



PENTALIN GROUP OF COMPANIES

GENERAL TERMS AND CONDITIONS  
OF CONTRACT

## 1. General

1.1 These General Terms and Conditions (“**Terms and Conditions**”) shall apply to all tenders, proposals, submissions and subsequent purchase orders/agreements issued by or requested from Pentalin Group of Companies including Johdee Minerals Processing (Pty) Ltd; Pentalin Processing (Pty) Ltd and Pentalin Trading (Pty) Ltd, hereinafter referred to as “**the Company**”.

1.2 Upon receipt of the signed proposal:

1.2.1 these Terms and Conditions shall prevail and be construed as an addition to any subsequent agreements entered by and between the Company and the entity providing the goods or service (hereinafter referred to as the Supplier/Contractor) (hereinafter the Company and Supplier/Contractor collectively referred to as the Parties and respectively as the Party);

1.2.2 in the case where a purchase order has been provided or where a subsequent agreement is entered into, these Terms and Conditions shall be incorporated into and be read together with such subsequent agreement and/or purchase order. Where there is a conflict between the terms and conditions contained herein and the terms and conditions contained in the purchase order or subsequent agreement, the terms and conditions as provided herein shall prevail unless agreed to otherwise in writing by both parties.

## 2. Interpretation

2.1 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 succeeding business day.

2.2 Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the content indicates a contrary intention.

2.3 The rule of construction that an agreement shall be interpreted against the Party responsible for the drafting or preparation thereof, shall not apply to these Terms and Conditions.

2.4 The use of the words “include” and “including” followed by specific examples shall not be construed as limiting the meaning of the general wording preceding it, and the *eiusdem generis* rule must not be applied in the interpretation of such general wording or such specific examples.

2.5 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 these Terms and Conditions.

2.6 No provision of these Terms and Conditions shall, unless otherwise stipulated, constitute a stipulation for the benefit of any person (*stipulatio alteri*) who is not a Party to the agreement between the Company and its client.

## 3. Governing Law

The law which is to apply to these Terms and Conditions, and according to which these Terms and Conditions are to be interpreted, shall be the law of the Republic of South Africa.

## 4. Cession

No Party shall cede, delegate, assign or otherwise transfer or dispose of any of its rights or obligations hereunder without the prior written consent of the other Party.

## 5. Concession not to constitute waiver

No grant by either Party to the other of any concession, waiver, condonation or allowance shall, in respect of any specific event or circumstance other than that in respect of which the grant was made, constitute a waiver of the rights of the grantor in terms of these Terms and Conditions or estoppel of the grantor’s right to enforce the provisions of the Terms and Conditions.

## 6. Terms of Payment

6.1 The Supplier/Contractor acknowledges that it has satisfied itself as to all the stipulations, conditions and circumstances affecting the agreed rate for the execution of the scope of work.

6.2 Upon completion of Work a tax invoice for all work completed up to and including the invoice date, will be issued to the Company, which tax invoice shall comply with the provisions of the Value Added Tax Act 89 of 1991, unless agreed otherwise in writing.

6.3 Invoices will be payable within 30 (thirty) days of the date of the statement. Overdue accounts shall bear interest at the prime overdraft rate plus 2% (two percent) compounded monthly, calculated from the date of the invoice.

6.4 If any item or part of an item on a tax invoice is disputed by the Company, the Company shall notify the Supplier/Contractor thereof whereupon the Supplier/Contractor shall issue and submit a credit note to the Company in respect of the disputed amount. All disputes shall be resolved by no later than the 25<sup>th</sup> (twenty-fifth) day of the following month.

6.5 All amounts payable by the Company shall be made by way of electronic funds transfer (“EFT”) into the Supplier/Contractor’s designated account.

## 7. VAT

All fees and disbursements quoted are exclusive of Value Added Tax.

## 8. Publication and Confidentiality

8.1 For the purposes of these Terms and Conditions, all information furnished by the Company to the Supplier/Contractor, and vice versa, shall be deemed confidential information and shall include, but not be limited to:

8.2 The parties shall hold in confidence all confidential information received from one another and shall not divulge the confidential information to any person including employees, save for the employees or agents directly involved with the execution of the scope of work, and in such case, the disclosure of the confidential information to such employees or agents shall only be to the extent required for the execution of the scope of work.

8.3 With respect to all confidential information provided by either Party, the parties will use the same care and diligence to prevent disclosure to third parties of such confidential information, as it employs to avoid disclosure, publication or dissemination of its own confidential information.

8.4 The parties agree to use the confidential information for the sole purpose of these Terms and Conditions and the execution of the scope of work.

8.5 Should there be a dispute between the parties as to whether either Party complied with the provisions of this clause or not, the onus shall be on the alleged defaulting Party to show that it took all reasonable steps to comply with the provisions of this clause and further, the aggrieved Party shall take all reasonable steps to assist the alleged defaulting Party in establishing the source from which such confidential information was made known.

8.6 The provisions of this clause 8 (*Publication and Confidentiality*) shall survive the fulfilment, cancellation or termination of these Terms and Conditions for any reason whatsoever and remain binding on the parties in perpetuity.

## 9. Force Majeure

9.1 Neither Party shall be responsible for or be held liable due to any failure to observe its obligations in terms of any agreement between the parties, where such failure is due to any Force Majeure Event.

9.2 For the purposes of these Terms and Conditions, a Force Majeure Event shall include acts beyond the control of a Party such as acts of God, war (whether declared or not), civil insurrection, hostilities, lightning, earthquake, storm, flood, sabotage, embargoes, fire, explosions and any

event which the Party claiming force majeure could not reasonably be expected to prevent or control, but shall exclude any event caused by negligence of the Party claiming force majeure or any of its employees, agents or representatives or by any failure to observe the standard of care, diligence and skill of a Supplier/Contractor providing comparable Work.

9.3 The burden of proof of the existence of a Force Majeure Event shall rest with the Party claiming force majeure.

9.4 A Party claiming force majeure hereunder shall notify the other Party within 2 (two) Business Days of the circumstances of such Force Majeure Event, and shall advise the other Party, if and when known, of the likely duration of the Force Majeure Event, and shall use all reasonable diligence to remedy the Force Majeure Event.

9.5 If any Force Majeure Event continues and prevents a Party from performing in terms of its obligations for a continuous period in excess of 30 (thirty) days, the Party not claiming force majeure may elect, at its sole discretion, to terminate the agreement by giving the other Party 15 (fifteen) days' written notice.

## 10. Breach

10.1 If any of the Parties commits a material breach of any of the provisions of the agreement, and the breach is capable of remedy, the other Party may call in writing on the Party in breach to remedy the breach within a period of 14 (fourteen) days unless the remedial action was already addressed under clause 12 (*Dispute Resolution*).

10.2 If the breach remains unremedied after the aforesaid notice period has expired, the Party not in breach will be entitled, but not compelled and without prejudice to any of its other rights, to:

10.2.1 claim specific performance; or

10.2.2 terminate the agreement with immediate effect on written notice to the Party in breach; and/or

10.2.3 to re-contract with any other person or persons or to employ other workmen to provide such services as it may think fit to make good such default.

10.3 In addition, the Supplier/Contractor may terminate the agreement with immediate effect in written notice to the Company in the event that the Company commits an act of which fraud is a component.

10.4 In addition, the Company may terminate the agreement with immediate effect on written notice to the Supplier/Contractor in the event that the Supplier/Contractor:

10.4.1 commits an act of which fraud is a component; or



10.4.2 becomes commercially insolvent or commits any act of insolvency; or

10.4.3 is placed in provisional of final liquidation; or

10.4.4 takes any steps to obtain protection or is granted protection from creditors in terms of any law; or

10.4.5 is placed under business rescue.

10.5 The provisions of this clause will not affect the rights of the Parties to claim damages.

## **11. Termination**

11.1 Either Party may terminate the agreement entered into between the parties, as a whole or in part, at any given time provided that 1 (one) calendar month's written notice thereof has been provided to the other Party.

11.2 Where a Party is in breach or default of these Terms and Conditions or of the provisions of the agreement entered into between the parties, the defaulting Party shall be notified in writing within 7 (seven) calendar days of the aggrieved Party's dissatisfaction with regard to performance or non-conformance and shall be provided with the opportunity to respond in writing and take corrective action within 7 (seven) calendar days after being issued with the notice. Record shall be kept of all communication in this regard.

11.3 Upon termination of the agreement entered into between the parties, the Company will pay to Supplier/Contractor all amounts due and not previously paid for the Work completed in accordance with such agreement.

## **12. Dispute Resolution**

Any disagreement or dispute arising between the parties relating to, or arising out of these Terms and Conditions or the agreement entered between the parties, shall in the first instance be referred to the parties' respective Chief Executive Officers (or their designated nominees) for resolution. In the event of the dispute not having been resolved within 15 (fifteen) business days of such referral, or such longer period as the parties' respective Chief Executive Officers (or their designated nominees) may agree in writing, the dispute or difference will be referred to arbitration.

## **13. Limitation of Liability**

13.1 Neither Party shall be liable towards the other Party for any indirect or consequential losses or damages.

13.2 The company's liability towards the Supplier/Contractor for loss of, or damage to the Supplier/Contractor's property shall be limited to all direct losses or damages capped at the amount of the applicable

agreement/purchase order, provided that such damages be limited to proven damages only.

## **14. Risk and Ownership**

Risk shall pass from the Supplier/Contractor to the Company upon physical receipt of the Works/Goods at the Company and signature of the invoice and/or delivery note on behalf of the Company by a Company official. Ownership of the Works/Goods shall pass from the Supplier/Contractor to the Company upon full payment made to the Supplier/Contractor for the Works/Goods.

## **15. Support and Good Faith**

15.1 The parties undertake always 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 necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of the agreement.

15.2 The parties shall always during the continuance of the agreement observe the principles of good faith towards one another in the performance of their obligations in terms of the agreement. This implies, without limiting the generality of the foregoing, that they shall:

15.2.1 always during the term of the agreement act reasonably, honestly and in good faith; and

15.2.2 perform their obligations arising from the agreement diligently and with reasonable care.

## **16. Non-Exclusivity**

Nothing in the agreement between the Parties is intended nor shall it be construed as creating any exclusive arrangement with the Supplier/Contractor in respect of the provision of the Work. As such, the Company shall not be restricted from procuring similar or comparable Work, from any other entity or source, during the duration of the agreement. In addition, the Company reserves the right to test the market as regard to the provision of the Work and may, during the duration of the agreement, seek to test the Contractor's rates and pricing against the Contractor's competitors' rates and pricing as regard to the provision of the Work.