



# **PURCHASE ORDER GENERAL TERMS AND CONDITIONS OF PURCHASE**

- 1 Definitions**
  - 2 Price**
  - 3 Payment**
  - 4 Documentation and Rights of Audit**
  - 5 Right to Set Off**
  - 6 Taxes**
  - 7 Packaging, Shipping and Documentation**
  - 8 Delivery and Schedule**
  - 9 Force Majeure**
  - 10 Inspection, Testing and Expediting**
  - 11 Title and Risk of Loss**
  - 12 Confidentiality, Intellectual Property and Data Security**
  - 13 Warranty**
  - 14 Indemnity and Liability**
  - 15 Liens**
  - 16 Suspension**
  - 17 Cancellation**
  - 18 Termination**
  - 19 Complete Agreement**
  - 20 Change Orders**
  - 21 Assignment and Subcontracting**
  - 22 Correspondence, Language and Notices**
  - 23 Applicable Law Compliance with Policies and Licenses**
  - 24 Claims and Dispute Resolution**
  - 25 Bribery and Anti-corruption**
  - 26 Publicity**
  - 27 Survival**
  - 28 Severability**
  - 29 Approvals**
  - 30 Waiver**
  - 31 Independent Contractor**
  - 32 Insurance**
-

## 1. Definitions

Throughout this Purchase Order, unless the contrary intention appears, the following words and expressions shall have these meanings:

**“Acceptable”** means the Supply is in accordance with the requirements of this Purchase Order and where required under the Purchase Order, the Supply satisfies the testing requirements, set out in the specifications for Supply, and Seller has supplied all deliverables, manuals, documents and other information required under the Purchase Order.

**“Annexure A”** means the document entitled “Annexure A” Purchase Order Summary;

**“Buyer”** means the company issuing this Purchase Order and named on the Purchase Order Cover Sheet as “Buyer”;

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

**“Confidential Information”** means all information that is confidential, non-public or proprietary in nature regardless of how such information is stored, delivered, or exchanged between the parties before, on, or after the date of this Purchase Order, which relates to this Purchase Order, the negotiations preceding this Purchase Order, or to the business, technology or other affairs of Buyer or Client (including without limitation plans, programs, plants, processes, products, costs, equipment, operations, or customers, records, reports, data, and other information, and all copyrightable subject matter provided to Seller, or any other information which has been expressly identified by Buyer as being confidential in nature, that may come within the knowledge of Seller or its employees, agents, or assigns in the performance of this Purchase Order).

**“Defect”** means any aspect (including any defect, fault, failure, degradation, deficiency, omission, error or non-conformance) of the Supply or any part thereof or any other part of the supply of the Supply, which is not in accordance with this Purchase Order.

**“Change Order”** has the meaning set forth in clause 20;

**“Facilities”** means Client’s plant or facility that will incorporate the Supply;

**“Law”** means any applicable law, rules, regulation, decree, code, ordinance, resolution, or other act of any governmental authority, whether national, federal, territorial, provincial, state, local, or other governmental agency that may be applicable to Seller’s performance under this Purchase Order or to its supply and delivery of Supply;

**“Liability”** means all damages, losses, claims, liabilities, debts, accounts, costs, and expenses (including but not limited to reasonable attorneys’ fees and other legal expenses) and any actions, suits, demands, investigations, and other legal proceedings related thereto, of any nature whatsoever;

**“Notice”** has the meaning given to it in clause 22.

**“Price”** means the rates or prices identified on this Purchase Order to be paid to Seller in connection with the Supply;

**“Purchase Order”** means the binding agreement comprised of the documents listed in the Purchase Order Cover Sheet, together with any specifications, data sheet, drawings, exhibits and other documents attached to the Purchase Order or specifically referenced therein;

**“Purchase Order Cover Sheet”** means the document bearing that description and to which these Purchase Order General Terms and Conditions have been appended;

**“Purchase Order General Terms and Conditions”** means this document;

**“Purchase Order Special Conditions”** means the document bearing that description and which is appended to the Purchase Order Cover Sheet;

**“Seller”** means the person, firm or company to whom this Purchase Order is issued for the provision of the Supply;

**“Site”** means the Client’s mine-site or other premises of the Client as may be identified elsewhere in this Purchase Order;

**“Sub-suppliers”** means any consultants, sub-tier suppliers or subcontractors under contract with Seller in connection with the Supply; and

**“Supply”** means the entire undertaking to be performed by Seller under this Purchase Order, to include the provision of all equipment, machinery, appliances, materials, supplies, manufacturing, fabrication, assembly, engineering, vendor data and related services.

**“Variation”** has the meaning given to it in clause 20.

## **2. Price**

As full compensation for provision and delivery of the Supply, Seller shall be paid the Price in accordance with the terms and conditions of this Purchase Order.

The Price stated in this Purchase Order shall remain firm and fixed for the duration of this Purchase Order, and unless otherwise specifically agreed in writing or specified herein (i) shall not be subject to any escalation, additional charges or any other increases of whatsoever description, (ii) shall include all costs, royalties and license fees, taxes, customs duties, fees or charges of any kind incurred by Seller, (iii) shall include all packaging, marking, crating, handling and shipping costs; and (iv) shall include all other costs necessary for the Seller to provide the Supply to the Buyer in accordance with the terms of this Purchase Order, whether those costs are direct or incidental to the provision of the Supply.

## **3. Payment**

Unless otherwise expressly provided in this Purchase Order, payment will be made net 45 days, subject to submission of properly constituted invoice(s) and supporting documentation as specified in this Purchase Order or reasonably required by Buyer. Items shown separately on this Purchase Order shall be shown separately on the invoice. Invoices shall be in a form approved by Buyer, shall show this Purchase Order number and the place where the Supply

was delivered, the Seller's tax file number, invoice number, account name and number, Seller's bank name and address, and shall be accompanied by a signed copy of the delivery docket. With respect to any reimbursable items, Seller shall provide full documentation and receipts as directed by Buyer.

Invoice Instructions:

- a) Use of Electronic System. If Seller is a registered user of Newmont's electronic Purchase Order and Service Order system ("SRM"), Seller shall invoice Newmont in accordance with the requirements of SRM. Without limiting the generality of the foregoing sentence, Seller shall (a) electronically create a service entry confirmation for all Services in SRM prior to invoicing Newmont for such Services, (b) electronically create an invoice for Services in SRM only after receiving an approved service confirmation from Newmont via SRM, and (c) electronically create an invoice for Goods in SRM only after receiving an approved goods receipt confirmation from Newmont via SRM.
  
- b) Non-Electronic Invoices. The provisions of this clause 3(b) shall apply if Seller is not a registered user of SRM. Seller shall submit invoices electronically to Newmont Accounts Payable at [ghanainvoices@newmont.com](mailto:ghanainvoices@newmont.com)

All such invoices must reference the PO or SO Number ("PO#") assigned to the Purchase Order and/or Change Order applicable to the Services or Goods. Common invoicing problems to avoid:

- NO PO#: Valid PO# is not listed on invoice.
- PO# COMPLETE: PO# referenced on invoice has been invoiced in its entirety.
- INCORRECT/INVALID PO#: PO# referenced on invoice is incorrect or invalid.
- NO PO LINE #: Invoice contains multiple line items. Invoice line-items must correspond to the relevant line item(s) on associated PO#. For assistance, please contact the Newmont Supply Chain or Accounts Payable representative.
- INCORRECT/INVALID PO LINE#: PO# line number stated on invoice is incorrect or invalid.

#### **4. Documentation and Rights of Audit**

Seller shall maintain a copy of records and documentation related to the Supply under this Purchase Order, to include correspondence, directions, subcontracts, and purchase orders, and associated change orders, document submittals, test records and orders, meeting minutes, transmittals, plans, drawings, specifications, books, accounts, receipts, vouchers and other memoranda of any description related to this Purchase Order ("Purchase Order Documentation").

With respect to accounting records, Seller shall maintain a true, correct, and complete set of records, including books and accounts, prepared in accordance with generally-accepted

accounting principles consistently applied, relating to the costs and expenses for which Seller seeks reimbursement hereunder, including time expended by Seller and all invoices and any payments relevant to Sub-suppliers or as may otherwise be necessary for proper financial management under this Purchase Order. Such records shall detail in particular all fully accounted costs.

All Purchase Order Documentation shall be made available to audit, inspect, and copy by Buyer or its designated representative during the term of this Purchase Order and for a period of five (5) years following any termination or expiration of this Purchase Order, upon 48 hours' prior Notice and during usual business hours where the records are kept provided however that Buyer shall not have audit rights into any fixed rates, agreed-upon percentage multipliers or lump sum amounts. Seller shall promptly provide data or information requested, including that requested in electronic form, by Buyer or its representatives.

## **5. Right to Set Off**

Buyer shall have the right to set-off amounts owing from Seller to Buyer against payment under this Purchase Order. In addition, if Buyer reasonably believes it might become obligated to pay any amount to a third party or incur other costs, expenses, or losses as a result of Seller's negligence, or failure to fulfil obligations under this Purchase Order, Buyer shall have the right, in addition to any other remedy available in law or equity (but subject to the limitations and conditions of Liability set forth in Clause 14), to set off and deduct from monies due or to become due to Seller the sum that is reasonably necessary to cover such amounts, costs, expenses, and losses. Any sums so deducted that are subsequently determined to be due Seller shall thereupon be promptly paid by Buyer.

## **6. Taxes**

Except only as otherwise expressly provided in this Purchase Order:

- a.** The Price shall include taxes, duties, fees or charges imposed on or payable in relation to the Supply and revenues received under this Purchase Order, including all income, sales, excise, value added, sale and use, consumption and use, personal property, license fees, employment-related and other taxes, all stamp duties, customs and excise duties and other like duties; and
- b.** Seller shall be responsible for the administration and payment of all taxes, duties, fees or charges imposed on or payable in relation to the Supply and shall indemnify Buyer for Seller's failure to pay same on a timely basis.
- c.** If any exemption, reduction, allowances or other privileges in relation to taxes may be available to the Vendor or the Buyer, the Vendor shall use all reasonable endeavors to enable the Buyer to benefit from any savings or refunds (including interest awarded) to the maximum allowable extent. The Buyer may withhold or deduct from any payment due the Vendor, any taxes that the Buyer is required by any taxing authority to withhold or deduct.

## **7. Packaging, Shipping and Documentation**

Seller shall ensure that the Supply is adequately protected from damage and deterioration during shipment and short term storage having due regard for the conditions and environment at the Site and areas through which the Supply will traverse, to include climate, roads, and requirement for multiple handling. In packaging, marking and transporting the Supply, Seller shall abide by international and national regulations regarding the transportation of Supply and the protection of safety, health and the environment.

It is Seller's obligation to pack, mark and ship materials and equipment and issue respective shipping documents with clear indication and reference between Purchase Order items being invoiced and items being shipped. The Price includes, among others packing, palletising, shipment and handling unless otherwise expressly stated herein. Seller shall replenish as soon as possible, at own cost, and/or pay for damaged Supply resulting from improper packing or marking.

If the Supply includes or constitutes dangerous, hazardous or toxic items, Seller must include "Material Safety Data Sheets" and clearly mark or label the Supply with appropriate information, provide necessary shipping certification and otherwise comply with all Laws and requirements of Buyer. Costs arising from failure of Seller to follow proper packaging, marking and transporting procedures and instructions as specified in the Purchase Order shall be for the account of Seller.

Prior to shipment, Seller shall provide Notice to Buyer of the shipping date, shipping weight, dimensions, name of carrier, quantity and description of the Supply to be shipped and expected date and time of arrival at the point of delivery; and obtain a shipping release. Failure to provide such Notice and to obtain a shipping release may result in return of Supply without cost to Buyer. The address for delivery shall be as stated on the Purchase Order Cover Sheet or as otherwise directed by Buyer. In the event that special unloading facilities at Site will be required (eg lifting beam, crane etc), the Seller shall give proper notice with full details of these requirements prior to shipment. When organising delivery, Seller will cooperate in full with the Buyer's shipping agent.

Each case, carton, box, crate and container in each shipment shall be accompanied by a proper delivery docket or packing list that is attached to the exterior of the package with a duplicate inside, and that details this Purchase Order number, quantity and description of the Supply. Items shipped loose shall be so identified on the packing list. Buyer's count will be accepted as final and conclusive on shipments not accompanied by Seller's itemized delivery docket or packing list.

All Supply received in excess of Purchase Order requirements will be subject to return for credit at Seller's cost. Costs arising from failure of Seller to follow proper shipping instructions as specified in this Purchase Order shall be for the account of Seller.

## **8. Delivery and Schedule**

Seller shall deliver all Supply on the dates specified and at the delivery points specified in this Purchase Order. Delivery will not be completed until Seller has complied in full with the shipping and documentation requirements detailed in Clause 7.

Time is of the essence with respect to delivery. Seller at its own expense shall (i) furnish schedules and status of manufacture and delivery as Buyer may reasonably require, (ii) provide immediate Notice to Buyer of any delay or anticipated delay in the delivery of Supply or documentation, and (iii) take all reasonable precautions to avoid delays and mitigate the effects of delays without additional cost to Buyer.

If Seller delivers the wrong quality or quantity of Supply or otherwise delivers Supply that is Defective or not Acceptable or otherwise does not conform with the requirements of this Purchase Order, then without prejudice to any other rights which Buyer may have against Seller (but subject to the releases and limitations of Liability in Clause 14), Buyer may within a reasonable time from delivery and at Seller's expense, reject such Supply and return same at Seller's expense or convert such Supply into a conditions that is Acceptable to Buyer or otherwise remedy the deficiency.

If Seller is unable to make delivery within the time stipulated (or within any extension of time granted by Buyer pursuant to a Change Order) Buyer will, unless the delay results from a force majeure event or Buyer's own act or omission, be at liberty (without prejudice to any other right or remedy of Buyer but subject to the releases and limitations of Liability in Clause 14) to make special arrangements for expedited transport to the Site at Seller's expense.

Where Seller is in breach of any part of this Clause 8, Buyer shall be entitled, without prejudice to any other rights, to purchase Supply from a third party and the Seller shall be liable to the Buyer for any additional costs incurred by the Buyer in purchasing Supply from a third party.

## **9. Force Majeure**

Neither Seller nor Buyer shall be considered in breach of their obligations (other than payment of money) under this Purchase Order where performance is delayed or prevented by any circumstances beyond such party's reasonable control, including but not limited to an act of God or a public enemy, acts of terrorists, fire, flood, named hurricane or cyclone, strike or any other form of industrial action of an industry wide nature, freight embargo, provided that the party claiming force majeure shall within ten (10) days from the beginning of such event notify the other party in writing of the fact of the event and its probable effect on performance.; The party claiming force majeure shall take reasonable measures to mitigate the potential impact of the force majeure event on its performance under this Purchase Order. A force majeure event shall not be a basis for a claim for additional compensation, and each party shall bear its own costs and expenses associated with or caused by such an event.



## **10. Inspection, Testing and Expediting**

Buyer and its designated agent or representative shall have full and free access at all reasonable times to inspect the Supply from standpoints of quality, progress and compliance with the requirements of this Purchase Order. Such inspection may take place at any stage of engineering, manufacture or completion at the shops, factories or other places or businesses of Seller or any of its Sub-suppliers.

Buyer reserves the right to review Seller's quality assurance and quality control procedures. Any inspection, lack of inspection, checking, approval or acceptance of the Supply by the Buyer and/or its designated agent or representative will not relieve the Seller of its responsibility to supply and deliver the Supply in accordance with the requirements of, or to otherwise comply with its obligations under, this Purchase Order

Seller is obliged to ensure that relevant orders with Sub-suppliers contain terms and conditions affording Buyer and its representatives the right of testing, inspection and expediting, afforded in this Purchase Order.

Seller will notify Buyer at least ten (10) calendar days in advance of the date's inspection or testing can be made. If for any reason the inspection or testing date is delayed, Seller shall advise Buyer in writing immediately. In the event that representatives of Buyer arrive for an inspection pursuant to Seller's notification of readiness and discover that the Supply is not ready for inspection, Seller shall be responsible for all personnel costs and expenses, whether for extension of the visit or for an additional visit.

Seller shall not ship the Supply without either Buyer's final written inspection approval or a written waiver of inspection from Buyer. Violation of this obligation shall constitute grounds for rejection of the Supply, with subsequent costs for return or other appropriate action for the account of Seller.

## **11. Title and Risk of Loss**

Seller warrants that it will provide good and unencumbered title for all Supply under this Purchase Order. Title shall transfer to Buyer at the time of delivery to and acceptance by Buyer; however, if Seller receives partial or progress payments prior to such delivery and acceptance, Seller shall transfer title to such completed or partially completed Supply at the time of such payment, and identify such items as the property of Buyer by conspicuously marking or tagging same. Notwithstanding passage of title on completed or partially completed Supply at the time of partial or progress payments, risk of loss on such items shall remain with Seller until delivery to and acceptance at the point of delivery stated in this Purchase Order.

Seller shall promptly make good at its own cost any loss or damage, howsoever caused, to the Supply before the risk of loss therein has passed to Buyer. Except only as otherwise stated in this Purchase Order, Seller shall be responsible to insure the Supply for its full replacement value against loss or damage during manufacture, pending delivery and in transit to, and acceptance by Buyer at, the delivery point specified in the Purchase Order. If the Supply is destroyed or damaged prior to delivery and acceptance, Buyer will be entitled to cancel this

Purchase Order in respect of such Supply without Seller being entitled to any payment or compensation, and to the extent any payment has been made by Buyer in respect of such Supply, Seller must immediately refund in full the amount so paid.

If pursuant to warranty or otherwise Seller rectifies the Supply at the Site, or removes it from the Site for rectification, risk of loss in such Supply shall pass to Seller when the work of rectification commences or Seller takes possession of the Supply, whichever is the earlier, until the rectification at Site is complete or the Supply is returned to and are safely reinstalled, as the case may be, whereupon risk of loss will pass again to Buyer.

## **12. Confidentiality, Intellectual Property and Data Security**

Seller agrees for itself and Sub-suppliers, and their respective employees, agents, and assigns (i) to treat as confidential and proprietary, (ii) not to disclose to others, during or subsequent to the term of this Purchase Order, and (iii) not to use, except for purposes of providing the Supply, without the express prior written consent of Buyer, which consent may be withheld for any reason whatsoever, any Confidential Information. Seller shall take all necessary precautions, contractual and otherwise, to prevent unauthorised disclosure or use of Confidential Information.

Notwithstanding the foregoing, Confidential Information shall not include any information that:

- is, or shall have been, in the possession of Seller and not subject to a confidentiality obligation to Buyer or its corporate affiliates prior to disclosure thereof in connection with the Supply;
- through no act or omission of Seller becomes published or otherwise available to the public under circumstances such that the public may utilise the same without any direct or indirect confidentiality obligation to Buyer or its corporate affiliates; or
- is acquired by Seller from any third party rightfully possessed of the same and having no direct or indirect confidentiality obligation to Buyer or its corporate affiliates, with respect to the same.

Seller acknowledges that Confidential Information is an important asset of Buyer and that there is not an adequate remedy at law for a breach of this Clause 12 and Buyer will suffer irreparable harm as a result of such a breach. Therefore, Seller agrees that Buyer shall be entitled to equitable relief, including temporary and permanent injunctive relief without the obligation of posting bond (cash or otherwise) in the event of actual or threatened disclosure or use of Confidential Information in breach of this Clause 12.

Notwithstanding the restrictions in this Clause 12, Seller shall have the right to disclose Confidential Information if required by Law, provided in such situations to the extent possible Seller shall provide prior Notice to Buyer of such disclosure and specific details as to the Confidential Information required to be disclosed.

If Seller has any Confidential Information or other data owned by the Buyer or any Buyer affiliate (collectively, "Sensitive Information") on Seller's information technology systems, Seller shall, for as long as any Sensitive Information resides on Seller's information technology system: (i) employ industry-standard firewall and encryption protection for its information

technology systems, and (ii) use commercially reasonable efforts to scan its information technology system for viruses and malware and promptly mitigate the effects of any viruses or malware detected. Seller immediately shall notify the Buyer if it becomes aware, or has reason to believe, that any breach of this Clause has occurred, that any unauthorized access to or use of, or any security breach relating to or otherwise affecting, any Sensitive Information has occurred, or that any person who has had access to Sensitive Information has violated or intends to violate the terms of this Agreement. Seller shall, at its own expense, cooperate with the Buyer in investigating and responding to the foregoing.

Seller hereby grants to Buyer a non-exclusive, irrevocable, assignable, royalty free licence and right to use the Supply for its purposes. Furthermore, Buyer shall have the right to use all Intellectual Property rights in and to any and all of the records, reports, data, and other information, and all copyrightable work prepared by Seller and provided to Buyer as part of the Supply.

Seller shall release, indemnify, defend and hold harmless Buyer and its corporate affiliates and their directors, officers, employees, agents and representatives from and against any Liability arising from violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by the use or sale of Supply under this Purchase Order except in so far as such infringement is due to Seller having used or followed a design provided by Buyer; provided that Seller shall be given adequate authority, information and assistance (at Seller's expense) for the defence of same, subject to the right of Buyer to participate at its expense and to be fully advised by Seller in advance of all actions taken. If the Supply or any part thereof is held to infringe any patents, licences or any right of use, use or disposition, or if the sale or use of said Supply is enjoined, regardless of whether such determination constitutes a final judgment, Seller shall, at its expense and with Buyer's approval, either procure for Buyer the right to use said Supply, or replace such Supply with substantially equal but non-infringing Supply.

### **13. Warranty and Quality**

Seller warrants to Buyer that the Supply covered by this Purchase Order will be Acceptable, free from Defects and will strictly comply with the specifications, drawings, and other descriptions identified in this Purchase Order or thereafter mutually agreed by the parties in writing, will be new, of good quality, of good materials, design and workmanship, free from defects, and will properly function under the operating conditions specified herein.

If, during performance of the Supply or at any time prior to the expiry of any warranty, the Supply fails to conform to any warranty, the Purchase Order or if any Defect in the Supply becomes apparent to the Buyer, then the Buyer shall provide Notice to the Seller describing the nonconformance or Defect. Upon receipt of such Notice, the Seller shall, at its expense, promptly and diligently remedy the nonconformance or Defect within 14 days or such other period as Buyer may reasonably require, having regard to the nature and effect of the nonconformance or Defect.

If Seller fails to take action or to remedy any nonconformance or Defect it is required to carry out under the Purchase Order, within the period required under the Purchase Order, or if the Seller has attempted to remedy such nonconformance or Defect and been unable to do so

within a reasonable time, the Buyer may, in addition to any other rights and remedies available at law or in equity, itself without further Notice to Seller, arrange to have a third party remedy the nonconformance or Defect or remedy the nonconformance or defect with Buyer personnel all at Seller's expense.

The warranty provided in this clause shall apply to any Supply performed by the Seller to correct a nonconformance or Defect, extending for a period of one year from the date the Seller and the Buyer agree in writing that such corrective work has been completed to the satisfaction of the Buyer.

#### **14. Indemnity and Liability**

To the full extent permitted by Law:

- a)** Seller shall release, indemnify, defend and hold harmless Buyer, its corporate affiliates and their directors, officers, employees, agents and representatives from and against any Liability arising from (i) Seller's failure to comply with Law in providing the Supply or performance under this Purchase Order, (ii) violation or infringement of rights in any patent, copyright, proprietary information, trade secret or other property right caused or alleged to be caused by the use or sale of the Supply under this Purchase Order except in so far as such infringement is due to the Seller having used or followed a design provided by or on behalf of the Buyer and (iii) the injury to or death of persons (including employees of Buyer and Seller) or damage to or loss of property where resulting from the negligent acts or omissions of Seller, defects in the Supply or breach of Seller's obligations under this Purchase Order.
- b)** Subject to the releases and limitations of Liability set forth in this Clause 14, the rights and remedies afforded either party under this Purchase Order shall not be to the exclusion of any rights and remedies otherwise available a law or in equity.
- c)** Neither party shall be liable to the other party for its consequential, incidental, indirect, punitive or exemplary damages (including, but not limited to, loss of use, loss of profit or other similar economic damages).
- d)** The releases and limitations of Liability set forth in this Clause 14 shall be effective notwithstanding any provision in this Purchase Order to the contrary and irrespective of the basis upon which the claim is brought, including contract, indemnity, warranty, tort (including negligence), strict liability or any other basis; provided such releases and limitations shall not be effective for (i) Liability based on the fraud, gross negligence or willful misconduct of the party being released or the party whose Liability is being limited, (ii) Liability of Seller subject to its indemnification obligations under Paragraph "a" above, and (iii) Liability of Seller for breach of its obligations under Clause 12.

## **15. Liens**

Seller represents and warrants that it shall timely pay all employees and Sub-suppliers to ensure that such employees and entities do not file a Claim against, or attach or place an encumbrance on property of Buyer, its corporate affiliates. Seller shall protect, indemnify, defend, and hold harmless Buyer and its corporate affiliates from and against any and all Liability related to Claims or encumbrances placed on property of Buyer and its corporate affiliates. To the full extent permitted by Law, Seller, waives all rights of lien against the property or premises of Buyer and its corporate affiliates for any and all Supply.

## **16. Suspension**

Buyer may suspend all or part of the Supply for such time or times and in such manner and for such reason as Buyer in its absolute discretion may consider necessary. Any such suspension shall be effective upon Buyer providing Notice of such suspension to Seller.

Except for any back charges or set offs permitted under this Purchase Order and provided the reason for the suspension is not as a result of Seller's default, Seller shall be entitled to reimbursement of all provable direct costs and expenses resulting from such suspension, provided Seller has used all reasonable efforts to mitigate the effects of suspension as they may pertain to its Sub-suppliers and the Supply.

If Seller believes that any such suspension or withdrawal of suspension justifies modification of this Purchase Order for compensation or schedule, Seller shall comply with the provisions set forth in Clause 24. In no event shall Seller be entitled to any loss of prospective profits, contribution to overhead or any incidental, consequential or other damages because of such suspensions or withdrawals of suspension.

Buyer, in its absolute discretion, may direct Seller to recommence the whole or the relevant part of the Supply and Seller shall comply promptly with the direction.

## **17. Cancellation**

Buyer may cancel for its convenience this Purchase Order in whole or in part without need of requirement, action or court order whatsoever by giving Notice to Seller indicating the date of cancellation. On the date indicated in such Notice, Seller shall cease manufacture, supply and all other work, not place any further orders or commitments, preserve and protect materials on hand purchased for or committed to this Purchase Order, work in progress, and completed work both in Seller's and in its Sub-suppliers' facilities pending Buyer's instruction, and shall dispose of same in accordance with Buyer's instruction and otherwise take all action relating to the cancellation that Buyer may reasonably require. To the extent the Supply is standard or stock items and are not yet delivered or in transit, Buyer shall have no further obligation. If the Supply is not standard or stock items, have been delivered or are in transit, Buyer shall pay Seller all costs and expenses incurred as a result of cancellation, all as reasonably determined by Buyer plus five percent (5%) to cover Seller's overhead and profit, plus amounts otherwise due under this Purchase Order, but in no event will the total amount to be paid when added to previous payments to Seller exceed the Price, as adjusted through a Change Order.

Except for any back charges or set-offs permitted under this Purchase Order, Seller shall be entitled to compensation for materials and work performed prior to the date of cancellation and provable direct costs and expenses resulting from such cancellation; provided such compensation shall not exceed the proportion of the Price that the work Seller had satisfactorily performed to the date of cancellation; further provided Seller shall minimise costs and mitigate consequences of such cancellation. In no event shall Seller be entitled to any loss of prospective profits, contribution to overhead or any incidental, consequential or moral damages because of cancellation of this Purchase Order.

Upon cancellation of this Purchase Order and at Buyer's request, Seller shall deliver, as a condition precedent to final payment, all Project Documentation requested by Buyer within thirty (30) calendar days after receiving Buyer's request.

## **18. Termination**

If Seller breaches any of its obligations under this Purchase Order, or if Seller becomes insolvent or bankrupt or makes an arrangement with its creditors or has an administrative receiver or administrator appointed or commences to be wound up (other than for purposes of amalgamation or reconstruction), Buyer may at its option and without prejudice to any of its other rights under law or equity or this Purchase Order (but subject to the limitations and conditions of Liability set forth in Clause 14), and without need of requirement, action or court order whatsoever, terminate the Purchase Order for cause by giving Notice to Buyer of such termination. In such event, Seller shall deliver or assign to Buyer any work or rights to work in progress as Buyer may request and Buyer may complete the performance of this Purchase Order by such means as Buyer selects and Seller will be responsible for any additional costs incurred by Buyer in so doing. Any amount due but unpaid to Seller as of the date of termination shall be applied towards the additional costs, expenses and damages incurred by Buyer as a result of Seller's default.

## **19. Complete Agreement**

This Purchase Order, together with the specifications, drawings and all documents attached hereto, and the other documents referred to therein, which by this reference are all made an integral part hereof, constitutes the entire agreement between Buyer and Seller with respect to the Supply and supersedes Buyer's estimate and tender and all prior negotiations, representations or understandings of any kind. No conditions in Seller's accepting or acknowledging this Purchase Order will be binding on Buyer unless specifically accepted in writing by Buyer. Any terms and conditions included in any invoices, acknowledgements or communications issued by Seller shall not be applicable to this Purchase Order even if signed by Buyer.

## **20. Variations**

Changes to this Purchase Order will not be binding upon the parties unless and until expressly made in writing by way of a written Variation ("Variation") and accepted by both Buyer and

Seller. This Purchase Order shall not be amended or superseded by any provisions in invoices, bills of lading, packing slips, receipts, rate schedules work tickets or any sales documents, whether signed or acknowledged by Buyer.

Buyer may propose additions or modifications to the Supply or the requirements or entitlements under this Purchase Order. Buyer and Seller shall mutually agree upon an equitable adjustment in the Price and/or schedule to reflect the effect of such proposed change. Seller will not perform any proposed change unless and until the parties have signed a Variation implementing such change or Seller is otherwise specifically directed in writing by Buyer to implement a change, pending finalisation of a formal Variation.

The Supply under any Variation shall be subject to and performed in accordance with the terms and conditions of this Purchase Order, except only as expressly agreed in such Change Order.

## **21. Assignment and Subcontracting**

Neither this Purchase Order nor any portion hereof shall be assigned, delegated or sub-let by Seller without Buyer's prior written consent; provided Seller may subcontract to any firm or company that is listed or named in this Purchase Order as a Sub-supplier and may sub-let the supply of minor materials and details.

Seller shall be responsible and liable for all acts, omissions, performance or non-performance by its Sub-suppliers in connection with the Supply to the same extent it would be if Seller had performed such acts, omissions, performance or non-performance itself. Seller's responsibility and liability for its Sub-suppliers shall not be waived or reduced as a result of Buyer's approval of any Sub-supplier or the naming of such Sub-supplier in this Purchase Order.

Buyer reserves the right to assign in its sole discretion its interest in this Purchase Order to its respective successors and assigns, and Seller hereby consents to any such assignment.

## **22. Correspondence, Language and Notices**

All correspondence and documentation related to this Purchase Order shall be transmitted to the Buyer's representative at the address specified in Annexure A Item 4. The Purchase Order number and Buyer's name (or where appropriate, such other name as directed by Buyer) must be shown on all correspondence and documentation (e.g. invoices, communications, packing lists, delivery docket, waybills and bills of lading). Seller shall on a timely basis provide all progress reports, engineering and other data specified in this Purchase Order or otherwise required for the satisfactory use, maintenance, repair, installation or operation of the Supply.

All contract documents, correspondence, specifications, drawings, technical documents, computer generated documents, accounting documentation, written and oral communications and all other matters pertaining to this Purchase Order shall be solely prepared and communicated in the English language.

All formal notices, requests, approvals, consents and contractual communications ("Notices") shall be in writing, and shall be sent in the form of a letter and to the other party at the address specified in Annexure A of this Purchase Order. Either party may change its address by Notice to the other party. Without prejudice to any other authority, any Notice over a signature of a representative of a party shall be deemed to be properly authorised.

All Notices to be given under this Purchase Order must be in strict compliance with the requirements of this Clause 22 and any notice or notification attempted or made to other addressees or in any other fashion shall be of no effect and not considered to be a valid Notice under this Purchase Order.

The above procedure for Notices shall not apply to informal day to day communications between Parties that shall be by logged e-mail or such other means as the parties agree.

### **23. Applicable Law, Compliance with Policies and Licenses**

The validity, interpretation and enforcement of this Purchase Order shall be governed by the laws of the location specified in Annexure A item 5 (except for laws pertaining to choice of law or conflicts of law) and each party submits to the exclusive jurisdiction of the courts of the jurisdiction specified in Annexure A item 6(a).

Seller agrees to strictly comply with, and ensure that its employees, agents, and representatives strictly comply with, Law, including but not limited to those relating to labour, health and safety, environmental, mine safety, and taxation, human rights and bribery of public officials, corrupt business practices and the like.

Seller acknowledges having reviewed Newmont's Code of Conduct, which is available under the About Us/ Governance and Ethics tabs at [www.Newmont.com](http://www.Newmont.com), and, when Seller is engaged in activities on Buyer's behalf, Seller shall abide by the principles expressed in Buyer's Code of Conduct, to the extent applicable. In addition, Seller acknowledges having reviewed the Buyer's Supplier Code of Conduct, which is available under the About Us/ Governance and Ethics tabs at [www.Newmont.com](http://www.Newmont.com).

Seller shall ensure it will promptly apply for and procure without additional compensation all permits (except for such permits as may be specifically set forth as Buyer's responsibility), certificates and licences required by Law or governmental authorities having jurisdiction over the Supply or Seller.

### **24. Claims and Dispute Resolution**

Seller must provide Notice promptly and in any event within ten (10) calendar days from the occurrence of any act, event or condition that may entitle Seller to any adjustment in schedule or other requirement or any additional compensation or entitlement in connection with the Supply or this Purchase Order. If Seller fails to provide Notice within such ten (10) calendar days, Seller forfeits and hereby waives all rights for any adjustment in schedule or additional compensation or entitlement under this Purchase Order. Except as otherwise agreed in writing



by Buyer, within fifteen (15) calendar days from such Notice by Seller, Seller shall substantiate its claim with information, records and documentation reasonably necessary and satisfactory to Buyer and subject to the verification of Buyer.

Notwithstanding anything to the contrary in this Purchase Order, no claim or legal action for compensation under this Purchase Order will be allowed or valid if asserted by Seller after final payment under this Purchase Order.

Except for matters requiring immediate injunctive or similar equitable relief, all disagreements, controversies, claims, disputes or other matters in question between the Parties arising out of or relating in any way to this Purchase Order ("Disputes") shall be resolved pursuant to this Clause 24.

If either party provides Notice to the other of any Dispute, such Dispute shall be submitted promptly to a senior management representative identified by each party, who shall meet with each other, in person or by telephone, not later than ten (10) calendar days after the date such Dispute was submitted to them.

If the senior management representatives fail to resolve the dispute within fourteen (14) calendar days after the matter is submitted to them (or within such longer period as may be agreed by the Parties), then the Dispute shall be subject to arbitration at the location specified in Annexure A item 6(a) and utilising the forum of arbitration as specified in Annexure A item 6(b).

The parties agree that neither (i) trade custom or usage and prior course of dealing, nor (ii) the United Nations Convention for the International Sale of Goods, the Sale of Goods Act or similar statutory provisions related to the sale of goods, shall apply with respect to the Supply or this Purchase Order.

## **25. Bribery and Anti-corruption**

The Seller represents, warrants and covenants to the Buyer that, as of the date hereof and the date that each invoice is submitted to the Buyer, in carrying out its responsibilities, neither the Seller, nor any of its equity holders, beneficial owners, partners, officers, directors, employees or agents, shall, directly or indirectly, offer, pay, promise to pay, or authorize the payment of any money, or offer, give, promise to give, or authorize the giving of any financial or other advantage or anything else of value:

- (A) to (1) any official or employee of any government, or any department, agency, or instrumentality thereof, (2) any political party or official thereof, or to any candidate for political office, (3) any official or employee of any public international organization or (4) any person acting in an official capacity for or on behalf of such government, department, agency, instrumentality, party, or public international organization, in each case for the purpose of influencing any act or decision of such party, or of such official, employee or candidate in his official capacity, or inducing such official, employee, party or candidate to do or omit to do any act in violation of the lawful duty of such official, employee, party or candidate, or securing any improper advantage, or inducing such official, employee, party or candidate to use his or its influence with a

government or instrumentality thereof to improperly or illegally affect or influence any act or decision of such government or instrumentality; or

- (B) to an officer, employee, agent, or representative of another Buyer or organization, with the intent to influence or reward the recipient's action(s) with respect to his Buyer's or organization's business, or to gain a commercial benefit to the detriment of the recipient's Buyer or organization, or to induce or reward the improper performance of the recipient's duties.

Notwithstanding any other provision of this Agreement, the Buyer may immediately suspend this Agreement in the event it should receive information which, in its sole discretion, it determines to be evidence of a breach by The Seller of any representation, warranty or undertaking in clause (i) above. In the event of receipt of such evidence and/or such suspension, the Buyer shall consult with the Seller and may thereafter immediately terminate this Agreement if the Buyer, in its sole discretion, is reasonably satisfied that such a breach has occurred. In the event of such termination, the Buyer shall have no liability to the Seller under this Agreement for any fees, reimbursements, or other compensation under this Agreement or for any other loss, cost, claim, or damage resulting, directly or indirectly, to the Seller from such termination, other than for Services already performed and/or goods already delivered.

## **26. Publicity**

Seller shall not issue any information, news release, publication, advertisement, document, photograph or article for publication concerning the Supply, the Site or Buyer in any news media or to the public without prior written approval of Buyer. Seller shall ensure that any of its Sub-suppliers comply with the publicity restrictions herein and that said Sub-suppliers not issue any such information without first receiving Buyer's written approval. The restriction in this Clause 26 shall not be applicable to the extent required by Law, provided Seller shall provide immediate (and if possible, prior) Notice to Buyer of any such publicity or disclosure required by Law.

## **27. Survival**

The provisions of clauses 1, 3, 4, 5, 6, 8, 9, 12, 13, 14, 15, 17, 18, 19, 21, 22, 23, 24, 26, 27, 28, 29, 30, and 32 and any other provisions which by their nature are intended to survive the termination, completion or expiration of this Purchase Order shall continue as valid and enforceable obligations of the parties notwithstanding any such termination, completion or expiration.

## **28. Severability**

In the event any provision, or any part or portion of any provision of this Purchase Order shall be held to be invalid, void or otherwise not enforceable, such holding shall not affect the remaining part or portions of that provision, or any other provision of this Purchase Order.

## **29. Approvals**

Buyer's (i) review or approval of drawings, (ii) inspection or failure to inspect the Supply, (iii) witnessing of tests or waiving the witness of tests, (iv) approval or acceptance of items tested, inspected or shipped, or (v) payment for the Supply, shall in no way diminish or modify Seller's responsibilities or obligations under this Purchase Order, nor impair Buyer's right to reject nonconforming or defective Supply, nor be deemed to constitute acceptance of the Supply notwithstanding Buyer's opportunity to inspect or earlier reject the Supply, and notwithstanding Buyer's knowledge of the non-conformity, defect or non-compliance with the requirements of this Purchase Order.

## **30. Waiver**

The failure by either party to insist on performance of any term, condition, or instruction, or failure to exercise any right or privilege, or its waiver of any breach, shall not thereafter constitute a waiver by such party of any such term, condition, instruction, right, privilege or breach.

## **31. Independent Contractor**

For all purposes connected with this Purchase Order, Seller shall act as an independent contractor and not the agent or representative of Buyer. Seller shall be solely responsible for determining the means, manner, and method for providing the Supply and for directing and supervising anyone employed or contracted by Seller.

Neither Seller nor anyone employed or contracted by Seller shall be deemed to be an agent, employee, servant, worker, or representative of Buyer for any purposes under Law, including but not limited to Worker's Compensation, employee benefits and employment taxes, collection of income tax at the source (i.e., withholding).

## **32. Insurance**

Unless otherwise specified in this Purchase Order, the Seller shall have the risk of loss with respect to and shall be responsible to insure the Goods against loss or damage during manufacture, pending delivery and in transit to the delivery point specified in the Purchase Order and until acceptance by the Buyer. If Goods are destroyed or damaged prior to delivery and acceptance, the Buyer will be entitled to cancel this Purchase Order in respect of those Goods without the Seller being entitled to any payment or compensation, and to the extent any payment has been made by the Buyer in respect of those Goods, the Seller must immediately refund in full the amount so paid.

**ANNEXURE A**  
**PURCHASE ORDER SUMMARY**

<b>Item</b>	<b>Description</b>	<b>Value/Meaning</b>
1	<b>Effective Date</b> (Issue Date on Purchase Order Cover Sheet)	
2	<b>Seller</b> (Sellers Name on Purchase Order Cover Sheet/ Definition of Seller in Clause 1 'Definitions' of the Purchase Order General Terms and Conditions)	
3	<b>Expiry Date</b> (Clause 14 'Warranty' of the Purchase Order General Terms and Conditions)	24 calendar months from Delivery.
4	<b>Buyer's Address for Notices</b> (Clause 25 'Claims and Dispute Resolution' address to Buyer's contact on Purchase Order Cover Sheet)	Attention: Buyer Representative
	<b>Seller's Address for Notices</b>	Attention: Seller Representative Address:
	Monetary Limitations of Liability (Clause 15 'Indemnity and Liability' of the Purchase Order General Terms and Conditions)	The Purchase Order total sum.
5	Governing Law (Clause 24 'Applicable Law and Licences' of the Purchase Order General Terms and Conditions) – Law governing interpretation of Agreement	Laws of the Republic of Ghana
6(a)	Dispute Resolution Location (Clause 24 'Claims and Dispute Resolution' of the Purchase Order General Terms and Conditions)	Republic of Ghana
6(b)	Dispute Resolution forum (Clause 25' Claims and Dispute Resolution' of the Purchase Order General Terms and Conditions)	International Chamber of Commercial
7	All Risk Cargo Insurance (Clause 32 'Insurance' of the Purchase Order General Terms and Conditions)	Provided by Seller
8	Security and Parent Company Guarantees	N/A
9	Performance Guarantee	N/A