

Case number: 44925/16

In the matter of :

**EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED**

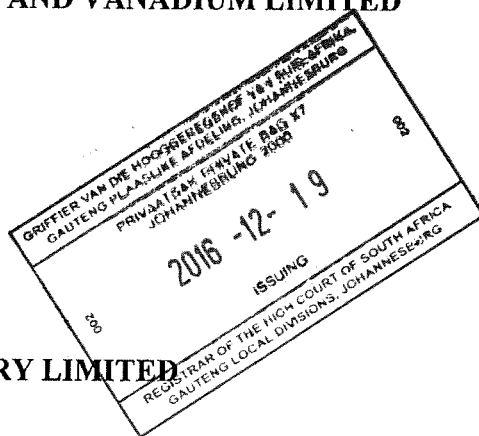
Plaintiff

**(IN BUSINESS RESCUE)**

and

**AIR LIQUIDE PROPRIETARY LIMITED**

Defendant



**TO THE SHERIFF OR HIS DEPUTY:**

**INFORM**

**AIR LIQUIDE PROPRIETARY LIMITED**, a company duly incorporated with limited liability in terms of the company laws of South Africa under registration number 1948/029574/07, with its registered address at corner Old Vereeniging Road and Andre Marais Street, Alrode, Alberton, Gauteng

(hereinafter referred to as the Defendant)

**THAT**

**EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED (IN BUSINESS RESCUE)**, a company duly incorporated with limited liability in accordance with the company laws of the

Republic of South Africa under registration number 1960/001900/06, with its registered address at Old Pretoria Road, Portion 93 of the Farm Schoongezicht 308, JS, eMalahleni

(hereinafter referred to as the Plaintiff)

hereby institutes action against the Defendant in which action the Plaintiff claims the relief and on the grounds set out in the particulars annexed hereto.

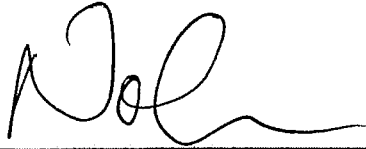
**INFORM** the Defendant further that if it disputes the claim and wishes to defend the action, the Defendant shall -

1. Within 10 (ten) days of the service upon the Defendant of this Summons, file with the registrar of this Court at Corner Von Brandis and Pritchard Street, Johannesburg, a notice of the Defendant's intention to defend and serve a copy thereof on the Attorneys of the Plaintiff, which notice shall give an address (not being a post office or poste restante) referred to in rule 19(3) for the service upon the Defendant of all notices and documents in the action.
2. Thereafter and within 20 (twenty) days after filing and serving notice of intention to defend as aforesaid, file with the Registrar and serve upon the Plaintiff a Plea, Exception, Notice to strike out, with or without a Counter-claim.

**INFORM** the Defendant further that if the Defendant fails to file and serve notice as aforesaid, Judgement as claimed may be given against the Defendant without further notice to the Defendant, or if having filed and served such notice, the Defendant fails to plead, except, make application to strike out or counter-claim, Judgement may be given against the Defendant.

**AND** immediately thereafter serve on the Defendant a copy of this Summons and return the same to the Registrar with whatsoever you have done thereupon.

Dated at JOHANNESBURG on this the 19<sup>th</sup> day of December 2016.



**EDWARD NATHAN SONNENBERGS**

Attorneys for the Plaintiff

150 West Street

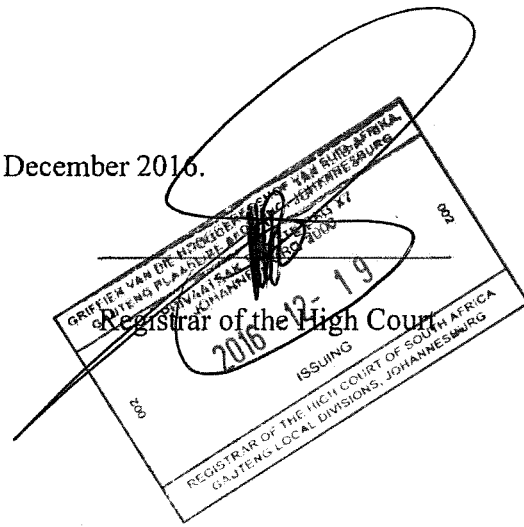
Sandown, Sandton

Email: lfield@ensafrica.com

Tel : (011) 269 7600

Fax : (010) 596 6176

(Ref: LField)



**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**

Case number: 44925/16

In the matter of :

**EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED**  
**(IN BUSINESS RESCUE)**

Plaintiff

and

**AIR LIQUIDE PROPRIETARY LIMITED**

Defendant

---

**THE PARTICULARS OF THE PLAINTIFF'S CLAIM**

---

**THE PARTIES**

1. The plaintiff is Evraz Highveld Steel and Vanadium Limited (in business rescue), which:

- 1.1. is a company duly incorporated with limited liability in accordance with the company laws of the Republic of South Africa under registration number 1960/001900/06;
- 1.2. has its registered office at Old Pretoria Road, Portion 93 of the Farm Schoongezicht 308, JS, eMalahleni;
- 1.3. was placed under voluntary business rescue proceedings in terms of section 129 of the Companies Act, 71 of 2008, by way of a resolution filed with the Companies and Intellectual Property Commission of South Africa ("CIPC") on 13 April 2015;
- 1.4. is represented herein by Piers Marsden and Daniel Terblanche, being its joint business rescue practitioners, having been so appointed in the notices of appointment filed with CIPC on 15 April 2015; and
- 1.5. prior to its business rescue, was engaged in the production of iron and steel products as well as vanadium bearing slag.

2. The defendant is Air Liquide Proprietary Limited, which:

- 2.1. is a company duly incorporated with limited liability in accordance with the company laws of South Africa under registration number 1948/029574/07; and
- 2.2. has its registered address at corner Old Vereeniging Road and Andre Marais Street, Alrode, Alberton, Gauteng, within the area of jurisdiction of the above Honourable Court.

**THE SUPPLY AGREEMENT**

3. On or about 8 December 2011, the plaintiff and the defendant concluded a written oxygen, nitrogen and argon supply agreement. A copy of the written agreement is annexed as "POC1" ("the supply agreement").
4. The supply agreement was concluded in Pretoria and the parties were represented by their duly authorised representatives.
5. In terms of the supply agreement:
  - 5.1. "Commencement Date" means the date on which the Facility begins Commercial Operation, which date shall be no later than the Contractual Availability Date.
  - 5.2. "Contractual Availability Date" means the date which is 24 (twenty-four) months after the Signature Date.
  - 5.3. "Commercial Operation" means commencement of commercial operation of the Facility, being 24 (twenty four) hours after the defendant has given written notice to the plaintiff to confirm commissioning of the Facility. Commercial Operation shall be no later than the Contractual Availability Date.
  - 5.4. "Facility" means the air separation unit and its related equipment to be installed, owned, operated and maintained by the defendant at the facility site for the production, compression of the product and the storage of supplementary product, including any additions, extensions or replacements thereto.

6. In terms of the supply agreement, the defendant would supply to the plaintiff, and the plaintiff would purchase from the defendant, oxygen, nitrogen and argon ("the product") with effect from the Commencement Date (clause 9).
7. The following were the express, alternatively tacit terms of the supply agreement:
  - 7.1. The plaintiff would provide the facility site for the purposes of the construction and operation of the Facility from which the defendant would operate on the plaintiff's premises (clause 6.1.1).
  - 7.2. The defendant would at its sole cost and responsibility construct and commission the Facility upon the facility site in accordance with the requirements of the supply agreement (clause 8.1).
  - 7.3. The plaintiff would supply the utilities required by the defendant to operate the Facility (clause 13.2 and clause 13.3).
  - 7.4. In the event of the defendant failing to commence operations by the Commencement Date, and such date being later than the Contractual Availability Date, due to the defendant's fault ("Commencement Delay"), then the defendant would be liable to pay to the plaintiff, as compensation for such delay, a fixed amount equal to R33 000.00 per day of the delay for the first 3 months of such delay, limited to an aggregate amount of R3 000 000.00 (clause 14.12 as read with clause 20.1.1).
  - 7.5. In the event of there being a delay in the Commencement Date or the defendant failing to supply 100% of the product nominated quantities required by the plaintiff during any availability period, the defendant would use its reasonable endeavours to source product from alternate sources to compensate for a shortfall in supply of the product.

If the costs associated with sourcing such product were higher than the price provided for in the supply agreement, then the defendant would be liable for such costs (clause 20.15).

8. On or about 9 October 2012, a first addendum to the supply agreement was concluded between the plaintiff and the defendant in terms whereof certain provisions of the supply agreement were amended. A copy of the first addendum is annexed as “POC2”.

#### **THE DEFENDANT’S BREACH OF THE SUPPLY AGREEMENT**

9. The defendant, in breach of its contractual obligations to the plaintiff under the supply agreement, failed to meet the Commencement Date of 8 December 2013.
10. Commercial Operation of the Facility only commenced on 19 February 2014.

#### **THE PLAINTIFF’S DAMAGES**

11. In consequence of the aforesaid breach, the plaintiff has suffered damages as is set out below.



**Claim 1 – Compensation for the Commencement Delay**

12. The Commencement Delay equated to 73 days from the Contractual Availability Date specified in the supply agreement.
13. The compensation due to the plaintiff for the period of the Commencement Delay, calculated at R33 000.00 per day of the delay over the period of 8 December 2013 to 18 February 2014, amounts to the sum of R2 409 000.00.
14. The plaintiff has accordingly suffered damages in the amount of R2 409 000.00.
15. Had the defendant performed its obligations under the supply agreement, the plaintiff would not have suffered the aforesaid damages.
16. The plaintiff's damages flow naturally and generally from the defendant's breach of the supply agreement.
17. In the premises, the defendant is obliged to pay to the plaintiff the sum of R2 409 000.00.

**Claim 2 – Alternate Sources of Supply during the Commencement Delay**

18. The defendant agreed to the plaintiff sourcing the product from a third party supplier, namely, African Oxygen Limited ("Afrox"), during the Commencement Delay.
19. The price for the supply of the products from Afrox amounted to the sum of R22 251 517.88, in accordance with the following two invoices:
  - 19.1. Invoice number 922, annexed as "POC3"; and

19.2. Invoice number 924, annexed as "POC4".

20. Had the defendant been in a position to supply the product in terms of the supply agreement, the plaintiff would have paid the sum of R6 456 706.95 to the defendant. The documents setting out the computation of the aforesaid amount are annexed as "POC5".
21. The difference in the price for the supply of the product from Afrox and the price that would have been payable for the supply of the product from the defendant in terms of the supply agreement is R15 794 810.93.
22. The plaintiff has accordingly suffered damages in the amount of R15 794 810.93.
23. Had the defendant performed its obligations under the supply agreement, the plaintiff would not have suffered the aforesaid damages.
24. The plaintiff's damages flow naturally and generally from the defendant's breach of the supply agreement.
25. In the premises, the defendant is obliged to pay to the plaintiff the sum of R15 794 810.93.

**WHEREFORE** the plaintiff claims against the defendant as follows:


**In respect of Claim 1:**

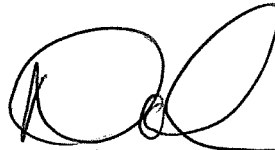
- (a) payment of the amount of R2 409 000.00 (excluding VAT);
- (b) interest *a tempore morae*;
- (c) costs of suit;
- (d) further or alternative relief.

**In respect of Claim 2:**

- (a) payment of the amount of R15 794 810.93;
- (b) interest *a tempore morae*;
- (c) costs of suit;
- (d) further or alternative relief.

Dated at CAPE TOWN on 15TH DECEMBER 2016

  
\_\_\_\_\_  
G W WOODLAND SC  
Counsel for the Plaintiff



**EDWARD NATHAN SONNENBERGS**

Plaintiff's Attorneys

ENS House

150 West Street

Sandton

Ref: Ms L Field

TO: **THE REGISTRAR**  
High Court  
JOHANNESBURG

AND TO: **AIR LIQUIDE PROPRIETARY LIMITED**  
Corner Old Vereeniging Road and Andre Marais Street  
Alrode  
Alberton  
Gauteng

**"POC1"**

**Execution Copy**

**24 November 2011**

**OXYGEN, NITROGEN AND ARGON  
SUPPLY AGREEMENT**

between

**AIR LIQUIDE (PROPRIETARY) LIMITED**

and

**EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED**

A handwritten signature consisting of a horizontal line followed by a large, stylized loop.

## TABLE OF CONTENTS

1	PARTIES .....	4
2	INTERPRETATION .....	4
3	INTRODUCTION .....	10
4	TERMINATION OF TERM SHEET AND LOI.....	11
5	TERM.....	11
6	FACILITY SITE.....	11
7	INTERIM PERIOD ARRANGEMENTS .....	11
8	CONSTRUCTION OF FACILITY .....	14
9	PRODUCT SUPPLY AND PURCHASE OBLIGATIONS .....	14
10	PRODUCT AND UTILITIES WARRANTIES AND SPECIFICATIONS .....	18
11	COORDINATION OF OPERATIONS.....	20
12	DELIVERY POINT.....	21
13	MEASUREMENT.....	21
14	PRICE, MONTHLY FEE AND PRICE AND MONTHLY FEE ADJUSTMENT AND MINIMUM PRODUCT PURCHASE OBLIGATION .....	24
15	PAYMENT .....	28
16	AVAILABILITY .....	29
17	TAXES.....	31
18	IMPAIRMENT OF CREDIT.....	32
19	INSURANCE.....	33
20	BREACH AND LIMITATION OF LIABILITY.....	33
21	TERMINATION.....	35
22	FORCE MAJEURE.....	35
23	GENERAL WARRANTIES .....	38
24	DISPUTE RESOLUTION.....	39
25	NOTICES AND DOMICILIA .....	40
26	BENEFIT OF THIS AGREEMENT .....	41
27	ASSIGNMENT .....	41
28	APPLICABLE LAW AND JURISDICTION .....	41
29	GENERAL .....	41
30	COSTS.....	44
31	SIGNATURE.....	44

*m*  
*Hy*  
*At*

*[Signature]*

**ANNEXURES**

**ANNEXURE "1" : LAYOUT AND BATTERY LIMITS**

**ANNEXURE "2" : UTILITIES SPECIFICATIONS FOR INTERIM PERIOD AND FOR PERIOD  
FROM COMMENCEMENT DATE**

**ANNEXURE "3" : PRODUCT SPECIFICATIONS**

**ANNEXURE "4" : AVAILABLE PNMAX RANGES ABOVE 500 TONS PER DAY**

**ANNEXURE "5" : REDUNDANCY LIST BASED ON 380 TONS PER DAY**

**ANNEXURE "6" : SCOPE EXCLUSIONS**

**ANNEXURE "7" : PILING SPECIFICATIONS**

g m  
H

— R

## 1 PARTIES

1.1 The Parties to this Agreement are:

1.1.1 Evraz Highveld Steel and Vanadium Limited (registration number 1960/001900/06), having its registered office at Portion 93 of the Farm Schoongezicht 308 JS, District eMalahleni, South Africa and duly represented by Michael Dennis Garcia and Catherina Isabella Lewis; and

1.1.2 Air Liquide (Proprietary) Limited (registration number 1948/029574/07), having its registered office at corner Vereeniging and Andre Marias Streets, Alrode, Gauteng, Republic of South Africa and duly represented by Laurent Langellier.

1.2 The Parties agree as set out below.

## 2 INTERPRETATION

2.1 In this Agreement, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions bear corresponding meanings:

2.1.1 "ABQ" means argon base quantity;

2.1.2 "Adjustment Multipliers" shall bear the meaning ascribed thereto in clause 14.5;

2.1.3 "AFSA" means the Arbitration Foundation of Southern Africa;

2.1.4 "Affiliate" means any company that directly or indirectly Controls, is Controlled by, or is under the same Control as the Seller or the Purchaser (as the case may be);

2.1.5 "Agreement" means the agreement contained in this document, including all annexures hereto;

2.1.6 "ASU" means the air separation unit, being the equipment to be installed by the Seller for the production of the Product;

2.1.7 "Availability" means the percentage of the times that the Seller provides to the Purchaser the Product that the Purchaser nominated for the Availability Period, as set out in clause 16;

2.1.8 "Availability Period" means, –

2.1.8.1 in respect of the first of such periods, the 12 (twelve) month period starting 3 (three) months after the Commencement Date; and

2.1.8.2 in respect of any subsequent periods, the 12 (twelve) month period starting each year on the anniversary of the end of the period set out in clause 2.1.8.1;

2.1.9 "Battery Limits" means the boundary of the Facility Site as described in Annexure "1";

2.1.10 "Barg" means a unit of pressure measurement, gauge, where 1 (one) bar absolute equals 100 (one hundred) kilopascals;


*m*  
*A*

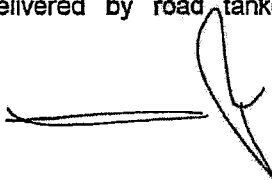


- 2.1.11 "BOR" shall bear the meaning ascribed thereto in clause 16.2;
- 2.1.12 "BOS" shall bear the meaning ascribed thereto in clause 16.4;
- 2.1.13 "Buffer Pressure" means the instantaneous pressure in the Buffer Vessel;
- 2.1.14 "Buffer Vessel" the vessel in terms of which Buffer Pressure is measured;
- 2.1.15 "Commencement Date" means, the date on which the Facility begins Commercial Operation, which date shall be no later than the Contractual Availability Date;
- 2.1.16 "Commercial Operation" means commencement of commercial operation of the Facility, being 24 (twenty four) hours after the Seller has given written notice to the Purchaser to confirm commissioning of the Facility. Commercial Operation shall be no later than the Contractual Availability Date;
- 2.1.17 "Contractual Availability Date" means the date which is 24 (twenty-four) months after the Signature Date;
- 2.1.18 "Control" means the ability, by virtue of ownership, rights of appointment, voting rights, management agreement, or other agreement of any kind, to control or direct, directly or indirectly, the appointment of the majority of the board or the majority of any other executive body or to control or direct, directly or indirectly, any decision making process or the management of any company or entity or appointee, and "Controlled" shall have a corresponding meaning;
- 2.1.19 "CPI" means the average annual rate of change (expressed as a percentage) in the Consumer Price Index for all urban areas as published in the Government Gazette by Statistics South Africa, or such other index reflecting the official rate of inflation in South Africa as may replace it, which annual change shall be determined with reference to the monthly average of such year;
- 2.1.20 "Delivery Point(s)" means the outlet of the Seller's Meter(s);
- 2.1.21 "Eskom" means Eskom Holdings SOC Limited, registration number 2002/015527/06, a limited liability state owned company duly incorporated in the Republic of South Africa;
- 2.1.22 "Facility" means the ASU and its related equipment to be installed, owned, operated and maintained by the Seller at the Facility Site for the production, compression of the Product and the storage of Supplementary Product, including any additions, extensions or replacements thereto;
- 2.1.23 "Facility Site" means the site, as well as the security fencing surrounding such site to be provided by the Seller (at its own cost), which site is to be provided by the Purchaser to the Seller on Portion 48 of the farm Elandsfontein 309 JS, eMalahleni, Mpumalanga, South Africa;
- 2.1.24 "Facility Flow Meter" means the flow meter(s) utilised to measure the flow of Product from the Facility to the Battery Limit, which will be installed at the Facility;
- 2.1.25 "Force Majeure Event" shall bear the meaning as set out in clause 22.2;
- 2.1.26 "High Critical Pressure" means 3 Barg above the Low Critical Pressure, or

such High Critical Pressure as nominated by the Purchaser, provided that the nominated High Critical Pressure shall not exceed 38 Barg;

- 2.1.27 "Interim Period" is the period between the Signature Date and the date immediately preceding the Commencement Date;
- 2.1.28 "LOI" means the letter of intent entered into between the Parties on 10 August 2011, as amended;
- 2.1.29 "Low Critical Pressure" means the Buffer Pressure to be nominated by the Purchaser in terms of clause 9.6;
- 2.1.30 "Maximum PNMax" means the maximum quantities of the applicable Product to be supplied by the Seller to the Purchaser, as increased by the Purchaser in terms of clause 9.10;
- 2.1.31 "Milestones" shall bear the meaning ascribed thereto in clauses 7.2 and 7.6;
- 2.1.32 "Minimum Product Purchase Obligation" or "MPPO" shall bear the meaning ascribed thereto in clause 14.8;
- 2.1.33 "Monthly Fee" means the fee to be paid by the Purchaser to the Seller each month for the duration of the Term as consideration for the quantities of Product reserved for the Purchaser as set forth in clause 14, but subject to clauses 20, 14.10 and 22;
- 2.1.34 "NBQ" means nitrogen base quantity;
- 2.1.35 "NNQ" means nitrogen nominated quantity;
- 2.1.36 "Nm<sup>3</sup>" means 1 m<sup>3</sup> (one cubic metre) of gas measured at 0°C (zero degrees Celsius) and 1.013 (one point zero one three) Barg;
- 2.1.37 "OBQ" means oxygen base quantity;
- 2.1.38 "ONQ" means oxygen nominated quantity;
- 2.1.39 "PBQ" or "Product Base Quantities" means collectively the OBQ, NBQ and ABQ as specified in clause 9.9;
- 2.1.40 "PNQ" or "Product Nominated Quantities" means collectively the NNQ and ONQ, being the quantities of Product nominated by the Purchaser in terms of clause 9.6, which shall not be lower than the PBQ nor exceed the PNMax, or the Maximum PNMax (as the case may be);
- 2.1.41 "PNMax" or "Product Nominated Maximum Quantities" means the maximum quantities of the applicable Product to be supplied by the Seller to the Purchaser as specified in clause 9.9, which quantities can only be increased by the Purchaser in accordance with the provisions of clauses 9.10 and 9.12;
- 2.1.42 "PNQ Range" or "Product Nominated Quantities Range" means the nomination range set out in Table 9.1 in clause 9.9;
- 2.1.43 "Parties" means the parties to this Agreement;
- 2.1.44 "Pipeline Systems" means the pipeline network and related facilities, as storage tanks, owned, operated and maintained by the Seller through which Product (excluding argon, which will be delivered by road tanker) is

M  
By  A



transported from the Facility to the Battery Limits;

- 2.1.45 "Plant" means the Purchaser's existing and future operational steelworks facilities located on various portions of the farm Elandsfontein 309 JS, eMalahleni, Mpumalanga, South Africa;
- 2.1.46 "PPI" means the average annual rate of change (expressed as a percentage) in the Producer Price Index for all urban areas as published in the Government Gazette by Statistics South Africa, or such other index reflecting the official rate of inflation in South Africa as may replace it, which annual change shall be determined with reference to the monthly average of such year;
- 2.1.47 "Price" means the purchase price payable by the Purchaser to the Seller for the Products as set out in clause 14;
- 2.1.48 "Prime Rate" means the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (three hundred and sixty five) day year irrespective of whether or not the year is a leap year, from time to time published by Nedbank Limited as being its prime overdraft rate, as certified by any representative of that bank whose appointment and designation it will not be necessary to prove;
- 2.1.49 "Product(s)" means, individually or collectively (as the context may require) oxygen, nitrogen and argon;
- 2.1.50 "Product Specifications" means the Product specifications set out in Annexure "3";
- 2.1.51 "Purchaser" means Evraz Highveld Steel and Vanadium Limited, registration number 1960/001900/06, a limited liability public company duly incorporated in the Republic of South Africa;
- 2.1.52 "Purchaser's Designated Account" means the bank account nominated by the Purchaser, the details of which are set out below, or such other account as the Purchaser may designate in writing on 25 (twenty five) business days' notice to the Seller:

Name of Account	Evraz Highveld Steel and Vanadium Limited-Sundries
Bank	Nedbank Corporate
Branch	Corporate Client Services
Branch Code	145405
Account Number	1454037229

- 2.1.53 "Seller" means Air Liquide (Proprietary) Limited, registration number 1948/029574/07, a limited liability private company duly incorporated in the Republic of South Africa;
- 2.1.54 "Seller's Designated Account" means the bank account nominated by Seller, the details of which are set out below, or such other account as the Seller may designate in writing on 5 (five) business days' notice to the Purchaser.

*W*

*[Handwritten signatures]*

Name of Account	Air Liquide (Proprietary) Limited
Bank	Nedbank
Branch	Corporate Client Services JHB
Branch Code	145-405
Account Number	1454 041 587

- 2.1.55 "Seller's Meter(s)" means the flow meter stations, located at the Battery Limits (which includes the Facility Flow Meter and Supplementary Product Flow Meter) owned, maintained and controlled by the Seller and utilised by the Seller to measure the quantities of Product delivered to the Plant;
- 2.1.56 "Signature Date" means the date of signature of this Agreement by the Party last signing;
- 2.1.57 "Supplementary Product" means the oxygen and nitrogen stored by the Seller as set out in clause 9.16;
- 2.1.58 "Supplementary Product Flow Meter" means the flow meter utilised to measure the flow of Supplementary Product from the Facility to the Battery Limit, which will be installed at the Facility;
- 2.1.59 "Supplementary Product Period" means the period in which Supplementary Product is supplied to the Battery Limit when the Buffer Pressure in the Buffer Vessel drops to the Low Critical Pressure and until the Buffer Pressure in the Buffer Vessel is equal to the High Critical Pressure;
- 2.1.60 "Term" shall bear the meaning ascribed thereto in clause 5;
- 2.1.61 "Term Sheet" means the term sheet entered into between the Parties on 7 March 2011;
- 2.1.62 "Ton" means 1,000 (one thousand) kilograms and which, in respect of -
- 2.1.62.1 oxygen, contains 699.8 (six hundred and ninety nine point eight) Nm<sup>3</sup>;
- 2.1.62.2 nitrogen, contains 799.6 (seven hundred and ninety nine point six) Nm<sup>3</sup>; and
- 2.1.62.3 argon, contains 560 (five hundred and sixty) Nm<sup>3</sup>;
- 2.1.63 "TPD" means a rate of supply equal to 1 (one) Ton in 1 (one) day;
- 2.1.64 "Utilities" means the utilities required by the Seller and to be provided by the Purchaser in accordance with the Utilities Specifications and clauses 7.6 and 10.2; and
- 2.1.65 "Utilities Specifications" means the specifications for the Utilities as set out in Annexure "2".
- 2.2 In this Agreement:
- 2.2.1 clause headings and the heading of this Agreement are for convenience only and are not to be used in its interpretation;

*m*

*By* *Al*

*[Signature]*

2.2.2 an expression which denotes:

2.2.2.1 any gender includes the other genders;

2.2.2.2 a natural person includes a juristic person and *vice versa*;

2.2.2.3 the singular includes the plural and *vice versa*;

2.2.2.4 a Party includes a reference to that Party's successors in title and assigns allowed at law; and

2.2.2.5 a reference to a consecutive series of two or more clauses is deemed to be inclusive of both the first and last mentioned clauses.

2.3 Any reference in this Agreement to:

2.3.1 "business hours" shall be construed as being the hours between 08h30 and 17h00 on any business day in the Republic of South Africa;

2.3.2 "days" shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time;

2.3.3 "month" means each month of the Gregorian Calendar;

2.3.4 "laws" means all constitutions; statutes; regulations; by-laws; codes; ordinances; decrees; rules; judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, rulings, or awards; policies; voluntary restraints; guidelines; directives; compliance notices; abatement notices; agreements with, requirements of or instructions by any Governmental Body; and the common law, and "law" shall have a similar meaning; and

2.3.5 "person" means any person, company, close corporation, trust, partnership or other entity whether or not having separate legal personality.

2.4 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

2.5 When a person must act as "an expert and not as an arbitrator" in terms of this Agreement, then:

2.5.1 unless otherwise stated in this Agreement, and in the absence of manifest error or fraud, the expert's decision is final and binding on the Parties;

2.5.2 unless otherwise stated in this Agreement, the expert's costs shall be shared between the Parties;

2.5.3 the expert may adopt any fair, unbiased and reasonable process which he thinks is proper in the circumstances;

2.5.4 the expert must consult as he sees fit with the relevant Parties before making his decision; and

2.5.5 the expert may take advice from any person which he thinks has expert

*m*  
*Ag H*

knowledge about the matter, but the expert must obtain the prior written consent of the Parties prior to doing so, which consent shall include details of what confidential information may be shared with such expert.

- 2.6 Any substantive provision, conferring rights or imposing obligations on a Party and appearing in any of the definitions in this clause 2 or elsewhere in this Agreement, shall be given effect to as if it were a substantive provision in the body of this Agreement.
- 2.7 Words and expressions defined in any clause shall, unless the application of any such word or expression is specifically limited to that clause, bear the meaning assigned to such word or expression throughout this Agreement.
- 2.8 Unless otherwise provided, defined terms appearing in this Agreement in title case shall be given their meaning as defined, while the same terms appearing in lower case shall be interpreted in accordance with their plain english meaning.
- 2.9 A reference to any statutory enactment shall be construed as a reference to that enactment as at the Signature Date and as amended or substituted from time to time.
- 2.10 Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a business day, the next business day.
- 2.11 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the context indicates a contrary intention.
- 2.12 The rule of construction that this Agreement shall be interpreted against the Party responsible for the drafting of this Agreement, shall not apply.
- 2.13 No provision of this Agreement shall (unless otherwise stipulated) constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to this Agreement.
- 2.14 The use of any expression in this Agreement covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.
- 2.15 Any reference in this Agreement to "this Agreement" or any other agreement or document shall be construed as a reference to this Agreement or, as the case may be, such other agreement or document, as amended, varied, novated or supplemented from time to time.
- 2.16 In this Agreement the words "clause" or "clauses" and "annexure" or "annexures" refer to clauses of and annexures to this Agreement.

### 3 INTRODUCTION

The Purchaser wishes to purchase the Products from the Seller for the operations of the Plant and the Seller wishes to sell the Products to the Purchaser, on the terms and conditions of this Agreement.

#### 4 TERMINATION OF TERM SHEET AND LOI

For the avoidance of doubt, with effect from the Signature Date, this Agreement terminates and supersedes the Term Sheet and the LOI in their entirety and no Party shall have any claim against the other Party arising therefrom.

#### 5 TERM

- 5.1 Subject to clauses 20, 21 and 22, the initial term of this Agreement shall commence on the Signature Date and shall endure for a period of 264 (two hundred and sixty four) months thereafter ("Term"). The Parties shall meet at any time during the Term to discuss (i) whether this Agreement is required to be renewed beyond the Term and (ii) the terms and conditions of such renewal. Should the Parties fail to agree to any said renewal, this Agreement shall terminate automatically on midnight of the last day of the Term.
- 5.2 Upon expiration or termination (as the case may be) of this Agreement, the Parties obligations and rights accruing prior to expiration or termination shall survive such expiration or termination.

#### 6 FACILITY SITE

- 6.1 The Parties record that:
- 6.1.1 the Purchaser will provide the Facility Site for the purposes of the construction and operation of the Facility; and
- 6.1.2 the expiration or termination of this Agreement will not affect the availability of the Facility Site to the Seller as per clause 6.1.1 and as agreed by the Parties.
- 6.2 Should this Agreement be terminated in accordance with this Agreement by either Party, or should this Agreement expire at the end of the Term, then –
- 6.2.1 at the request of the Seller, the Purchaser shall use its reasonable endeavours to continue to provide the Seller with the Utilities for a period of 12 (twelve) months after the termination of this Agreement if such provision is technically and economically feasible for the Purchaser; and
- 6.2.2 the Parties shall in good faith discuss the purchase by the Seller of equipment used in the delivery of Utilities owned by the Purchaser, provided that the Purchaser shall be entitled to (i) remove any and all equipment which is owned by the Purchaser whether or not such equipment is situated within the Battery Limit and (ii) have reasonable access to the Facility Site to utilise such equipment should the Purchaser determine not to remove such equipment.

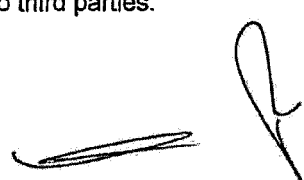


#### 7 INTERIM PERIOD ARRANGEMENTS

- 7.1 The Parties acknowledge that notwithstanding the Commencement Date, there are a number of principal process events, set out in clauses 7.2 and 7.6 that needs to be completed during the Interim Period on or before the dates specified in clauses 7.2 and 7.6.
- 7.2 The Seller shall complete and submit an environmental impact assessment ("EIA") to the relevant authorities in order to obtain an environmental authorisation ("EA") by no later than 12 months after the Signature Date ("EA Date") (subject to clause 7.3) and obtain all necessary licences, permits and environmental authorisations required for the purposes of this Agreement in terms of law by the Commencement Date ("Seller's Milestone").

- 7.3 The Seller shall use all its reasonable and commercial efforts (with the Purchaser's reasonable assistance when requested on reasonable notice), to ensure that the EA is obtained by no later than the EA Date. At least 3 (three) months prior to the EA Date, should the Seller anticipate, despite all reasonable and commercial efforts, that the EA may not be obtained by the EA Date, then the Seller shall give written notice forthwith to the Purchaser of such anticipated delay, together with details of the process undertaken by the Seller with regard to the EIA and EA. Upon receipt of the notice by the Purchaser, the Parties will endeavour to meet as soon as reasonably possible and in good faith discuss the manner in which the EIA process may be expedited and the EA obtained. The Purchaser shall provide the Seller with all reasonable assistance in this regard. Should the Parties, after such consultation, agree to extend the Commencement Date, the Parties shall reduce such agreement to writing and the extended date shall be deemed to be the Commencement Date for the purposes of this Agreement. Should the Parties fail to agree to extend the Commencement Date, the Commencement Date shall remain unchanged. The provisions of this clause 7.3 shall be without prejudice to any Party's rights under clause 22.
- 7.4 Should the Seller's Milestone be delayed as contemplated in clause 7.3, the date(s) upon which the Purchaser's Milestones must be delivered shall be extended as agreed by the Parties, acting in good faith, to the extent that the delay in the Seller's Milestone caused a delay in the Purchaser's Milestones.
- 7.5 Should the EA not be obtained within 1 (one) month after the EA Date or the EA is rejected, then the Parties will meet and in good faith negotiate the provision by the Purchaser to the Seller of a site similar to the Facility Site for the purposes of establishing the Facility.
- 7.6 The Purchaser shall provide the following ("**Purchaser's Milestones**") at its cost (except for the supply of electricity and water which will be supplied in accordance with clauses 13.2 and 13.3) on or before the dates specified below:
- 7.6.1 Piling as per the specifications provided by the Seller in Annexure "7", 6 weeks from the EA Date;
  - 7.6.2 Oxygen pipeline from the Plant to the Battery Limit, 70 weeks after the Signature Date;
  - 7.6.3 Two transformers of 33kV/11kV/0.4kV supplied and installed on the Facility Site, 70 weeks after the Signature Date;
  - 7.6.4 the Buffer Vessel 70 weeks after the Signature Date;
  - 7.6.5 Potable water available at the Battery Limit as per the Utilities Specifications, 48 weeks after the Signature Date;
  - 7.6.6 Raw water available at the Battery Limit as per the Utilities Specifications, 48 weeks after the Signature Date;
  - 7.6.7 Fire water available at the Battery Limit as per the Utilities Specifications, 48 weeks after the Signature Date;
  - 7.6.8 Electrical power for construction available to the Battery Limit as per the Utilities Specifications; 48 weeks after the Signature Date;
  - 7.6.9 Nitrogen pipeline from the Plant to the Battery Limit, 70 weeks after the Signature Date;

M



- 7.6.10 Return water pipeline at the Battery Limit, 70 weeks after the Signature Date; and
- 7.6.11 Electrical power supply to the transformers in clause 7.6.3 for the operation of the Facility as per the Utilities Specifications, 87 weeks after the Signature Date.
- 7.7 On the date(s) that the Seller meets the Seller's Milestone and the Purchaser meets each of the Purchaser's Milestones, such Party will provide written confirmation of such milestones being met to the other Party.
- 7.8 It is recorded that as at the Signature Date, the Parties are considering amending the provisions of clause 7.6 such that the Seller (and not the Purchaser) will provide the items specified in clauses 7.6.1, 7.6.2, 7.6.3 and 7.6.4 on terms and conditions yet to be agreed. The Seller shall provide to the Purchaser all the reasonable and necessary details in relation to such items, together with the costing, time periods and the terms of maintenance applicable thereto. If the Parties reach such agreement on amending the provisions of clauses 7.6.1, 7.6.2, 7.6.3 and 7.6.4, such agreement will be in writing and signed by both Parties on or before 6 (six) months after the Signature Date and these items will be considered to be Seller's Milestones. Should no such agreement be reached, the Purchaser shall supply the items specified in clauses 7.6.1, 7.6.2, 7.6.3 and 7.6.4 within the time periods set out in those clauses.
- 7.9 The Parties record that the items specified in Annexure "6" ("Scope Exclusions") are excluded from the Seller's scope, and that the Seller is therefore not liable to provide these items as part of constructing the Facility, which will accordingly be provided by the Purchaser.
- 7.10 The Purchaser acknowledges that the Purchaser's Milestones are necessary for the start-up and operation of the Facility on the Commencement Date. Accordingly, should the Purchaser for any reason not provide (subject to clause 22) any of the Purchaser's Milestones on the dates stipulated, then:
- 7.10.1 the Seller may, in its reasonable discretion and on written notice to the Purchaser, determine the Commencement Date to have occurred on the date when the Seller would have otherwise achieved Commercial Operation, but for the Purchaser not meeting the Purchaser's Milestones in time, and
- 7.10.2 the Seller's obligations to supply Product to the Purchaser hereunder will be reasonably reduced,
- without prejudice to the Seller's other rights in terms of this Agreement.
- 7.11 The Seller shall not be entitled to supply the Utilities to any third party and shall use the Utilities solely for the purposes of its operations at the Facility.
- 7.12 The Seller shall have the right to produce Product at the Facility for sale to third parties using the Utilities, provided that such supply to third parties shall not prejudice the supply of the Products to the Purchaser under this Agreement in any manner whatsoever, including the ability of the Purchaser to nominate the Maximum PNMax as set forth in clause 9.10.
- 7.13 The Seller shall have the right to install on the Facility Site, as reasonably required, dedicated Product storage, distribution facilities, buildings and road works for the Product to be offered for sale to third parties.
- 
- 
- 

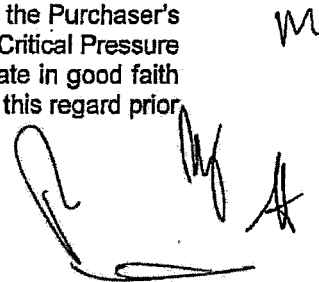
## 8 CONSTRUCTION OF FACILITY

- 8.1 The Seller shall, at its sole cost and responsibility, construct and commission the Facility upon the Facility Site in accordance with the requirements of this Agreement. The Facility will incorporate the design features outlined in Annexure "1".
- 8.2 Subject to clause 22, should the Purchaser be unable to or refuse to accept the Product due to its fault on the Commencement Date, Commercial Operation shall not be delayed as a result thereof and the Monthly Fee and MPPO shall be payable by the Purchaser.

## 9 PRODUCT SUPPLY AND PURCHASE OBLIGATIONS

- 9.1 With effect from the Commencement Date and for the duration of the Term and in accordance with the terms and conditions of this Agreement, the Seller shall sell and deliver by means of the Pipeline Systems (or by road tanker for argon), and the Purchaser shall purchase and receive from the Seller, the Product requirements of the Plant from the first cubic meter up to the PNMax or Maximum PNMax (if applicable).
- 9.2 Unless the Seller is prevented from providing the Product due to (i) a Force Majeure Event or (ii) the Seller's fault, with effect from the Commencement Date and monthly during the Term, the Purchaser shall take from the Seller the Products and shall pay the Price for the MPPO, regardless of whether or not the Purchaser actually receives or requires such Product.
- 9.3 The Seller shall have no obligation to supply any Product in excess of the PNMax or Maximum PNMax (if applicable), but shall use its reasonable endeavours to consider supplying any temporary increase in such quantities from time to time in accordance with the terms and conditions of this Agreement.
- 9.4 The Purchaser shall not purchase Product up to the Maximum PNMax from a party other than the Seller during the Term, save as expressly provided otherwise in this Agreement.
- 9.5 The Purchaser shall use its reasonable endeavours to coordinate with the Seller and to control any changes in its Product consumption rate to enable the Seller to operate the Facility efficiently by operating the Facility at the PNQ.
- 9.6 The Purchaser shall give not less than 24 (twenty four) hours prior written notice to the Seller of any change to the PNQ and/or Low Critical Pressure and/or High Critical Pressure to enable the Seller to adjust the Facility's operation mode. The Parties agree that any amendment to the PNQ and/or Low Critical Pressure and/or High Critical Pressure must be in whole numbers and not fractions. This notice shall be delivered by the Purchaser to the Seller at any time but shall be effective from 12h00 midnight on the day after such 24 (twenty four) hours' notice has expired. Such new PNQ and/or Low Critical Pressure and/or High Critical Pressure volumes shall remain in effect and shall be the PNQ and/or Low Critical Pressure and/or High Critical Pressure for all supply of Product thereafter until modified by the Purchaser's written notice.
- 9.7 The Parties will cooperate in good faith to minimise the impact of the Purchaser's adjustment of the PNQ and/or Low Critical Pressure and/or High Critical Pressure as contemplated in clause 9.6. The Parties undertake to negotiate in good faith to establish effective operating and communication procedures in this regard prior to the Commencement Date.

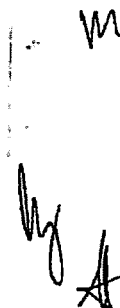
M



- 9.8 During any 24 (twenty four) hour day, should the Purchaser require supply of any Product above or below the PNQ nominated by the Purchaser for a period in such day, then the Purchaser will give written notice to the Seller who will use its reasonable endeavours to adjust the Facility and the PNQ to the new requirement for such day only.

9.9

9.10



- 9.11 It is recorded that the Purchaser shall order from the Seller argon from time to time as required by the Purchaser up to a maximum amount of 4 Tons per day, averaged over a monthly period.
- 9.12 The Purchaser may, at any time during the Term, request in writing an increase in the then current PBQ in excess of the Maximum PNMax, specifying the amount of the desired increase ("Extra PBQ") and the proposed effective date of such increase. The proposed effective date may be not less than 30 (thirty) months from date of receipt by the Seller of the Purchaser's written request ("Extra PBQ Notice"), unless otherwise agreed in writing between the Parties. The Seller shall provide the Purchaser with a quote within 90 (ninety) days of the Purchaser giving notice of such request, taking into account all relevant factors that may be applicable to the provision of such Extra PBQ. Should the Purchaser pursue discussions with the Seller in respect of the Extra PBQ, the Monthly Fee as well as the Price payable and the terms and conditions relating to the Extra PBQ shall be negotiated and agreed between the Parties in writing. Until any such agreement has been reduced to writing, the existing Monthly Fee, Price and terms and conditions of this Agreement will remain in force.
- 9.13 To the extent that the Seller is unable to provide the quotation for the Extra PBQ as requested by the Purchaser in terms of clause 9.12 or if the Purchaser is not satisfied with the quote provided by the Seller as contemplated in clause 9.12, then –
- 9.13.1 the Parties shall within 1 (one) week of either Party giving notice to the other, meet and in good faith discuss the quote (or lack thereof) in an attempt to reach agreement on the terms that the Extra PBQ may be provided by the Seller; and
- 9.13.2 after such notice is given the Purchaser shall not be precluded from inviting third parties to tender for the provision of the Extra PBQ (or any portion thereof) on the same specifications.
- 9.14 If the Parties fail to reach agreement pursuant to clause 9.13 within a period of 3 (three) months commencing on the date of receipt of the aforesaid written notice, then the Purchaser shall be entitled to procure such Extra PBQ (or any portion thereof) from any other third party. If the Seller has not provided the Purchaser with a quote within the 90 (ninety) day period as contemplated in clause 9.12, then the Purchaser shall be entitled to procure such Extra PBQ (or any portion thereof) from any other third party from the date of receipt of the written notice in clause 9.13.1.
- 9.15 It is specifically agreed that:
- 9.15.1 subject to clause 22 or any reason attributable to the Purchaser, in the event that the Seller is not able to supply to the Purchaser all the Product required by the Purchaser up to the Maximum PNMax in accordance with the terms and conditions of this Agreement (notably clause 9.6), then the Purchaser will be entitled to procure at its cost such Product from any third party to the extent and for the duration of the Seller's failure to supply, provided that the Seller shall provide the Purchaser with reasonable notice that it is able to resume supply of the Products in accordance with this Agreement; and
- 9.15.2 the Purchaser shall first follow the procedures for requesting and negotiating from the Seller the supply of any Extra PBQ in accordance with clauses 9.12 to 9.14, prior to the Purchaser receiving quantities of Extra PBQ from another supplier as contemplated in clause 9.14.

9.16 The Seller acknowledges that it is critical that the Purchaser is at all times supplied with the Product and therefore, subject to clause 22 and any reason attributable to the Purchaser, the Seller must be able to supply 100% of the Purchaser's requirements as notified in accordance with clause 9.6 or as otherwise stated in this Agreement. The Seller shall reserve for the Purchaser the following amounts of Supplementary Product in storage tanks located at the Facility Site:

9.16.1 2,000 (two thousand) Tons of liquid oxygen; and

9.16.2 400 (four hundred) Tons of liquid nitrogen.

9.17 It is recorded that:

9.17.1 supplementary oxygen can be vaporised at a maximum rate of 40 (forty) Tons per hour for a period of 50 (fifty) hours; and

9.17.2 supplementary nitrogen can be vaporised at a maximum rate of 6 (six) Tons per hour for a period of 66 (sixty six) hours.

9.18 The Seller shall commence replacing the quantities of Supplementary Product previously used contemplated in clause 9.16 once the Facility is able to supply the PBQ. Refilling of the storage tanks to their reserve capacity as stipulated in clause 9.16 shall be done within 10 (ten) days for liquid oxygen and within 8 (eight) days for liquid nitrogen when the Purchaser's oxygen consumption is equal to or less than 380 TPD.

9.19 The Purchaser shall not supply or otherwise transfer any Product supplied under this Agreement to any third party, other than to (i) South Africa Japan Vanadium (Proprietary) Limited, (ii) the Ferro Vanadium smelter owned by Vanchem Vanadium Products (Proprietary) Limited, (iii) any Affiliates of the Purchaser and (iv) any other parties, using the Product for their own operations located on the premises where the Plant is located in accordance with the specifications contemplated in Annexure "3". The supply or transfer of Product by the Purchaser in terms of this clause shall be made in the normal course of the Purchaser's business and on a pass-through basis and the Purchaser shall not apply a profit margin or mark-up in relation to the supply or transfer of such Product, unless with the prior written consent of the Seller.

9.20 The Purchaser will indemnify and hold harmless the Seller against all and any claims which may be made against the Seller by third parties pursuant to the Purchaser's supply or transfer of any Product to such third parties in accordance with clause 9.19.

9.21 During Supplementary Product Periods, the Seller shall supply Supplementary Product automatically to the Buffer Vessel until the High Critical Pressure is reached. The Purchaser shall be charged for such Supplementary Product during Supplementary Product Periods on the following basis:

9.21.1 should the Seller's Meter show that the gaseous oxygen and nitrogen flow measured on an instantaneous basis during such Supplementary Product Period is above or equal to the ONQ and/or NNQ, then the Purchaser will be charged for all such Supplementary Product supplied during the Supplementary Product Period at rates applicable for Supplementary Products as set out in clause 14; and

9.21.2 should the Seller's Meter show that the gaseous oxygen and nitrogen flow measured on an instantaneous basis during such Supplementary Product

*M*  
*My A*

Period is below the ONQ and/or NNQ, then the Purchaser will be charged for the volume of Product above the ONQ and/or NNQ, at the rates applicable for Supplementary Product as set out in clause 14. The rates charged for the ONQ and/or NNQ will be as set out in clause 14.

## 10 PRODUCT AND UTILITIES WARRANTIES AND SPECIFICATIONS

### 10.1 Product

10.1.1 The Seller warrants and undertakes to the Purchaser that, at the Delivery Point(s):

10.1.1.1 Product delivered to the Purchaser hereunder shall conform in all respects to the Product Specifications; and

10.1.1.2 the manufacture or sale of the Product sold and delivered hereunder will not infringe any intellectual property rights of any third party, including any trade mark, copyright, patents or the like.

10.1.2 The Seller does not warrant against any intellectual property right infringements arising from the use of the Product by the Purchaser alone or in combination with other goods or in the operation of any of the Purchaser's processes.

10.1.3 Save for those warranties and undertakings given in clauses 10.1 and 10.1.2, no warranties, undertakings or representations are given or made, in respect of the Product and the Product is being sold on a *voetstoots* basis. For the avoidance of doubt, the Seller does not make any warranty relating to the merchantability of the Product or its fitness for any particular use or purpose.

10.1.4 Product which:

10.1.4.1 conforms to the Product Specifications is hereinafter referred to as "On-Spec Product"; and

10.1.4.2 does not conform to the Product Specifications is hereinafter referred to as "Off-Spec Product."

10.1.5 In no event (except if the Purchaser in its sole discretion utilises the Off-Spec Product) will any delivery of any Off-Spec Product by the Seller to the Purchaser waive the Purchaser's right to recover damages incurred by the Purchaser to the extent same are caused by the delivery of Off-Spec Product by the Seller, subject to the limitations set out in this Agreement including those set out in clause 20.

10.1.6 The Seller shall as soon as it becomes aware that the Product is Off-Spec Product immediately notify the Purchaser that the Product is Off-Spec Product. Should the Seller deliver Off-Spec Product to the Purchaser, the Purchaser may, in its sole discretion, determine whether to utilise such Off-Spec Product. Should the Purchaser determine that such Off-Spec Product is not suitable for its operations, it will notify the Seller within 3 (three) days of such delivery that such Product is not suitable for its operations and the Seller shall no later than 1 (one) day after receipt of such notification rectify the situation to ensure that the Purchaser receives On-Spec Product. If the Purchaser does not notify the Seller within 3 (three) days of delivery that any Product is not suitable for its operations, the Product will be deemed to be On-Spec Product.

10.1.7 The Purchaser may, at no cost to the Purchaser, refuse to accept delivery of

*[Handwritten signature]*

any Off-Spec Product after notification as contemplated in clause 10.1.6 and should the Seller pass any Off-Spec Product after such notification by the Purchaser, the Purchaser shall not be liable to pay for any such Off-Spec Product which may pass through the Delivery Points.

## 10.2 Utilities

10.2.1 The Purchaser warrants and undertakes to the Seller that Utilities supplied to the Seller hereunder shall conform in all respects to the Utilities Specifications.

10.2.2 Save for those warranties and undertakings given in clause 10.2.1, no warranties, undertakings or representations are given or made, in respect of the Utilities and the Utilities are being supplied on a *voetstoots* basis. For the avoidance of doubt, the Purchaser does not make any warranty relating to the merchantability of the Utilities or its fitness for any particular use or purpose.

10.2.3 Utilities which:

10.2.3.1 conform to the Utilities Specifications are hereinafter referred to as "On-Spec Utilities"; and

10.2.3.2 does not conform to the Utilities Specifications are hereinafter referred to as "Off-Spec Utilities."

10.2.4 In no event (except if the Seller in its sole discretion utilises the Off-Spec Utilities) will any delivery of any Off-Spec Utilities by the Purchaser to the Seller waive the Seller's right to recover damages incurred by the Seller to the extent same are caused by the delivery of Off-Spec Utilities by the Purchaser, subject to the limitations set out in this Agreement including those set out in clause 20.

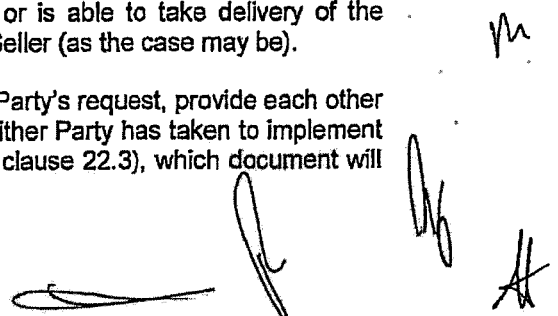
10.2.5 The Purchaser shall as soon as it becomes aware that the Utilities are Off-Spec Utilities immediately notify the Seller that the Utilities are Off-Spec Utilities. Should the Purchaser deliver Off-Spec Utilities to the Seller, the Seller may, in its sole discretion, determine whether to utilise such Off-Spec Utilities. Should the Seller determine that such Off-Spec Utilities are not suitable for its operations, it will notify the Purchaser within 3 (three) days of such delivery that such Utilities are not suitable for its operations and the Purchaser shall no later than is technically possible after receipt of such notification rectify the situation to ensure that the Seller receives On-Spec Utilities. If the Seller does not notify the Purchaser within 3 (three) days of delivery that any Utilities is not suitable for its operations, the Utilities will be deemed to be On-Spec Utilities.

10.2.6 The Seller may, at no cost to the Seller, refuse to accept delivery of any Off-Spec Utilities after notification as contemplated in clause 10.2.5 and should the Purchaser pass any Off-Spec Utilities after such notification by the Seller, the Seller shall not be liable to pay for any such Off-Spec Utilities which may be supplied to it.

10.2.7 Notwithstanding anything to the contrary, if the Purchaser is unable to supply the Utilities in accordance with the Utilities Specifications and this affects the ability of the Seller to supply the agreed quantity or quality of Product(s), the quantity and/or quality of Product(s) to be supplied by the Seller shall be reduced in proportion with the technical impact on the performance of the Facility, without prejudice to the Seller's other rights or remedies under the terms of this Agreement.

*[Handwritten signatures and initials: M, f, H, and a large flourish]*

## 11 COORDINATION OF OPERATIONS

- 11.1 Notwithstanding any scheduled or unscheduled maintenance by the Seller in respect of the Facility as set out in this clause 11, the Seller shall ensure at all times that there is sufficient Supplementary Product to meet 100% of the PNQ for the duration of such maintenance.
- 11.2 The Parties shall give each other prior written notice as soon as either of them is made aware of any scheduled maintenance activities at either the Facility or the Plant which will affect the other Party's rights under this Agreement. In addition, the Parties shall meet during the first quarter of each successive calendar year for the duration of the Term, at a date and time mutually agreed upon between the Parties, to disclose and discuss regularly planned maintenance schedules for the subsequent 18 (eighteen) month period, including inspections, tests, and unit shutdowns. The Parties will use their reasonable efforts to coincide respective scheduled maintenance activities. In addition to the annual planning outlined in this clause 11.2, the Parties will work together to develop a mutually acceptable system of on-going communication and regular coordination meetings.
- 11.3 The Seller undertakes to provide the PNQ up to the respective PNMax or Maximum PNMax (as the case may be) from the vaporization of Supplementary Product during shutdowns for scheduled or unscheduled maintenance.
- 11.4 Unless otherwise agreed between the Parties, the Seller shall be entitled to schedule and undertake maintenance in respect of the Facility for the duration of the Term for the following periods:
- 11.4.1 3.65 (three comma six five) days per year (in aggregate); and
- 11.4.2 1 (one) period of 5 (five) consecutive days every 3 (three) years.
- 11.5 In addition to the planned shutdowns for scheduled maintenance set out in clause 11.3, the Parties agree that, from time to time, they may need to perform unscheduled maintenance or repairs at their respective facilities for emergency and safety reasons. In such event, the affected Party shall give the other Party as much prior written notice as is reasonably possible of the need to perform such maintenance or repairs. The Parties will use reasonable efforts to perform any such unscheduled maintenance or repairs at their respective facilities simultaneously.
- 11.6 The Seller shall determine, in its discretion (acting reasonably and in consultation with the Purchaser), whether to shut down the Facility during any periods when the Purchaser has temporarily ceased operations, is temporarily unable to take Product from the Seller or is temporarily unable to provide any Utilities to the Seller, giving due consideration to the expected duration of such period, the minimum technical Product limits of the Facility, Product demands from other purchasers and of the overall resulting economics and schedule, provided that should the Seller determine to shut down the Facility as aforesaid, then the Seller shall ensure that the Facility is available promptly when the Purchaser has given reasonable written notice to the Seller that the Purchaser has recommenced (or will recommence) its operations at the Plant or is able to take delivery of the Product or is able to supply the Utilities to the Seller (as the case may be).
- 11.7 The Parties shall from time to time or at either Party's request, provide each other with a document(s) setting out the steps that either Party has taken to implement Good Industrial Practices (as contemplated in clause 22.3), which document will include details relating to –
- 



- 11.7.1 maintenance of Facility or Plant (where applicable) and spare parts management;
- 11.7.2 training and qualification of staff; and
- 11.7.3 human resources policies,

in order that either Party may satisfy itself with the other Party's application of Good Industrial Practise.

- 11.8 The Seller shall maintain the system pressure of 38 Barg in relation to oxygen at all times at the Battery Limit. The Purchaser may, at its election and expense, install pressure regulation equipment downstream from the Delivery Point(s), after providing reasonable notice to the Seller of the intended design and specifications of such equipment.

## 12 DELIVERY POINT

- 12.1 The Seller shall be solely liable and responsible for the Product delivered up to the Delivery Point(s), at which point ownership, benefit and risk shall pass, and the Purchaser shall be solely liable and responsible for the Product delivered after the Delivery Point(s), save as set out in terms of clause 10.1.5.
- 12.2 The Purchaser shall be solely liable and responsible for the Utilities supplied up to the Facility, at which point ownership, benefit and risk shall pass; and the Seller shall be solely liable and responsible for the Utilities supplied from the Facility, save as set out in terms of clause 10.2.4.

## 13 MEASUREMENT

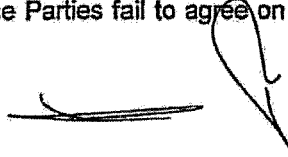


### 13.1 Product

- 13.1.1 Save to the extent otherwise provided herein, the measurement of Product supplied shall be performed by the Seller's Meter(s). All meter readings shall be made at the Seller's expense by the Seller using a custody transfer flow meter. If technological improvements are made in flow measurement, the Seller shall have the option to change the methodology of measurement of Product delivered hereunder at its sole cost and expense.

- 13.1.2 The volume of Product supplied shall be calculated and expressed in Tons or Nm<sup>3</sup>.

- 13.1.3 If the Seller fails to obtain suitable readings from the Seller's Meter(s) or in the event that either Party disputes any meter reading, the quantities of Product delivered for the period in question shall be calculated by the Seller from the Purchaser's check meter installed at the Purchaser's cost. If neither Party has obtained a suitable meter reading or in the event that either Party disputes any meter reading, the quantity of supplied Product shall be estimated and agreed in writing between the Parties, using the average of delivered quantities of Product for an agreed period of time or other mutually agreed indication of the Product delivered. In the event that the Parties are unable to agree in writing the quantity of any Product delivered during a specific period within a period of 5 (five) business days from date that the dispute has been declared by either Party, either Party may refer such dispute to a third party appointed by agreement between the Parties, which expert shall act as an expert and not as an arbitrator. The expert shall make a determination within 10 (ten) business days from the date on which the dispute was referred to him for resolution or as soon as possible thereafter. Should the Parties fail to agree on the expert

M

within 5 (five) days from date that the dispute has been declared, then:

- 13.1.3.1 in the event that the dispute relates to a legal matter or any matter which is not an engineering, technical or financial matter, either Party shall be entitled to forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the expert; or
- 13.1.3.2 in the event that the dispute relates to an engineering or technical matter, either Party shall be entitled to forthwith call upon the chairperson of the Engineering Council of South Africa/ Council for Scientific and Industrial Research to nominate the expert; or
- 13.1.3.3 in the event that the dispute relates to a financial matter, either Party shall be entitled to forthwith call upon the chairperson of the South African Institute of Chartered Accountants to nominate the expert.
- 13.1.4 The Seller shall furnish the Purchaser with a monthly volume statement on or before the 10th (tenth) day of the month following the month in which the Product volumes set out in such statement was delivered to the Purchaser. The volumes statement shall set out the total deliveries of Product during the preceding month.
- 13.1.5 The Supplementary Product that is able to be invoiced to the Purchaser in terms of clause 9.21, will be charged to the Purchaser at the rates set out in clause 14 and will form part of the monthly volume statement to be provided by the Seller in terms of clause 13.1.4.
- 13.1.6 The cost of maintenance of the Seller's Meter(s) shall be borne by the Seller.
- 13.1.7 The Seller shall test the accuracy of Seller's Meter(s) and recalibrate such meter(s) not less than once per year at its own cost.
- 13.1.8 The Purchaser shall be given at least 5 (five) business days' prior written notice by the Seller of such test and the Purchaser may have a representative present. The Purchaser may request additional calibration tests ("Additional Test") by giving the Seller prior written notice. The Parties shall promptly agree on a date for such Additional Test, which shall be no later than 10 (ten) business days from the date of request of an Additional Test. The Purchaser shall have a representative present at such Additional Test.
- 13.1.9 If such Additional Test shows an inaccuracy of:
  - 13.1.9.1 less than 2% (two percent), the cost of conducting such Additional Test shall be paid by the Purchaser; or
  - 13.1.9.2 2% (two percent) or more, the cost of conducting such Additional Test shall be borne by the Seller.
- 13.1.10 The Seller shall supply the Purchaser with a copy of the report in respect of each Additional Test. If any Additional Test demonstrates an inaccuracy of:
  - 13.1.10.1 2% (two percent) or more, the invoices based on such meter reading shall be corrected by the amount of the inaccuracy for the period commencing on the date of the previous calibration test to date of calibration report and the Seller shall recalibrate or replace such meter as soon as possible; or
  - 13.1.10.2 less than 2% (two percent), no such corrections of invoices will be made

W

*[Handwritten signatures and initials]*

and the previous readings shall be deemed to have been accurate.

- 13.1.11 If such a re-calibration is required and the relevant period of inaccuracy is not known or agreed to between the Parties, such correction in the relevant invoice shall be made for a period extending for the entire period since the date of the preceding calibration test. All adjustments to correct previous volume statements and invoices shall be made promptly by the Seller.
- 13.1.12 The Purchaser, at its option and expense, may install and operate a check meter provided that only the Seller's Meter(s) shall be used for invoicing purposes in the absence of a discrepancy of more than 2% (two percent) or manifest error.

## 13.2 Electricity

- 13.2.1 The Purchaser will be responsible for the installation and maintenance of the electricity meter and shall measure the electricity provided to the Seller. The Purchaser shall furnish the Seller with a monthly quantity statement on or before the 10th (tenth) day of the month following the month in which the electricity set out in such statement was delivered to the Seller. The volume statement shall show total deliveries of electricity during the preceding month. The Seller will be Invoiced on the same basis, according to Eskom Megaflex Diversity tariff structure or such other tariff description as Issued by Eskom from to time to time ("Megaflex Diversity Rate"), and in the same amounts as the Purchaser is invoiced from Eskom. The Purchaser will not be liable for any disputed amounts charged in relation to electricity.
- 13.2.2 The Parties acknowledge that electricity for the purposes of calculating the price of the Product will be calculated on the Eskom Megaflex Rate, irrespective of the source of future electrical power supply from the Purchaser, including but not limited to co-generation. The Purchaser acknowledges that the Seller has the right to procure power directly from Eskom or a third party in the future, provided that this does not lead to an increase in the Price of the Product. Should the Seller exercise this right, the Purchaser shall be relieved of its obligation to provide electrical power to the Seller as set out in the Utilities Specifications.
- 13.2.3 Should Eskom request that the Purchaser undertake energy efficiency processes in order to reduce its power consumption, and the Seller is satisfied that reducing its power consumption will not negatively affect safety at the Facility and the Availability, then the Parties will meet and in good faith discuss and agree the financial implications of such required reduction in power consumption. Pursuant to such agreement the Seller shall reduce its power consumption accordingly.
- 13.2.4 The Seller must maintain a power factor of 0.9.

## 13.3 Water

- 13.3.1 The Purchaser will install 3 (three) water meters to measure the amount of water provided to the Seller. These water meters will measure the supply of raw water from the Purchaser to the Seller, the return water from the Seller to the Purchaser and the supply of potable water from the Purchaser to the Seller.
- 13.3.2 The Purchaser shall furnish the Seller with a monthly quantity statement on or before the 10th (tenth) day of the month following the month in which the water set out in such statement was delivered to the Seller. The volume of water
- [Handwritten signatures and initials are present at the bottom of the page, including a large 'M' and several other marks.]*

shall show total deliveries of water during the preceding month.

- 13.3.3 The Seller will be responsible for return of return water to the Purchaser in accordance with the Utilities Specifications and the Purchaser will in the same statement contemplated in clause 13.3.2, provide a monthly quantity statement in respect of the return water.
- 13.3.4 The Seller will be invoiced on the same basis as the Purchaser is invoiced by the eMahlaleni local municipality save that the amount of return water and the cost in relation thereto will be deducted from the cost payable by the Seller to the Purchaser in relation to the supply of raw water and potable water, provided that the quality of the return water is in accordance with the Utilities Specifications. The rate at which the return water will be invoiced equals 50% of the applicable eMahlaleni local municipality raw water rate.
- 13.3.5 The Seller acknowledges that the volume of water returned to the Purchaser shall be no more than the volume of raw water supplied by the Purchaser to the Seller for any particular month. The Seller further acknowledges that the Purchaser has the right to refuse receiving any return water should such water be of a specification lower than as set out in the Utilities Specifications.
- 13.3.6 Potable water will be invoiced on a rate indexed equal to the eMahlaleni local municipality potable water rate.
- 13.3.7 The Purchaser acknowledges that the Seller has the right to procure water from the eMahlaleni local municipality or a third party in the future. Should the Seller exercise this right, the Purchaser shall be relieved of its obligations to provide water to the Seller as set out in the Utilities Specifications.
- 13.3.8 The Seller must install a water buffering system at its own cost to ensure that there is no back pressure impact on the Purchaser's operations.

#### **14 PRICE, MONTHLY FEE AND PRICE AND MONTHLY FEE ADJUSTMENT AND MINIMUM PRODUCT PURCHASE OBLIGATION**

- 14.1 The Purchaser shall pay to the Seller, with effect from the Commencement Date, the Monthly Fee as set out in Table 14.1. Such schedule shall be adjusted annually by application of the Adjustment Multipliers set out in out in clause 14.5, the first adjustment to be on the first anniversary of the Commencement Date.

\* The Monthly Fee will be increased for the first time on the anniversary of the Commencement Date and thereafter increased annually only by a factor of AM2 (as set out in clause 14.5) for the remainder of the Term.

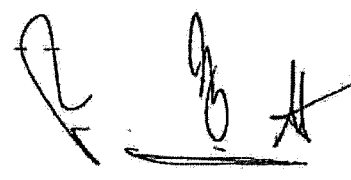
14.2

*Handwritten signatures and initials:*  
 M  
 [Signature]  
 [Signature]  
 A

14.3

14.4

M

Handwritten signature and initials, possibly "F. M. H.", written in black ink.

14.5

P 8

O O

14.6

m

L 26 A

14.7 In the event that any of the indices in clause 14.6 cease to be published, or if the basis for calculation of the indices is changed, or if the reference thereto is prohibited by government action, or if the components of, or the methodology of determining Seller's cost to produce Product becomes inconsistent with such indices, the Parties shall determine a new basis or published index which will reflect price adjustments on an equitable basis similar to that set out in this Agreement.

14.8 The Minimum Product Purchase Obligation shall be equivalent to the respective PNQs multiplied by the number of days in a relevant month. Should the Purchaser request supply above the PNQ as per clause 9.6 then the Purchaser shall pay the Price for all the Product requested above the PNQ for the remainder of the period of the request.

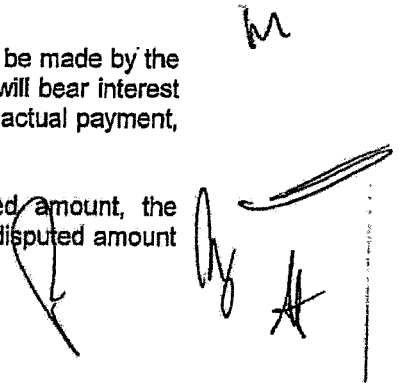
14.9 Should the Seller due to its fault provide only a portion of the Product nominated by the Purchaser in terms of clause 9.6, then the Purchaser shall only be liable to pay the *pro rata* portion so supplied and the Minimum Product Purchase Obligation shall not be applicable

14.10

W  
by  
H-

- 14.11 The Minimum Product Purchase Obligation calculation will be performed each month for each Product.
- 14.12 Subject to clause 22, if the Commencement Date is later than the Contractual Availability Date for reasons attributable to the Seller's fault, the Seller shall pay to the Purchaser, as compensation for such delay a fixed amount equal to:
- 14.12.1 R33,000.00 (thirty three thousand rand) per day of the delay, for the first 3 (three) months of such delay and limited to an aggregate amount of R3,000,000.00 (three million rand); and
- 14.12.2 R220,000.00 (two hundred and twenty thousand rand) per day of the delay beyond the 3 (three) month period described in clause 14.12.1, limited to a further 3 (three) months of such delay and limited to an amount of R20,000,000.00 (twenty million rand).
- 14.13 If the Commencement Date is delayed for any reason attributable to the Purchaser, the Purchaser shall commence paying the Monthly Fee when the Seller would have otherwise achieved the Commencement Date.

## 15 PAYMENT

- 15.1 From the Commencement Date, the Seller shall invoice the Purchaser in respect of the Monthly Fee and the Product as calculated in terms of clause 14.
- 15.2 The first Monthly Fee shall be invoiced by the Seller together with the amount of Products for the first month on the 10<sup>th</sup> (tenth) day of the month following the first month.
- 15.3 The Seller shall provide the Purchaser with a consolidated invoice in respect of the supply of Product and the Monthly Fee relating to the same period, which invoice will show how the invoice amount is calculated.
- 15.4 Such payment must be received within 30 (thirty) days after date of the invoice. The Seller shall ensure that the invoice is delivered to the Purchaser within at least 5 (five) business days from the date of the invoice.
- 15.5 All payments to be made in terms of this Agreement will be made by electronic transfer of immediately available and freely transferable funds to Seller's Designated Account free of any deductions or set-off whatsoever, in the currency of the Republic of South Africa.
- 15.6 Should any payment under or arising from this Agreement fail to be made by the Purchaser on the due date thereof then such overdue amounts will bear interest at the Prime Rate, from the due date for payment to the date of actual payment, both dates inclusive.
- 15.7 If the Purchaser, acting in good faith, disputes any invoiced amount, the Purchaser shall pay the undisputed amount and will not pay the disputed amount
- 



until the dispute is resolved in accordance with this Agreement. Upon resolution of such dispute by the Parties, any previously unpaid and due amount will be paid by the Purchaser within 10 (ten) business days, together with interest thereon at the Prime Rate from the due date until the date of actual payment, both days inclusive, if the dispute is settled in favour of the Seller and the variance of the disputed amounts raised by the Purchaser is more than 5%.

- 15.8 All invoices under this Agreement shall be rendered to the Purchaser at the *domicilium* address set out in clause 25.
- 15.9 Upon reasonable request by the Purchaser, the Seller will make available copies of measurement records applicable to any invoice during normal business hours.
- 15.10 If one or several of the applicable indices for a given invoiced month is not known at the date of invoicing, the Seller will use the respective index value(s) of the preceding month in calculating such invoice and send a subsequent invoice or credit note, as the case may be, reflecting any adjustment required to reflect the actual index values(s) for such month after they become known; it being recorded that any such adjustments shall not attract any interest whatsoever.
- 15.11 Any errors in an invoice shall be promptly reported by the Purchaser to the Seller in writing. Each invoice becomes final and binding on the Parties if the Parties have not raised any disputes within 6 (six) months of the Purchaser's receipt of such invoice.
- 15.12 Neither of the Parties shall be entitled to offset any payment or deduction that may be due to the other Party under this Agreement.
- 15.13 Clauses 15.4 to 15.9 (both inclusive), 15.11 and 15.12 shall apply *mutatis mutandis* to payments to be made by the Seller to the Purchaser for Utilities provided in terms of the Utilities Specifications, save that any references to the Seller shall be deemed to read as the "Purchaser" and vice versa and the "Seller's Designated Account" shall be deemed to be read as "Purchaser's Designated Account".

## 16 AVAILABILITY

- 16.1 The first Availability Period shall commence 3 (three) months following the Commencement Date.
- 16.2 At the end of each Availability Period, the Seller shall calculate the Purchaser's total time of oxygen requirements up to the ONQ, in hours, for such Availability Period ("BOR"). The BOR calculation shall not take into account:
  - 16.2.1 periods in which a Force Majeure Event affects either Party; and/or
  - 16.2.2 periods of non-supply or reduced supply of oxygen due to any fault of the Purchaser.
- 16.3 The supply of oxygen which is Off-Spec Product will not be taken into account in the BOR calculation if such oxygen is rectified to On-Spec Product within 1 (one) day of the notice contemplated in clause 10.1.6.
- 16.4 For the same Availability Period, the Parties shall calculate the hours that the Purchaser received the full or partial supply of its ONQ ("BOS"). For those hours in the said Availability Period that the Seller supplies, or is able to supply, the full ONQ, the BOS shall be credited for the total hours. For hours of partial supply of the ONQ, the BOS shall be credited with hours in proportion to the supplied

M

Handwritten signature and initials.

volume over the nominated volume for that period.

The supply, as evaluated, is from the Facility and Supplementary Product, up to the nominated quantity.

By way of example:

On the assumption that this Agreement commences on 1 December 2013, the Availability review will take place on the 28 February 2015 and annually thereafter (ie on 28 February 2016 etc).

Example A:

- In a 24 (twenty-four) hour period ie BOR, the ONQ is 480 TPD, which is 20 (twenty) Tonnes per hour ("Full Supply").
- In a case where for 18 (eighteen) hours out of the entire 24 (twenty four) hour period, the Seller supplies the Full Supply and for the remainder of the period, being 6 (six) hours, the Seller supplies only 15 (fifteen) tonnes per hour, then:
  - For the duration that the Seller is able to supply the Full Supply, the Seller will achieve the following –  $20/20 \times 18 = 18$  hours. For the duration that the Seller was unable to supply the Full Supply, the Seller will achieve the following –  $15/20 \times 6 = 4.5$  hours.
  - For the day the Seller's Availability will be equivalent to 22.5 hours ie BOS, being  $(18 + 4.5)/24$

16.5 Oxygen Availability shall be defined as follows:

Oxygen Availability = BOS/BOR(%)

16.6 If, during any Availability Period, the Availability is less than 100% (one hundred percent), then the Purchaser shall be entitled to and shall receive from the Seller an Availability credit ("Availability Credit") which will be calculated as follows and will be applied as credit against the amounts owed reflected on the Purchaser's invoice at the end of the relevant Availability Period:

Variance Range	Amount N1*	Cumulative Amount
$100\% \leq 99\%$	R500,000	R500,000.00
$>99\% \leq 98\%$	R1,000,000	R1,500,000.00
$>98\% \leq 97\%$	R1,500,000	R3,000,000.00
$>97\% \leq 96\%$	R2,000,000	R5,000,000.00
$>96\% \leq 95\%$	R5,000,000	R10,000,000.00

\*N1 = Pro rata credit

For example: Availability credit for 97.5% Availability equals:

Cumulative Amount at 98% (R1,500,000) plus pro rata credit for 98% - 97% (50% of R1,500,000 = R750,000) equals R2,250,000, less the amount by which the Monthly Fee has been reduced during the Availability Period as contemplated in clause 14.10.

For availability less than 95% the following Availability Credits apply (in addition to the table above):

Variance Range	Amount N1	Cumulative Amount
<95%	R1,000,000 per 1% below 95%	R20,000,000.00

For example: Availability credit for 90.5% Availability equals:

Cumulative Amount at 91% (R14,00,000.00) plus pro rata credit for 91% - 90% (50% of R1,000,000.00 = R500,000.00) equals R14,500,000.00, less the amount by which the Monthly Fee has been reduced during the Availability Period as contemplated in clause 14.10.

The Availability Credit shall not exceed R30,000,000.00 (thirty million rand) for any Availability Period and R200,000,000.00 (two hundred million rand) in aggregate over the Term, for any supply of oxygen less than 100%. This Availability Credit limitation of R30,000,000.00 (thirty million rand) per Availability Period and R200,000,000.00 (two hundred million rand) in aggregate over the Term, will be reduced by the amount by which the Monthly Fee has been reduced during the Availability Period as contemplated in clause 14.10.

- 16.7 The amounts (including the Cumulative Amounts) set out above will be increased annually with effect from the commencement of each Availability Period at CPI.
- 16.8 Subject to clause 20, the Availability Credit shall be paid in full and final satisfaction of Seller's obligations and any claim of the Purchaser under this clause 16.

## 17 TAXES

- 17.1 Subject to 17.3, should the Seller be subject to any taxes (including greenhouse or other environmentally related taxes) in terms of any laws, the Purchaser shall pay to the Seller such amount of taxes provided that the amount payable by the Purchaser shall be in the same proportion as the Purchaser's receipts of Product from the Facility bears to the total output of Product from the Facility. The Purchaser shall not be liable for any other taxes of any other nature whatsoever other than as stated above including without limitation any taxes on income or wealth.
- 17.2 Subject to 17.3, if, at any time during any term of this Agreement, the South African government enacts laws pursuant to which the Seller is required to incur capital expenses in connection with the modification of the Facility to comply with such laws, the Seller shall promptly notify the Purchaser of such laws, the actions it proposes to take in response thereto, the estimated capital cost thereof and the potential financial impact thereof on the Purchaser. The Parties shall meet promptly after the Seller has provided such notice to agree in good faith the nature of the capital expenditure in connection with the modification so required. Should the Parties be unable to agree to the nature and/or costs and/or financial

impact of the modification, then the Parties shall refer such matter to a third party appointed by agreement between the Parties, which expert shall act as an expert and not as an arbitrator. The expert shall make a determination within 10 (ten) business days from the date on which the matter was referred to him for resolution or as soon as possible thereafter. Should the Parties fail to agree on the expert within 5 (five) days from date that the dispute has been declared, then:

- 17.2.1 in the event that the dispute relates to a legal matter or any matter which is not an engineering, technical or financial matter, either Party shall be entitled to forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the expert;
- 17.2.2 in the event that the dispute relates to an engineering or technical matter, either Party shall be entitled to forthwith call upon the chairperson of the Engineering Council of South Africa/ Council for Scientific and Industrial Research to nominate the expert; or
- 17.2.3 in the event that the dispute relates to a financial matter, either Party shall be entitled to forthwith call upon the chairperson of the South African Institute of Chartered Accountants to nominate the expert.
- 17.3 If any of the taxes or capital expenses contemplated in clauses 17.1 and 17.2 are reflected in any indices used in the determination of Price, the Purchaser shall not be obliged to pay to the Seller any such amounts.
- 17.4 The Seller shall furnish the Purchaser with satisfactory exemption certificates when exemption from any such taxes is obtained. The Seller shall file for tax exemptions where possible and shall promptly notify the Purchaser of the estimated tax thereof and afford the Purchaser a reasonable opportunity to review and discuss such tax with the Seller.
- 17.5 Upon the expert referred to in clause 17.2 determining the nature and costs of the capital expenditure, the capital costs so determined shall be allocated to the Purchaser in the same proportion as the Purchaser's receipts of Product from the Facility bears to the total output of Product from the Facility. The Purchaser shall reimburse the Seller in an agreed manner for its share of such costs.

## 18 IMPAIRMENT OF CREDIT

- 18.1 If a Party ("Non-paying Party") fails to pay any undisputed amount due hereunder for a continuous period of more than 60 (sixty) days from due date thereof ("Past Due Amount"), the other Party ("Innocent Party") shall provide the Non-paying Party with written notice to make such payment within 30 (thirty) days. Should the Non-paying Party fail to make such payment within 30 (thirty) days, then the Innocent Party shall, for so long as the Non-paying Party fails to pay such amount due, have the right to suspend performance of the Innocent Party's obligations under this Agreement.
- 18.2 If the Innocent Party receives payment of the Past Due Amount within the 30 (thirty) day period, the Innocent Party shall not be entitled to suspend its performance hereunder.
- 18.3 If, at any time in either Party's reasonable opinion, the other Party's ability to meet its obligations in terms of this Agreement is impaired, such Party may, in writing, request the other Party to procure that its ultimate holding company provide a guarantee for the relevant Party's obligations under this Agreement within 30 (thirty) business days.

## 19 INSURANCE

- 19.1 Each Party shall, in each Party's discretion, obtain and maintain insurance cover for all its liabilities and/or obligations in terms of this Agreement.
- 19.2 The nature of a Party's insurance shall not limit their obligations and/or responsibilities in terms of this Agreement.
- 19.3 The Parties shall provide each other with insurance certificates proving the validity of their respective insurance policies, relevant to this Agreement, if requested.
- 19.4 The Parties shall share information regarding the extent of their insurance policies only in the event of an insurance claim in relation to this Agreement.
- 19.5 Both Parties agree to use their reasonable efforts to mitigate their damages which they may incur.

## 20 BREACH AND LIMITATION OF LIABILITY

- 20.1 Subject to clause 22, it is recorded that should the Seller:
  - 20.1.1 not commence operations by the Commencement Date due to its fault, then the Seller shall be liable to pay the Purchaser the amounts set out in clause 14.12 for the first 6 (six) months of such delay ("**Commencement Delay**"); and
  - 20.1.2 fail to supply 100% of the Product required by the Purchaser during any Availability Period due to its fault, then the Seller shall be liable to pay the Purchaser the amounts set out in clause 16.6 for partial supply less than 100% in any Availability Period ("**Partial Supply**").
- 20.2 Subject to clauses 22:
  - 20.2.1 if the Commencement Date is delayed by more than 3 (three) months; or
  - 20.2.2 the Availability is less than 95% during any Availability Period, or
  - 20.2.3 either Party commits any other breach (other than a breach contemplated in clauses 20.2.1 and 20.2.2) of any provision of this Agreement,

then the Party claiming the breach ("**Aggrieved Party**") shall provide notification to the other Party ("**Defaulting Party**") to remedy the breach within 30 (thirty) days of written notice to do so ("**Breach Notice**").
- 20.3 For the avoidance of doubt, should an event set out in clause 20.2 occur, the Parties shall first attempt to resolve such matter in accordance with the provisions of this clause 20 before invoking the provisions of clause 24.
- 20.4 If the breach referred to in clause 20.2 cannot reasonably be remedied within 30 (thirty) days of the Breach Notice, the Defaulting Party shall within a further 30 (thirty) days provide to the Aggrieved Party with a plan ("**Action Plan**") setting out:
  - 20.4.1 the steps which have been initiated by the Defaulting Party to remedy the breach; and
  - 20.4.2 the time frames (which shall be no longer than 6 (six) months from the date of

*[Handwritten signatures and initials]*

the breach and 3 (three) months in the case of late supply) required to remedy the breach and the steps which will be taken by the Defaulting Party to remedy the breach.

- 20.5 The Defaulting Party shall implement the Action Plan as soon as possible after such plan was presented to the Defaulting Party.
- 20.6 Should the breach not be remedied, and the breach continues for a period longer than is stipulated in the Action Plan (which period shall be no longer than 6 (six) months from the date of the breach and 3 (three) months in the case of late supply or such longer period as may be agreed by the Parties, acting reasonably), then the Parties shall appoint a suitably qualified independent expert ("Expert") by agreement within 10 (ten) days after the period as set out in the Action Plan for remedy of the breach has expired. The Expert shall have at least 10 (ten) years' experience in the relevant field of expertise relating to the matter referred to him.
- 20.7 Should the Parties fail to agree on the Expert within 10 (ten) days, then:
- 20.7.1 in the event that the dispute relates to a legal matter or any matter which is not an engineering, technical or financial matter, then either Party shall be entitled to forthwith call upon the chairperson of the Johannesburg Bar Council to nominate the Expert; or
- 20.7.2 in the event that the dispute relates to an engineering or technical matter, then either Party shall be entitled to forthwith call upon the chairperson of the Engineering Council of South Africa/Council for Scientific and Industrial Research to nominate the Expert; or
- 20.7.3 in the event that the dispute relates to a financial matter, then either Party shall be entitled to forthwith call upon the chairperson of the South African Institute of Chartered Accountants to nominate the Expert.
- 20.8 The Expert appointed in accordance with clause 20.7 shall be tasked to revise and/or amend the Action Plan, and shall act as an expert and not as an arbitrator.
- 20.9 The Expert's determination shall be binding on the Parties, save in the case of manifest error or fraud. The costs of the Expert shall be borne by the Defaulting Party.
- 20.10 The Defaulting Party shall take all steps necessary to implement the Action Plan, as revised or amended by the Expert, immediately after notification of the determination by the Expert. Should the breach continue for a longer period than stipulated in the Action Plan (as revised or amended by the Expert) to rectify such breach (which period shall not be longer than 6 (six) months from the date of determination by the Expert and 3 (three) months in the case of late supply), then the Defaulting Party has committed a material breach of this Agreement entitling the Aggrieved Party to exercise its rights in terms of clause 20.11.
- 20.11 If the Defaulting Party has committed a material breach in terms of clause 20.10, the Aggrieved Party shall be entitled to:
- 20.11.1.1 sue for immediate specific performance of any of the Defaulting Party's obligations under this Agreement; and/or
- 20.11.1.2 terminate this Agreement, in which case written notice of the termination shall be given by the Aggrieved Party to the Defaulting Party and the termination shall take effect on the giving of the notice; and/or

- 20.11.1.3 in either event the Aggrieved Party shall be entitled to claim damages it has suffered as a result of the material breach, subject to clauses 20.9, 20.10 and 20.11.
- 20.12 Without limiting the provisions of clauses 14 and 16, each Party's liability to the other Party in respect of direct damages suffered by it and caused by the other Party, is limited to a maximum amount of R10,000,000 (ten million rand) in aggregate per year and R50,000,000 (fifty million rand) in aggregate for the duration of this Agreement. Beyond these maximum amounts, each Party waives any right of recourse against the other Party, its employees, agents and representatives and insurers and shall obtain an equivalent waiver by its insurers of its rights of subrogation with respect to claims against the other Party.
- 20.13 In the event a Party makes a claim under clause 20.12, the claiming Party must demonstrate that any direct damage has been caused by the other Party and shall provide to the other Party a reasonably detailed description and documentary proof of the amount and nature of the damage incurred.
- 20.14 Notwithstanding anything to the contrary in this Agreement but without limiting the provisions of clauses 14 and 16, neither Party shall have any liability to the other Party for any consequential, indirect, special or incidental loss or damage of any kind, suffered by it and caused by the other Party in connection with this Agreement, including loss of profit, loss of production, loss of productivity and efficiency, loss of revenue, loss of goodwill, interest and finance charges, loss of use of goods, additional labour costs or third party claims. Each Party waives any right of recourse against the other Party, its employees, agents, representatives and insurers and shall obtain an equivalent waiver by its insurers of its rights of subrogation with respect to claims against the other Party in relation to any consequential damages or consequential losses.
- 20.15 Should there be a delay in the Commencement Date or the Seller fails to supply 100% of the PNQ required by the Purchaser during any Availability Period, the Seller shall use its reasonable endeavours to source Product from alternate sources to compensate for a shortfall in supply of the said Product. If the costs associated with sourcing such Product are higher than the Price, then the Seller shall be liable for such costs.

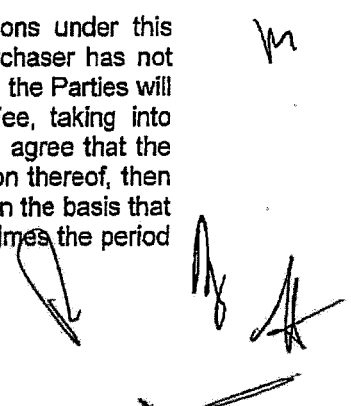
## 21 TERMINATION

- 21.1 The occurrence of any of the following events shall entitle the non-affected Party to terminate this Agreement forthwith on written notice to the affected Party:
- 21.1.1 either Party is liquidated or placed under business rescue; or
- 21.1.2 either Party compromises with its creditors generally, or attempts to do so.
- 21.2 The affected Party shall on request provide the non-affected Party with such information and documentation as is reasonably necessary for the non-affected Party to determine whether to terminate this Agreement.

## 22 FORCE MAJEURE

- 22.1 Except for the Purchaser's obligations to pay the Monthly Fee or the Price for the MPPO as envisaged below, neither Party shall be liable for non-performance or delay in performance of the terms of this Agreement when and to the extent such failure of or delay in performance is due to a Force Majeure Event as defined in clause 22.2.

Handwritten signature and initials, possibly 'M' and 'N/A', located at the bottom right of the page.

- 22.2 For the purposes of this Agreement, the expression "Force Majeure Event", means in respect of a Party, any event or circumstance or combination of events or circumstances (whether direct or indirect, and which may include any government action or inaction or directive, or accident to or breakdown of the Plant or the Facility or equipment) occurring after the Signature Date, the occurrence of which is beyond the reasonable control of such Party and which could not have been avoided by steps which might reasonably be expected to have been taken by a Party employing Good Industrial Practice, provided that an economic downturn or hardship suffered by a Party will not be deemed hereunder to be a Force Majeure Event by itself.
- 22.3 For the purposes of this clause 22.2, "Good Industrial Practice" means, in relation to any activity conducted by or any obligation of a Party as contemplated or provided for herein, adherence to the standards, practices, methods and procedures, and the exercise of that degree of skill, diligence, judgment, prudence and foresight which would ordinarily be expected from an internationally skilled and experienced person engaged in such an activity or performing such an obligation.
- 22.4 The Party making such claim ("Claiming Party") shall provide written notice to the other Party within 5 (five) business days after the occurrence of a Force Majeure Event. Such written notice shall give reasonably sufficient details as to the nature and expected duration of such Force Majeure Event and the extent to which a Party is impeded in carrying out its obligations under this Agreement and details of the steps required to remedy the situation. However, any delay of a Party in giving such written notice shall not be deemed to invalidate or otherwise affect the duration of the given Force Majeure Event.
- 22.5 The Claiming Party shall make every effort to remedy the cause of non-performance as soon as possible. However, the settlement of strikes or lockouts shall be entirely within the reasonable discretion of the Claiming Party and the immediately preceding sentence shall not be deemed to require the settlement of strikes or lockouts by acceding to the demands of any opposing party therein when such course is inadvisable in the reasonable discretion of the Claiming Party.
- 22.6 For the first 6 (six) months of a Force Majeure Event which affects the capacity of the Seller to provide quantities of Product as stipulated in clause 9, or affects the capacity of the Purchaser to accept delivery, then -
- 22.6.1 the Monthly Fee stipulated in clause 14.1 shall be payable in full, subject to 22.7; and
- 22.6.2 the Purchaser shall be liable to make payment in respect of the MPPO stipulated in clause 14.8 (reduced by an amount equal to the electricity component of the MPPO price calculation), reduced by the extent that the Seller does not have the ability to supply the Minimum Product Purchase Obligation.
- 22.7 Should the Force Majeure Event affect either Party's obligations under this Agreement for a period exceeding 6 (six) months, and the Purchaser has not terminated this Agreement in accordance with clause 22.13, then the Parties will meet and in good faith discuss a reduction in the Monthly Fee, taking into account the financial situation of the Parties. Should the Parties agree that the Purchaser will not be liable to pay the Monthly Fee or any portion thereof, then the Parties will agree to a compensatory extension of the Term, on the basis that there will be an extension of the Term for a period equal to two times the period
- 



that the Purchaser is relieved to pay the full Monthly Fee (and such extension will be pro rated in the event that the Purchaser is relieved to pay a portion of the Monthly Fee).

- 22.8 Should such events take place and not affect the Seller's capacity to store, vaporize and supply liquid Product, to the extent possible, the Seller shall use its reasonable endeavours to either –
  - 22.8.1 supply the quantities of Product requested by the Purchaser in vaporized liquid under the terms and conditions of clause 9; or
  - 22.8.2 source the quantities of Product requested by the Purchaser at the Purchaser's cost.
- 22.9 If the Purchaser's requirements cannot be met in terms of clause 22.8, the Seller will not restrict the Purchaser's ability to source Product directly from other sources to compensate for shortages during a Force Majeure Event, and to the extent and for the duration that such Force Majeure affects the Seller's obligations to supply the Product in terms of this Agreement.
- 22.10 If either Party is affected by a Force Majeure Event and has good reason to suspect that the Force Majeure Event will last longer than 6 months from the date of written notice in clause 22.4, and provided that there has not, within this period, been prior arrangement between the Parties, then the Claiming Party shall provide the other Party with plan ("Remedy Plan") detailing the time frames for the remedy and the steps to be taken by the Claiming Party to remedy the Force Majeure Event, which Remedy Plan is to be provided by the Claiming Party within 30 (thirty) days.
- 22.11 If the other Party is not satisfied with the contents of the Remedy Plan, then the Parties shall appoint an expert by agreement within 10 (ten) days after the Remedy Plan has been provided, *mutatis mutandis* on the terms and conditions set out in clause 20.6 and 20.7. The expert shall examine the Remedy Plan proposed by the Claiming Party and propose, as the case may be, revisions or amendments to the Remedy Plan within 14 (fourteen) days from his appointment.
- 22.12 Forthwith after the expert has provided the Remedy Plan (amended or revised as the expert sees fit), the Parties will meet and agree on the financial implications of the Remedy Plan and how the Remedy Plan will be instituted.
- 22.13 If the Force Majeure Event causes the Purchaser (after considering the Remedy Plan and approaching the expert, if required) to cease operations and have no requirement at all on a permanent basis for the Product at the Plant for the remaining Term, then the Purchaser may terminate this Agreement after a period of 6 (six) months of the Force Majeure Event continuing, subject to 30 (thirty) days' notice by the Purchaser to the Seller and payment of the amount ("Seller's Settlement Fee") contemplated in clause 22.14.
- 22.14 The Seller's Settlement Fee due to the Seller is an amount equal to the present value of the prevailing Monthly Fee for the remaining Term plus the MPPO (less an amount equal to the electricity component of the MPPO price calculation) for the remaining Term.
- 22.15 Should this Agreement be terminated in accordance with clause 22.13 and subsequently (but not later than 1 year after termination) the Purchaser resumes operations at the Plant and requires the Product, then this Agreement will be reinstated for the period that would have remained if the Agreement had not been terminated. In such an event the Seller will pay to the Purchaser the Seller

*W*  
*W* *A*

Settlement Fee, together with interest at the prime rate.

- 22.16 If the Seller elects not to repair or rebuild the Facility, then the Purchaser may terminate this Agreement after a period of 6 (six) months of the Force Majeure Event continuing, on 30 (thirty) days' notice to the Seller and payment by the Seller to the Purchaser of the amount ("Purchaser's Settlement Fee") contemplated in clause 22.17.
- 22.17 The Purchaser's Settlement Fee due to the Purchaser is an amount equal to the present value of the then prevailing Monthly Fee for 20 (twenty) years.
- 22.18 If the Purchaser is able to implement an alternative solution to source Product, then the Purchaser's Settlement Fee shall be reduced by the difference between the present value of the MPPO at the date of termination and the present value of the costs of the alternative solution over a period equal to what would have been the remaining Term, which value shall be limited to zero.

### 23 GENERAL WARRANTIES

- 23.1 Each of the Parties hereby warrants to and in favour of the other that:
- 23.1.1 it has the legal capacity and has taken all necessary corporate action required to empower and authorise it to enter into this Agreement;
- 23.1.2 this Agreement constitutes an agreement valid and binding on it and enforceable against it in accordance with its terms;
- 23.1.3 the execution of this Agreement and the performance of its obligations hereunder does not and shall not:
- 23.1.3.1 contravene any law or regulation to which that Party is subject;
- 23.1.3.2 contravene any provision of that Party's constitutional documents; or
- 23.1.3.3 conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it; and
- 23.1.4 to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all of its obligations in terms of this Agreement;
- 23.1.5 it is entering into this Agreement as principal (and not as agent or in any other capacity);
- 23.1.6 the natural person who signs and executes this Agreement on its behalf is validly and duly authorised to do so;
- 23.1.7 no other party is acting as a fiduciary for it; and
- 23.1.8 it is not relying upon any statement or representation by or on behalf of any other Party, except those expressly set forth in this Agreement.
- 23.2 Each of the representations and warranties given by the Parties in terms of clause 23.1 shall:
- 23.2.1 be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement;

m

*[Handwritten signatures and initials]*

- 23.2.2 continue and remain in force notwithstanding the completion of any or all the transactions contemplated in this Agreement; and
- 23.2.3 *prima facie* be deemed to be material and to be a material representation inducing the other Party to enter into this Agreement.
- 23.3 The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Agreement.
- 23.4 The Seller must maintain at least a level 5 BEE status and is required to provide the Purchaser with all information relevant in this regard, including a BEE certification for a reputable verification agency acceptable to the Purchaser.

## 24 DISPUTE RESOLUTION

### 24.1 Mediation

- 24.1.1 In the event of there being any dispute (excluding any dispute for which the Agreement provides a specific procedure for resolution) between the Parties arising out of this Agreement which cannot be resolved by the Managing Director of the Seller and the CEO of the Purchaser within a period of 10 (ten) business days from the date on which the dispute is referred to them by either Party, the said dispute shall on written demand by either Party be submitted to mediation as set out in clauses 24.1.2 to 24.1.7.
- 24.1.2 To initiate mediation a Party must give the other notice in writing ("Mediation Notice") requesting mediation and briefly setting out the issues which are to be mediated.
- 24.1.3 The mediator will be agreed by the Parties and failing agreement within 20 (twenty) days of receipt of a Mediation Notice, will be appointed by the AFSA.
- 24.1.4 The mediation will start not later than the later of 20 (twenty) days after the appointment of the mediator or 40 (forty) days after a Party has given a Mediation Notice. The mediation will take place in Johannesburg and the language of the mediation will be English.
- 24.1.5 The procedure for the mediation will be determined by the mediator in consultation with the Parties and recorded in a written agreement between the Parties and the mediator. The costs of the mediator will be shared equally by the Parties unless otherwise agreed in writing. Each Party will bear its own costs arising out of or in connection with the mediation.
- 24.1.6 If the dispute is not settled by mediation for any reason or if the mediation has started but is not settled, within 21 (twenty one) days of either Party initiating mediation, either Party may terminate the mediation by notice in writing to the other Party and the mediator and may, after effecting termination, initiate arbitration proceedings in accordance with the provisions of this Agreement.
- 24.1.7 This clause is a separate, divisible agreement from the rest of this Agreement and remains in effect even if this Agreement terminates or is cancelled for any reason.

*Handwritten initials and signature:*  
 m  
 [Signature]  
 [Signature]  
 A

## 24.2 Arbitration

- 24.2.1 Should the Parties not be able to settle the matter through mediation in terms of clause 24.1, then the said dispute shall on written demand by either Party be submitted to arbitration in Johannesburg in accordance with the AFSA rules, which arbitration shall be administered by AFSA.
- 24.2.2 Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before 3 (three) arbitrators appointed as per the said rules, unless the Parties agree to appoint 1 (one) arbitrator. The arbitral award shall be final and binding upon the Parties. The language of arbitration shall be English.
- 24.2.3 Nothing herein contained shall be deemed to prevent or prohibit a Party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 24.2.4 Any arbitration in terms of this clause 24.2 (including any appeal proceedings) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 24.2.5 This clause 24 will continue to be binding on the Parties notwithstanding any expiry or termination of this Agreement.
- 24.2.6 The Parties agree that the written demand by a Party to the dispute in terms of clause 24.2 that the dispute be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.
- 24.2.7 The arbitrator shall determine the liability for his costs, which the relevant Party must so pay.

## 25 NOTICES AND DOMICILIA

- 25.1 The Parties select as their respective *domicilia citandi et executandi* the following physical addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement, the said physical addresses as well as the following telefax numbers:

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
Purchaser	Portion 93 of the Farm Schoongezicht 308 JS, Old Pretoria Road, Emalaheni	(013) 690 9293

Marked for the urgent attention of: The Company Secretary

M  
by  
A

P

<u>Name</u>	<u>Physical Address</u>	<u>Telefax</u>
Seller	Cnr Vereeniging and Andre Marais Streets, Alrode, Gauteng, 1451	(011) 617 7634

Marked for the urgent attention of: Chief Operating Officer

provided that a Party may change its *domicilium* or its address for the purposes of notices to any other physical address or telefax number by written notice to the other Party to that effect. Such change of address will be effective 5 (five) business days after receipt of the notice of the change.

- 25.2 All notices to be given in terms of this Agreement will be given in writing and will:
- 25.2.1 be delivered by hand or by registered post;
- 25.2.2 if delivered by hand during business hours, be presumed to have been received on the date of delivery. Any notice delivered after business hours or on a day which is not a business day will be presumed to have been received on the following business day.
- 25.3 Notwithstanding the above, any notice given in writing, and actually received by the Party to whom the notice is addressed, will be deemed to have been properly given and received, notwithstanding that such notice has not been given in accordance with this clause 25.

## 26 BENEFIT OF THIS AGREEMENT

This Agreement will also be for the benefit of and be binding upon the successors in title and permitted assigns of the Parties or either of them.

## 27 ASSIGNMENT

- 27.1 Either Party may, on prior written notice to the other Party, assign any or all of its rights, title, and interest under and in terms of this Agreement to any Affiliate, provided that any such assignment shall not relieve the Party of any of its obligations hereunder unless the assignor demonstrates that its Affiliate has the financial and technical means sufficient to comply with its obligations hereunder.
- 27.2 Save as provided in clause 27.1, neither this Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either Party without the prior signed written consent of the other Party, which consent shall not be unreasonably withheld.

## 28 APPLICABLE LAW AND JURISDICTION

This Agreement will in all respects be governed by and construed under the laws of the Republic of South Africa.

## 29 GENERAL

### 29.1 Confidentiality

- 29.1.1 Without the prior written consent of the other Party, each Party will keep confidential and will not disclose to any person:

- 29.1.1.1 the details of this Agreement and the negotiations or discussions leading to its execution;
- 29.1.1.2 all information received in connection with this Agreement; and
- 29.1.1.3 all information which has been designated as being confidential, (collectively, "Confidential Information").
- 29.1.2 Each Party agrees to keep all Confidential Information confidential and to disclose it only to its respective majority shareholders, officers, directors, employees, consultants, financiers and professional advisors who:
- 29.1.2.1 have a need to know (and then only to the extent that each such person has a need to know);
- 29.1.2.2 are aware that the Confidential Information should be kept confidential;
- 29.1.2.3 are aware of the disclosing Party's undertaking in relation to such information in terms of this Agreement; and
- 29.1.2.4 have been directed by the disclosing Party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential and have signed a confidentiality agreement where such persons are external consultants, financiers and professional advisers.
- 29.1.3 The obligations of the Parties in relation to the maintenance and non-disclosure of Confidential Information in terms of this Agreement do not extend to information that:
- 29.1.3.1 is disclosed to the receiving Party in terms of this Agreement but at the time of such disclosure such information is known to be in the lawful possession or control of that Party and is not subject to an obligation of confidentiality;
- 29.1.3.2 is or becomes public knowledge, otherwise than pursuant to a breach of this Agreement by the Party who received such Confidential Information;
- 29.1.3.3 is required by the provisions of any law, statute or regulation, or during any court or arbitration proceedings, or by the rules or regulations of any recognised stock exchange to be disclosed and the Party required to make the disclosure has limited, as far as reasonably possible, the extent of such disclosure and has consulted with the other Parties prior to making such disclosure; or
- 29.1.3.4 is required to be disclosed to (i) the Commissioner for the South African Revenue Service, or (ii) the Department of Trade and Industry and the Party required to make such disclosure has limited, as far as reasonably possible, the extent of such disclosure and has consulted with the other Parties prior to making such disclosure.
- 29.1.4 The provisions of this clause 29.1 shall survive any termination of this Agreement for a period of five (5) years thereafter.

## 29.2 Whole Agreement

- 29.2.1 This Agreement constitutes the whole of the agreement between the Parties

relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.

29.2.2 This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

29.2.3 The annexures attached hereto are an integral part of this Agreement; provided that in the event of any conflict or inconsistency;

29.2.3.1 between any capitalized word, term, phrase or abbreviation defined in clause 2.1 and any capitalized word, term, phrase or abbreviation defined in any annexure, the meaning set forth in clause 2.1 shall take precedence over the meaning set forth in such annexure; and

29.2.3.2 in the interpretation of any provision of this Agreement and provision of any annexure, the terms of this Agreement shall take precedence in the event of a conflict.

#### 29.3 Variations to be in Writing

No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.

#### 29.4 No Indulgences

No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be 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.

#### 29.5 No Waiver or Suspension of Rights

No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.

#### 29.6 Provisions Severable

All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity,

m

by A

illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

#### 29.7 Continuing Effectiveness of Certain Provisions

The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

#### 29.8 Exclusion of Electronic Signature

The reference in clauses 27.1, 29.3 and 29.5 to writing signed by a Party shall, notwithstanding anything to the contrary in this Agreement, be read and construed as excluding any form of electronic signature.

#### 30 COSTS

Except as otherwise specifically provided herein, each Party will bear and pay its own legal costs and expenses of and incidental to the negotiation, drafting, preparation and implementation of this Agreement.

#### 31 SIGNATURE


31.1 This Agreement is signed by the Parties on the dates and at the places indicated below.

31.2 This Agreement may be executed in 2 (two) counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.

31.3 The Parties record that it is not required for this Agreement to be valid and enforceable that a Party shall initial the pages of this Agreement and/or have its signature of this Agreement verified by a witness.

SIGNED at eMalahleni on 07 December 2011

For and on behalf of  
EVRAZ HIGHVELD STEEL AND  
VANADIUM LIMITED

  
Signature

M.D. Garcia  
Name of Signatory

Chief Executive Officer  
Designation of Signatory

*M*  
*6*  
*11*

*m*





  
\_\_\_\_\_  
Signature

C.I. Lewis

\_\_\_\_\_  
Name of Signatory

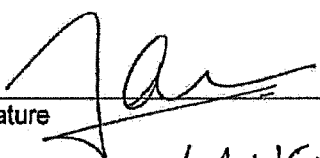
Company Secretary

\_\_\_\_\_  
Designation of Signatory

SIGNED at \_\_\_\_\_ on \_\_\_\_\_ 2011

For and on behalf of

AIR LIQUIDE (PROPRIETARY) LIMITED

  
\_\_\_\_\_  
Signature

Name of Signatory

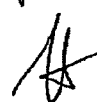
LANCELLER

\_\_\_\_\_  
Designation of Signatory

CEO



M.



ANNEXURE "1"

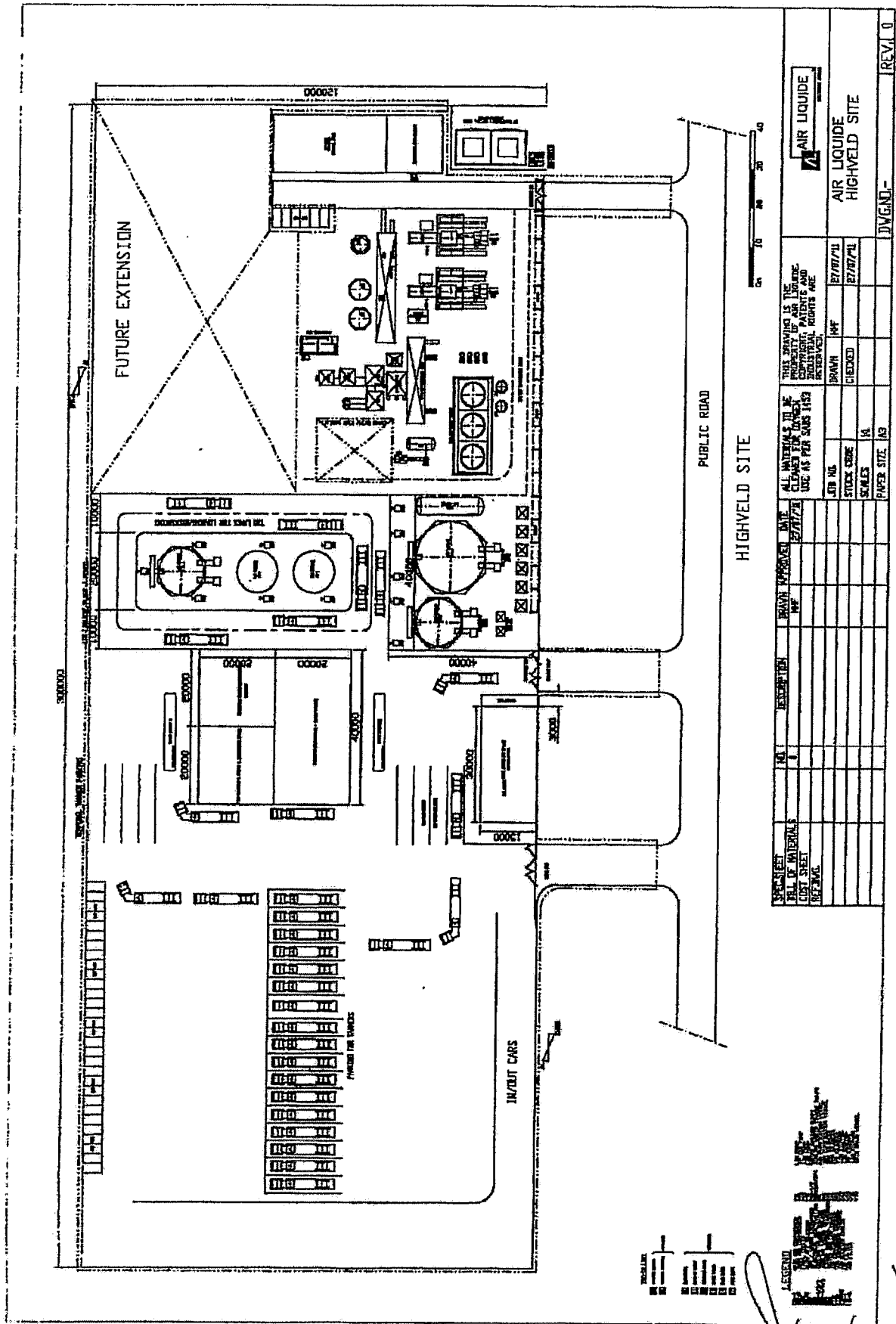
LAYOUT AND BATTERY LIMITS

EVRAZ HIGHVELD SITE-HIGHVELD.pdf

ly

m  
H





**ANNEXURE "2"****UTILITIES SPECIFICATIONS FOR INTERIM PERIOD AND FOR PERIOD FROM  
COMMENCEMENT DATE****To be supplied by the Purchaser to Seller:****RAW WATER**

Raw Water shall be available at Battery Limit on the date set out in clause 7.6.6 as per the specification below. A quantity of 1200m<sup>3</sup>/day (which includes the quantity required for fire water) will be supplied by the Purchaser to the Seller.

Conditions at Battery Limit:

Parameter		Values (min / nom / max)
Pressure (barg) (1)		2 / 3 / 8
Temperature (°C)		Ambient
pH		6.8 / - / 8.4
Conductivity (µS/cm)		20 / 200 / 400
Total hardness (CaCO <sub>3</sub> ) (mg/l)		200 / 220 / 250
Total alkalinity (mg/l)		80 / 90 / 110
TSS - Suspended solids (mg/l)		0 / 0.5 / 2
Cloudiness (Turbidity) (NTU)		0.5 / 1.25 / 5
TDS (mg/l)		< 330
Oil content (ppm)		0
<b>Cations (mg/l)</b>		
Calcium	Ca	30 / 40 / 55
Magnesium	Mg	20 / 28 / 35
Sodium	Na	20 / 26 / 34
Potassium	K	0 / 5.5 / 7
Iron	Fe	0 / 0.01 / 0.05
Ammonium	NH <sub>4</sub>	0 / 0.1 / 0.2
Aluminium	Al	0 / 0.2 / 0.5
<b>Anions (mg/l)</b>		
Chloride	Cl	10 / 16.7 / 50
Sulphate	SO <sub>4</sub>	100 / 156 / 165
Phosphate ( total )	PO <sub>4</sub>	0 / 0.01 / 0.05
Nitrate	NO <sub>3</sub>	0.1 / 0.3 / 5
<b>Others Ions and Compounds (mg/l)</b>		
Silica	SiO <sub>2</sub>	0 / 0.5 / 1
Manganese	Mn	0 / 0.01 / 0.05

Copper	Cu	0 / 0.4 / 0.8
Bicarbonate	HCO <sub>3</sub>	80 / 90 / 110
SDI – Silt density index		10/ -/ 12

Note 1: 2 barg is the minimum required by Seller at Battery Limits, Fire Water is to be available at 8 barg at all times.

All impurities that have an environmental impact will be managed in line with SANS241.

### RETURN WATER

Return water shall be returned by the Seller to the Purchaser as set out in clause 13.3.3, as per the specification below:

Conditions at Battery Limit:

Parameter		Values
Pressure (barg)		1 – 2
Temperature (°C)		20 – 49
Flow rates (m <sup>3</sup> /day)		250 – 475
pH		7 – 7.8
Conductivity (µS/cm)		20 – 330
Total hardness (CaCO <sub>3</sub> ) (mg/l)		200 – 1326
Total alkalinity (mg/l)		80 – 136
Cloudiness (Turbidity) (NTU)		0.5 – 5
TDS (mg/l)		150 – 215
<b>Cations (mg/l)</b>		
Calcium	Ca	20 – 636
Magnesium	Mg	20 – 690
Sodium	Na	20 – 34
Potassium	K-	0 – 7
Iron	Fe	0 – 0.06
Ammonium	NH <sub>4</sub>	0 – 0.2
Aluminium	Al	0 – 0.5
<b>Anions (mg/l)</b>		
Chloride	Cl	20 – 72
Sulphate	SO <sub>4</sub>	100 – 1348
Phosphate ( total )	PO <sub>4</sub>	0 – 0.6
Nitrate	NO <sub>3</sub>	0.1 – 5
<b>Others Ions and Compounds (mg/l)</b>		
Silica	SiO <sub>2</sub>	0 – 24
Manganese	Mn	0 – 0.05

m

*[Handwritten signatures and marks]*

### DOMESTIC/POTABLE WATER

Potable Water (domestic water) shall be available at Battery Limit on the date set out in clause 7.6.5.

A quantity of 20m<sup>3</sup>/day at 2 barg will be made available by the Purchaser to the Seller.

Potable Water quality will be in line with SANS241.

### ELECTRICAL POWER

#### For Construction:

Electrical Power for construction shall be available at Battery Limit on the date set out in clause 7.6.8.

Conditions at Battery Limit are to be 400V, 3 phase, 50Hz and 700Amp supply capacity.

Power quality to be in line with South African power quality standard NRS048.

#### For Operation:

Electrical Power for operation shall be available at Battery Limit on the date set out in clause 7.6.11. Electrical Power for operation at 33kV plus Dual Coil Transformer to step down to 11kV and 0.4kV. The Purchaser shall endeavour to supply the Seller with a second 33kV incomer and similar Transformer design.

Conditions at Battery Limit:

Parameter	Minimum	Nominal	Maximum
Voltage (kV)	32.8	33.5	34.2
Power (MVA)	22	22	34

Power quality to be in line with South African power quality standard NRS048.



**ANNEXURE "3"****PRODUCT SPECIFICATIONS**

Oxygen delivered hereunder shall conform to the following specifications at the given Delivery Point up to the Maximum PNMax:

Oxygen	Specification
Oxygen Purity	99.5 Mol % Min., 50 vpm N2 max
Minimum Pressure	38 Barg

Nitrogen delivered hereunder shall conform to the following specifications at the given Delivery Point up to the Maximum PNMax:

Nitrogen	Specification
Nitrogen and Inert	99.995 Mol % Min, 50vpm O2 max
Minimum Pressure	38 Barg

Argon delivered hereunder shall conform to the following specifications at the Delivery Point up to the Maximum PNMax:

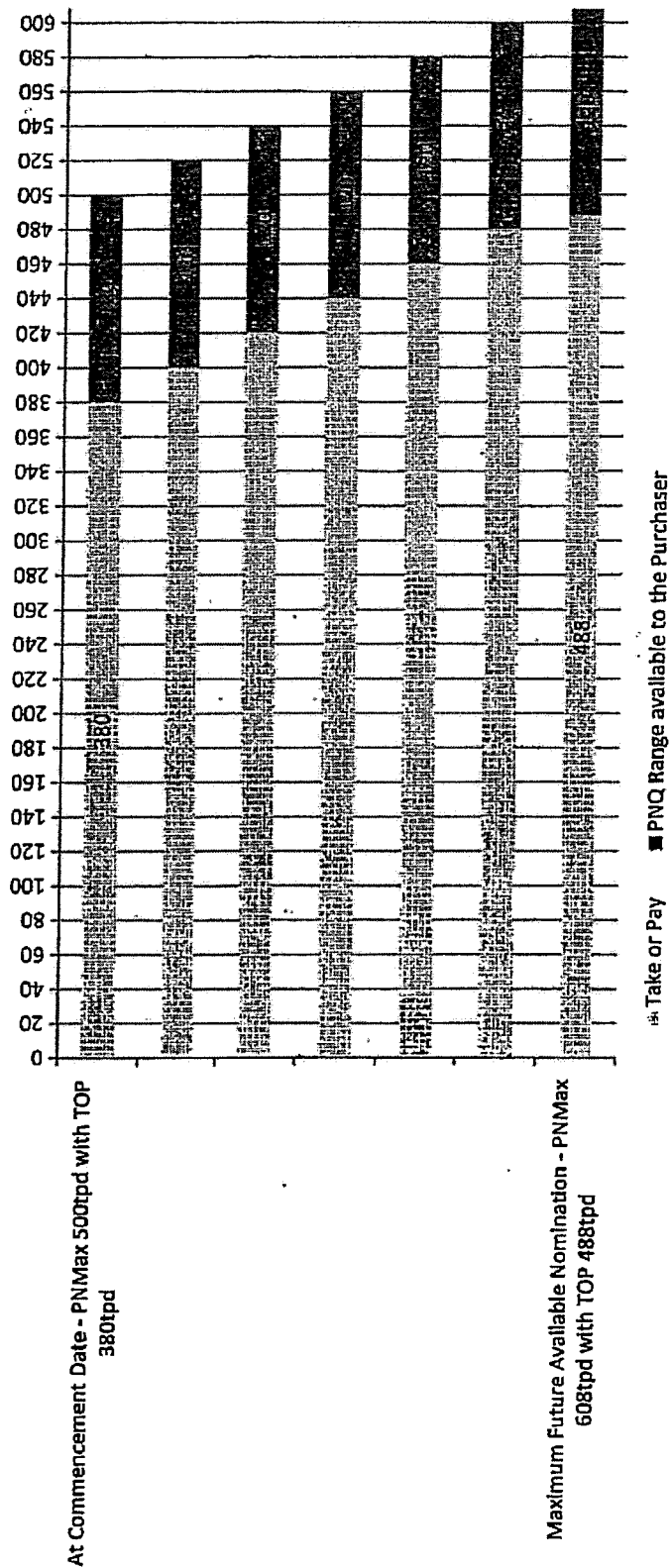
Argon	Specification
Argon Purity	99.9 Mol % Min

3  
m  
A

1

ANNEXURE "4"

AVAILABLE PNMAX RANGES ABOVE 500 TONS PER DAY  
(as per clause 9.10).






*[Handwritten signatures and initials]*



## ANNEXURE "5"

## REDUNDANCY LIST BASED ON 380 TONS PER DAY

EQUIPMENT	INSTALLED	SPARES	COMMENT	Time to get a new spare part Same duration as first ordered equipment. (+/- 12 Months)
Air Compressor	2 x 56% MAC	Full redundancy	+ AL group pool of spares for Yango. One compressor run (turn-down run expected) will produce TOP GOX quantity (380tpd) and 82tpd LOX, GAN 150 tpd.	
Expansion Turbine	1	Complete spare cartridge in store	In case of problem, replacement which takes about 24-hours. This is based on our experience of cartridge replacement in Saldanha and ASP1 with local contractors.	6 Months for new spare cartridge or 1 to 3 months to repair
P01 - LOX Reflux Pump	1	One online and one in stores.	In case of problem, replacement which takes about 24-hours. Our experience in Saldanha and ASP1 (smaller pumps) used as reference.	6 Months
P03 - HP LOX Pump	1	One online and one in stores.	In case of problem, replacement which takes about 24-hours. Our experience on a bigger pump in Saldanha used as reference.	6 Months
P05 - LIN Pump	0		Not used in our final design (Gan Compressor)	NA
P10 - Crude Argon Pump	1	One online and one in stores.	In case of problem, replacement which takes about 24-hours. Our experience in Saldanha and ASP1 (smaller pumps) used as reference.	6 Months
GAN Compressor	2 x 50%	Full redundancy	Full redundancy based on LIN backup with 2 pumps (2*100%)	Same duration as first ordered equipment. 5 Months
Water pumps	3 x 33% 1 x 133%	Four installed with 3 running and one on standby.		
Cooling Tower fans	3 x 33%	Three installed and running		
Back-up LOX Pumps	2 x 100%	2 X 100% flow. One online and one on standby.		4 Months 6 Months
Back-up LIN Pumps	2 x 100%	2 X 100% flow. One online and one on standby.		6 Months

**ANNEXURE "6"****SCOPE EXCLUSIONS**

Scope Exclusions	Status	Actions or Comments
Utilities		
The delivery point for gas and utilities has been assumed to be the Battery Limit.	Additional capex may be required if not as per plot plan as illustrated in Annexure 1.	Site location and delivery point for gas and utilities as illustrated in Annexure 1 layout tie-in point has been accepted by both parties and therefore no additional capex required.
Electricity Supply & Protection		
Transformers		The Seller's take-over-point on the transformers is the terminations on the secondary side of the transformers being 11kV and 0.4kV terminations.
Civil Work		
Piling	Additional capex required.	Soil assessment revealed Piling is required. Seller to provide to the Purchaser the total cost for such additional capex before Signature Date.
Land: In order for the Seller to fulfill its obligation, the Seller will provide land within the Purchaser's site in Witbank.	To be included in contract.	A separate Lease Agreement will be signed between the Seller and the Purchaser.
Gas Network		
High Pressure Vessels		
Pressure Reduction Control		
Metering Station after Battery Limit.		

GOX and GAN pipes outside Battery Limit		
Environmental		
Atmospheric Air Filtration vs. Seller's Specification	Additional capex required.	Heavy dusty area classification according to an air quality report provided by the Purchaser. Seller to provide to the Purchaser the total cost for such additional capex before Signature Date.
Communication Network Integration		
Integration with customer's control system	Additional capex required.	Purchaser requires but not limited Instantaneous Flow Rates & Pressures, Storage Levels & Product Purity signals. Seller to provide to the Purchaser the additional capex required to make available the signals at the delivery point before Signature Date.

By

cm

A

ANNEXURE "7"

## PILING SPECIFICATIONS

PILING SPECIFICATIONS

- 163 predrilled 410mm cast in situ Franki piles 10m deep on the date set out in clause 7.6.1

g  
m  
A

g  
m  
A

**"POC2"**

**FIRST ADDENDUM TO OXYGEN, NITROGEN AND ARGON SUPPLY AGREEMENT**

between

**AIR LIQUIDE PROPRIETARY LIMITED**

(a private company incorporated in accordance with the laws of the Republic of South Africa under registration number 1948/029574/07)  
("the Seller")

and

**EVRAZ HIGHVELD STEEL AND VANADIUM LIMITED**

(a public company incorporated in accordance with the laws of the Republic of South Africa under registration number 1960/001900/06)  
("the Purchaser")

**WEBBER WENTZEL | ALN**

TABLE OF CONTENTS

	Page No.
1. Interpretation .....	1
2. Recordal .....	1
3. Amendment to the Supply Agreement .....	2
4. Counterparts .....	3
5. Continuation of the Supply Agreement .....	3
ANNEXURE "6" SCOPE EXCLUSIONS .....	5

*J*  
*10-9-*

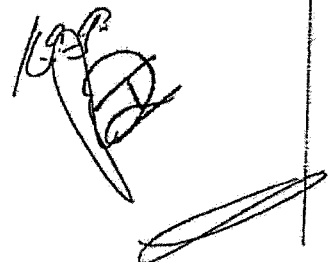
*[Signature]*

1. Interpretation

- 1.1 The provisions of clauses 2 and clauses 23 to 31 of the Oxygen, Nitrogen and Argon Supply Agreement entered into between the Purchaser and the Seller on 7 December 2011 ("the Supply Agreement") are hereby incorporated *mutatis mutandis* into this first addendum to the Supply Agreement ("this Addendum").
- 1.2 Capitalised terms not otherwise defined in this Addendum shall bear the meanings given to them in the Supply Agreement.

2. Recordal

- 2.1 The Parties have entered into the Supply Agreement.
- 2.2 Pursuant to the Supply Agreement, the Purchaser wishes to purchase the Products from the Seller for the operation of the Plant and the Seller wishes to sell the Products to the Purchaser.
- 2.3 In terms of clause 7 of the Supply Agreement the Parties undertook to carry out a number of principal process events which were required to be completed during the Interim Period as set out in clause 7.
- 2.4 In particular, clause 7.8 provided that the Parties are considering amending the provisions of clause 7.6 such that the Seller and not the Purchaser will provide certain items specified in clauses 7.6.1, 7.6.2, 7.6.3 and 7.6.4 on terms yet to be agreed.
- 2.5 The Parties have agreed to amend certain provisions of the Supply Agreement in accordance with the intention set out in clause 7.8.
- 2.6 Clause 29.3 of the Supply Agreement provides that no addition to or variation, deletion or agreed cancellation of all or any clauses or provisions of the Supply Agreement will be of any force and effect unless in writing and signed by the Parties.
- 2.7 The Parties accordingly wish to enter into this Addendum on the terms and conditions set out herein.



### 3. Amendment to the Supply Agreement

3.1 The Supply Agreement is hereby amended with effect from the date of signature of this Addendum by the last Party to sign it by:

3.1.1 deleting the current clause 7.2 in its entirety and replacing it with the following:

"7.2 The Seller shall:

7.2.1 complete and submit an environmental impact assessment ("EIA") to the relevant authorities in order to obtain an environmental authorisation ("EA") by no later than 12 months after the Signature Date ("EA Date") (subject to clause 7.3) and obtain all necessary licences, permits and environmental authorisations required for the purposes of this Agreement in terms of Law by the Commencement Date;

7.2.2 conduct Piling timeously to ensure that the Commencement Date is not delayed for any reason relating to conducting the Piling from the EA Date;

7.2.3 provide to the Purchaser the air filtration system ("Air Filtration System") timeously to ensure that the Commencement Date is not delayed for any reason relating to the provision of the Air Filtration System from the Signature Date; and

7.2.4 be solely responsible for the maintenance (and costs associated therewith) of the Air Filtration System for the duration of the Agreement,

("the Seller's Milestones");

3.1.2 the deletion of the words "the Seller's Milestone" wherever it appears in the Supply Agreement and the replacement thereof with "the Seller's Milestones";

W  
SP D



3.1.3 deleting clause 7.6.1 in its entirety;

3.1.4 inserting a new clause 7.8A as follows:

*"7.8A It is recorded that the Purchaser will not be responsible for any costs of any nature whatsoever relating to the Air Filtration System and the Piling other than as an adjustment to the Monthly Fee as provided for in clause 3.1.5 of this Addendum and the Monthly Fee will not be adjusted further for any such costs. Should an impediment arise during the construction of the piling which was unforeseen by both parties at the time of the conclusion of this Addendum which could negatively affect the cost of the construction of the piling, the parties shall meet in good faith to discuss and agree how the matter would be addressed";*

3.1.5 amending clause 14.1 of the Supply Agreement by deleting the amount of "R976,891.00" in table 14.1 and replacing it with "R1,091,021.00";

3.1.6 deleting Annexure "6" to the Supply Agreement in its entirety and the replacement thereof with Annexure "6" to this Addendum; and

3.1.7 deleting Annexure "7" to the Supply Agreement in its entirety.

#### 4. Counterparts

This Addendum may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

#### 5. Continuation of the Supply Agreement

Save as specifically amended by this Addendum, the Supply Agreement shall continue to be of force and effect on the basis of its original terms and conditions.

*[Handwritten signature and initials]*

Signed at

Arcele

on

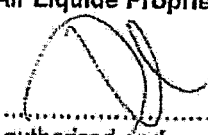
5 October

2012

Witness



for Air Liquide Proprietary Limited

  
.....  
duly authorised and warranting such  
authority

Signed at

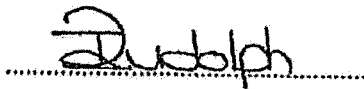
eMakhlani

on

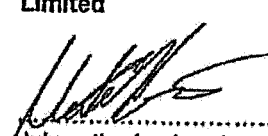
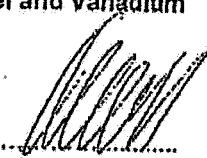
9 October

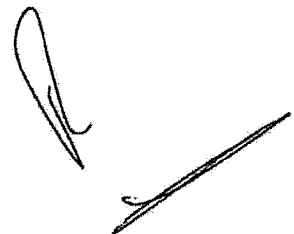
2012

Witness



for Evraz Highveld Steel and Vanadium  
Limited

   
.....  
duly authorised and warranting such  
authority



09/10/2012

5

WEBBER WENTZEL ALN

ANNEXURE "6"

SCOPE EXCLUSIONS

Scope Exclusions	Status	Actions or Comments
The delivery point for gas and utilities has been assumed to be the Battery Limit.	Additional capex may be required if not as per plot plan as illustrated in Annexure 1.	Site location and delivery point for gas and utilities as illustrated in Annexure 1 layout tie-in point has been accepted by both parties and therefore no additional capex required.
Transformers		The Seller's take-over-point on the transformers is the terminations on the secondary side of the transformers being 11kV and 0.4kV terminations.
Land: In order for the Seller to fulfil its obligation, the Seller will provide land within the Purchaser's site in Witbank.	To be included in contract.	A separate Lease Agreement will be signed between the Seller and the Purchaser.
High Pressure Vessels		
Pressure Reduction Control		
Metering Station after Battery Limit.		

4/12/12

09/10/2012

GOX and GAN pipes outside Battery Limit			
Continued from previous page			
Integration with customer's control system	Additional capex required.	Purchaser requires but not limited Instantaneous Flow Rates & Pressures, Storage Levels & Product Purity signals. Seller to provide to the Purchaser the additional capex required to make available the signals at the delivery point before Signature Date.	

PH W 23

1

"POC3"

## THE ISAS TRUST

VAT Registration Number: 4860168220

Registration Number: IT6044/97

Metals House  
11 Eton Road  
Parktown 2193  
Phone: (011) 482 8189  
Fax: 0866123062

### TAX INVOICE

Date : 31-Jan-14

Invoice : 922

Terms : 15 Days

#### INVOICE ADDRESS

HIGHVELD STEEL & VANADIUM CORPORATION

PO Box 111

Witbank 1035

VAT Reg. Number 4050104431

#### DELIVERED TO

HIGHVELD STEEL & VANADIUM CORPORATION

Description	Tons	Price	Net Value	V.A.T.	Total
<u>BASE FACILITY CHARGE</u>					
Capital Charge					
Escalating portion of capital charge					
Base facility and Operating Charge PRORATA					
<u>MAINT FEE - ARGON STORAGE VESSEL inc</u>				0.00	0.00
<u>TRANSFORMER LOSS REBATE PRORATA</u>					
<u>OXYGEN SUPPLIED</u>					
TOP shortfall to be invoiced end Feb					
<u>NITROGEN SUPPLIED</u>					
TOP shortfall to be invoiced end Feb					
<u>ARGON SUPPLIED</u>					
TOP shortfall to be invoiced end Feb					
<u>IMPORTED LIQUID OXYGEN &amp; NITROGEN</u>					
<u>LIQUID NITROGEN DELIVERIES</u>					
<u>CEILING CHARGE ON EXCESS</u>			0.00	0.00	0.00
<b>TOTAL</b>			6,871,738.61	962,043.40	7,833,782.01

# THE ISAS TRUST

Registration Number: IT6044/97

**Metaxis House**  
11 Elton Road  
Parktown 2193  
Phone : (011) 482 8180  
Fax : 0866123062

Date : 28-Feb-14  
Invoice: 924  
Terms: 15 Days

HIGHVELD STEEL & VANADIUM CORPORATION  
PO Box 111  
Witbank 1035  
VAT Reg. Number 4050104431

## HIGHVELD STEEL &amp; VANADIUM CORPORATION

[illegible]

"POC5"

AIR LIQUIDE rates

Date : 19-29 Jan 2014

INVOICE ADDRESS

HIGHVELD STEEL & VANADIUM CORPORATION  
PO Box 111  
Wilbank 1035  
VAT Reg. Number 4060104431

DELIVERED TO

HIGHVELD STEEL & VANADIUM CORPORATION

Description	Tons	Price	Net Value	V.A.T.	Total
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
TOTAL			2 107 031.45	294 984.40	2 402 015.87

## AIR LIQUIDE rates

Date : 30 Jan 2014 to 18 Feb 2014

### INVOICE ADDRESS

HIGHVELD STEEL & VANADIUM CORPORATION  
PO Box 111  
Witbank 1035  
VAT Reg. Number 4050104431

### DELIVERED TO

HIGHVELD STEEL & VANADIUM CORPORATION

Description	Tons	Price	Net Value	V.A.T.	Total
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
TOTAL			3 556 746.56	497 944.52	4 054 691.08