of materials and equipment reasonably ordered by the Supplier in expectation of completion of the delivery of the Goods or performance of the Services under the Agreement and which the Supplier is liable to accept and unable to otherwise cancel at no cost or mitigate acting reasonably, but only if they will become Gold Fields' property upon payment.
26. **Termination by Supplier**
- 26.1 The Supplier may terminate the supply of Goods and/or Services immediately by notice in writing if any of the following occur:
- (a) an Insolvency Event occurs in respect of Gold Fields; or
  - (b) the circumstances set out in clause 15.10 have occurred and at least 10 Business Days have passed since the Supplier has suspended the supply of Goods and/or performance of the Services and Gold Fields has still not made payment of the undisputed amount.
27. **Force Majeure**
- 27.1 Neither Supplier nor Gold Fields shall be liable for any failure to perform, in whole or in part, any of their obligations hereunder, including delays in the delivery of Goods and provision of Services or delays in payment, if such failure is caused by an event of force majeure such as, without limitation, earthquake, flood, tornado or other natural disaster, fire, accidents, war, insurrection, riot, civil disturbance and governmental interference or regulation or any other event unforeseeable, irresistible and beyond the reasonable control of any Party (each a "**Force Majeure Event**").
- 27.2 The performance of reciprocal obligations of the Party not affected by a Force Majeure Event shall be suspended until such Force Majeure Event ceases or until the affected Party is able to resume performance of its obligations, whichever is the earliest. Notwithstanding the foregoing, Gold Fields shall have the right to terminate the Purchase Order if a Force Majeure Event is not resolved within 45 days of its commencement or if the Supplier is unable to resume performance of its obligations under the Agreement in the aforementioned period.

28. **Notices**
- 28.1 Any notice, demand or request by the Supplier to Gold Fields or by Gold Fields to the Supplier to be made or given pursuant to the Agreement must be in writing and sent by prepaid post or in electronic form (such as email) to the respective addresses specified in the Purchase Order.
29. **Further Services Term**
- 29.1 The Supplier must extend the Agreement to provide the Services for the further term stated in the Purchase Order if Gold Fields serves a notice to that effect during the Services Term.
- 29.2 Any extension of the Agreement in accordance with clause 29.1 starts on the date immediately after the expiry of the Services Term.
- 29.3 If after the expiration of the Services Term, the Supplier continues to provide the Services, the Supplier agrees that the Services must be provided on and subject to the terms and conditions of the Agreement.
30. **Dispute Resolution**
- 30.1 Any dispute which arises between Gold Fields and the Supplier arising out of or in connection with the Agreement must be dealt with in accordance with this clause 30.
- 30.2 A Party may refer a dispute to the other Party for resolution, by serving notice in writing upon the person named in the Purchase Order as that Party's Representative on behalf of the other Party. The notice must specify:
- (a) the dispute;
  - (b) particulars of the Party's reasons for being dissatisfied; and
  - (c) the position which the Party believes is correct, including the facts and provisions of the Agreement supporting its position.
- 30.3 If the Parties are unable to resolve the dispute referred to in clause 30.2 within ten Business days of its referral, the dispute must immediately be referred to mediation.
- 30.4 In the event the Parties are unable to reach an agreement following the mediation process, either Party may without further notice commence litigation.
- 30.5 Notwithstanding clause 30.3, nothing in this Agreement prevents either Party from seeking an injunction or safeguard order before a court of competent jurisdiction to compel performance of obligations under this Agreement.
31. **Costs and Taxes**
- 31.1 Each Party must bear its own legal costs incidental to the preparation, drafting and execution of the Agreement.
- 31.2 The Supplier will assume the cost of any duty together with any fines or penalties assessed as payable with respect to the Purchase Order and the Agreement.
- 31.3 The Supplier is and remains liable for payment of any Taxes. If any Tax is imposed, the Supplier must pay the full amount to the relevant Authority and indemnifies Gold Fields against any failure to do so. If any exemptions, reductions, allowances, rebates or other privileges in relation to Taxes may be available to the Supplier or Gold Fields, the Supplier must adjust any payments due to reflect any such savings or refunds (including interest awarded) to the maximum allowable extent.
- 31.4 The Supplier shall remit Sales Taxes collected from Gold Fields to the applicable Authority when due, in accordance with

applicable Law. In determining the Price, the Supplier agrees not to include any Taxes recoverable by the Supplier through input tax credits, input tax refunds, rebates, or similar mechanisms, or any Taxes for which the Supplier is eligible for exemption or similar relief under applicable Laws.

- 31.5 Gold Fields may deduct from the whole or part of payments due to the Supplier any Taxes which Gold Fields is required to withhold or deduct by any Authority.

**32. Order of Precedence**

- 32.1 In the event of any inconsistency between the Special Conditions, these Purchase Order Terms and Conditions and the Purchase Order, the order of precedence shall be as follows:

- (a) the Special Conditions;
- (b) these Purchase Order Terms and Conditions; and
- (c) the Purchase Order.

**33. Miscellaneous**

- 33.1 Neither Party's failure to require remedy of any default or breach of the Agreement by the other Party or to require compliance by the other Party with any provision of the Agreement is a waiver of that term or condition.
- 33.2 The Agreement shall be governed by the Laws of Quebec, Canada. Any dispute arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction of the courts of the judicial district of Montréal, Québec.
- 33.3 The terms of the Agreement supersede all prior agreements, arrangements and undertakings between the Parties and constitutes the entire agreement between them in relation to the supply of the Goods and/or the Services.
- 33.4 The Agreement does not create a partnership, joint venture, agency, fiduciary or employment relationship between Gold Fields and the Supplier.
- 33.5 No amendment or variation to the Agreement nor any additional rights or obligations created in relation to the subject matter of the Agreement must be of any force or effect unless:
- (a) made expressly in writing and signed by a duly authorized officer of Gold Fields and a duly authorized representative of the Supplier; or
  - (b) effected by way of update to this Agreement in accordance with clause 33.7.
- 33.6 Any obligation, indemnity or warranty of either Party that by its nature extends beyond the expiration or earlier termination of this Agreement shall survive and continue in full force and effect following any termination or expiry of this Agreement.
- 33.7 Gold Fields may update this document from time to time, and by notification to the Supplier. Such updates shall be published on Gold Fields' website: [www.windfallmininggroup.com](http://www.windfallmininggroup.com). The updated terms will take full force and effect between the Parties, subject to agreement with the Supplier and any changes effected to the updated terms by the application of any existing Special Conditions agreed between the Parties.
- 33.8 The Parties hereto have expressly agreed that the Agreement as well as all other documents relating thereto be drafted in English. Les Parties aux présentes ont expressément convenu que l'entente de même que tous les documents s'y rattachant soient rédigés en anglais.