

**REQUEST FOR QUOTATION  
FOR THE SUPPLY OF GAS COMMODITIES  
TO KAMOA COPPER SA  
ENQUIRY NUMBER: 1013-OD-04-013 - GAS**

## **SECTION 1: INSTRUCTIONS TO TENDERERS**

These instructions will not form part of the Agreement with the successful Tenderer.

### **1. GENERAL**

This Request for Quotation (“RFQ”) covers the supply of the Goods defined in Section 2 Supply Specifications.

### **2. TENDERER**

The Tenderer is the organisation or company which submits a tender. The Tenderer has been provided with specific enquiry documentation to do so.

### **3. COVER LETTER TO TENDER**

The Tenderer’s letter accompanying the tender shall state: name of company, contact person’s contact cellular phone and e-mail address.

### **4. CONSORTIUM OR JOINT VENTURE**

Should an invited Tenderer wish to form a consortium or a joint venture or some other form of collaboration, the Tenderer shall formally notify KCSA within 7 days from the RFQ issue date, advising him of the details and seek KCSA’s agreement to tender in such a manner.

KCSA’s agreement is not assured and should the Tenderer continue without KCSA’s written approval the resultant tender may be rejected.

### **5. INSTRUCTIONS**

Tenderers are advised to familiarise themselves with all aspects of this RFQ before inserting any prices or rates. It is hereby understood and agreed that the successful Tenderer shall not be entitled to any increase in the Price quoted caused by contract provisions not taken into account by the Tenderer. The Tenderer’s Price will be considered to be strictly nett, inclusive of all overheads and ancillary costs to supply to the Employer, as set out herein, no claims for items

and activities excluded from the tender will be allowed.

The Tenderer shall investigate the whole of this RFQ to establish and comply with any requirement to provide any information via attachments and shall briefly describe and include the following with their tender:

- 5.1 A Power of Attorney authorising the signatories of the Tender to irrevocably bind the Tenderer to their tender.
- 5.2 Information regarding any pending, imminent and current arbitration, mediation and litigation in which the Tenderer is involved including details of the parties concerned, the subject of such arbitration, mediation and litigation and the disputed amount.
- 5.3 The Tenderers safety statistics and related performance data of similar comparison as the scope of this RFQ.
- 5.4 The name and contact details of 3 (three) previous but recent Employer / Client Representatives who may vouch for the Tenderers previous performance and cooperation, should the need arise.
- 5.5 Provide a list of clients to which the Tenderer has successfully delivered similar services and nature / magnitude and include a short description of the project, value of the project and your specific role delivered at each client. Please provide references and contact details for a selection of these clients.
- 5.6 Certification that the Tenderer is in good standing with the appropriate government and quasi government organisations such as The Revenue Service and The Department of Labour of the Democratic Republic of the Congo.
- 5.7 Where and when was the organisation or company founded?
- 5.8 Who are the major shareholders in the organisation or company?
- 5.9 In which country is the organisation or company registered? Provide registered organisation or company name and registration details in the Democratic Republic of the Congo.

- 5.10 In which countries is your organisation or company represented?
- 5.11 Specify the location of your organisation or company head office.
- 5.12 Specify the location of all your organisation or company offices, locally and internationally.
- 5.13 Has your organisation or company or entity or any former business ever failed in the past five financial years to complete a contract, had the contract partially or fully been taken over or had a contract been varied to delete substantial work to overcome poor performance under the contract? If yes, provide details.
- 5.14 Has any partner, principal or director in your organisation or company ever been associated with any other organisation that has failed in the past five financial years to complete a contract? If yes, provide details.
- 5.15 What benefits will your organisation or company gain through providing this service to the Employer?
- 5.16 What is your organisation or company structure and ownership?
- 5.17 What is the total number of staff employed? Provide an organisation chart. Identifying senior partners/directors and other staff.
- 5.18 Has any partner, principal or director in your Company ever been convicted of an offence?
- 5.19 Describe the skill sets and competencies of the resources your organisation or company has, as well as the number of resources your organisation or company has in the skill sets that would likely be called for by the Employer.
- 5.20 Provide a summary of your “order book” commitments for the next 3 years.
- 5.21 Provide information that approximately defines where the focus of your business lies and indicate which are the prime services your organisation or company provides and those that it typically sub-contracts.

- 5.22 The Tenderer shall submit with the Tenderer's tender, as a separate document, "Corporate Social Investment". Such document shall show any measurements taken to fulfil corporate social investment initiatives in areas where the Tenderer is present/the willingness to contribute to existing initiatives i.e. Development, Training, Local employment and Corporate spend.
- 5.23 Preamble to Bill of Quantities or Basis of Pricing.
- 5.24 Bill of Quantities or Schedule of Rates.
- 5.25 Alterations by Tenderer.
- 5.26 Rates for personnel (labour).
- 5.27 Schedule of equipment to supply, including rental rates and purchase values of these items.
- 5.28 Procurement mark-up.
- 5.29 Cash flow Prediction.
- 5.30 Goods Supply Programme.
- 5.31 Method Statements.
- 5.32 Schedule of Subcontractors and/or Suppliers proposed by Tenderer.
- 5.33 Project Team Structure.
- 5.34 CV's of proposes Site Management Team.
- 5.35 Quality Assurance Programme.
- 5.36 Insurance Details.
- 5.37 Additional Facilities Required.

5.38 Tender Correspondence.

### **SUBMISSION OF TENDER**

The "Original Tender" with all related tender data, annexures, addenda, and enclosures shall be submitted via email to [tenders@kamoacopper.com](mailto:tenders@kamoacopper.com), before the closing time, as follows:

Marked: Confidential  
RFQ Number: **1013-OD-04-013- V002**  
Description:  
Employer: Kamoacopper SA.

Tender's Close: **Thursday 21 May 2020, 12h00 Kolwezi time.**

### **PLEASE NOTE:**

You are reminded to keep a copy of the tender for your records.

**DO NOT DELIVER YOUR TENDER TO INDIVIDUALS. TENDERS SHOULD BE IN NORMAL LETTERS I.E. NOT BOLD OR CAPITALIZED.**

It is the responsibility of the Tenderer to ensure that its tender has been received by KCSA.

The tender shall remain valid and open for acceptance by KCSA for a period of 90 (Ninety) days from the closing date of the tender.

Before the closing date, KCSA may modify, change or amend the tender documents by formally issuing written addenda.

The Tenderer shall acknowledge receipt of each modification, change or addendum by the Tenderer's letter headed written notice to KCSA.

In order to take an addendum into account in preparing the tender, the Tenderer may apply to KCSA for an extension to the closing date, such application is to be received at least seven days prior to the RFQ closing date and time.

Should KCSA grant such extension, KCSA will notify all Tenderers in writing thereof.

Tenderers shall note that despite the foregoing there is no assurance that a requested extension of time will be granted by KCSA.

The Tenderer shall check the number of pages and attachments within this entire RFQ document and should any be found to be missing or in duplicate or the written text or details are indistinct or there is any obvious errors herein or if any doubt exists as to the full intent or meaning of any wording or text or dimensions or sketch or drawing or any ambiguity is found as to the scope of this RFQ, the Tenderer shall promptly notify KCSA in writing and have the same rectified.

No liability whatsoever will be admitted in respect of errors in tenders due to the foregoing if they have not previously been notified in writing to KCSA and it shall be taken that the RFQ and documentation is fully understood and no variations to the Price shall be accepted.

All queries technical, commercial, financial, contractual, and/or errors and other clarifications shall be formally communicated in writing to KCSA who will redirect such matters to the appropriate person, and ensure the suitable written response is distributed to all tenderers. Non adherence may lead to rejection.

Unless queries relate to method of operation and a specific request is received from Tenderers to treat a particular query and / or answer as confidential, then all Tenderers will receive a copy of all queries received together with the answers and / or corrections. These queries / answers shall constitute the rulings and shall be incorporated into the contract documents.

The closing time for clarification of queries and / or request for correction of errors and ambiguities are 48 hours prior to the RFQ closing date and time.

The tendered price is inclusive of all work required to be provided to complete the supply. Activities not listed or priced, and items for which no rate or price is provided by the Tenderer, will not be paid for by KCSA. Such activities and items are deemed to be covered by and included in the other prices and or rates and / or fees contained within the RFQ and or the tender.

All duties and taxes, levies, tolls, registrations, enrolments and other amounts payable by the Tenderer under the contract, or for any other cause, as of the date of tender submission must be included in the rates, prices, and the tendered price (excluding Value Added Tax (VAT)).

Value Added Tax (VAT) payable by KCSA shall be shown separately as an addition to the tendered price.

The Tenderer shall not be permitted to make any alterations and / or adjustments to his tender documents after the date and time for submission elapsed.

In the event of any discrepancies occurring between the prices detailed by the Tenderer in the forms provided with the RFQ and those contained in any additional letter or document submitted by the Tenderer, the former shall prevail.

Errors shall be corrected by KCSA as follows:

- Where there is a discrepancy between the amounts in figures and in words, the amount in words shall take precedence.
- Where there is discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate shall take precedence, unless in the opinion of KCSA there is an obvious gross misplacement of the decimal point in the unit rate, in which case the line item total as quoted shall take precedence, and the unit rate is corrected. Where an individual rate is considered unrealistic, such rate is adjusted as agreed following consultation with the Tenderer.
- Where there is an error in the price, either as a result of the other corrections required by this checking process or in the Tenderer's addition of prices, the price shall be corrected.

The Tenderer shall submit the main offer in accordance with the commercial and technical requirements as set out in this RFQ.

The Tenderer may in addition to the main offer submit an alternative proposal indicating, but not limited to, technical, financial, contractual, health, safety and environmental advantages to KCSA.

Should the Tenderer desire to make any departures from, or modifications to the RFQ provisions, scope, or to qualify the tender in any way, the Tenderer shall set out the proposals clearly. The alterations detailed will be the only alterations considered by KCSA. A schedule of alterations needs to accompany the tender.

The acceptance and / or rejection of such alternative proposals shall be at the sole discretion of KCSA, but such alternative proposal will not be considered where the Tenderer has not submitted a main offer in



compliance with this RFQ.

## **CONDITIONS OF AGREEMENT**

The conditions of contract shall be the KCSA's "Purchase Agreement" attached hereto in Section 3.

## **PRICE ADJUSTMENT**

Tender documents shall contain a clear statement on whether prices quoted by bidders may be fixed or subject to adjustment (upwards or downwards) on the occurrence of specified events over which the Tenderer has no control and which are likely to affect the prices of major cost constituents of the contract, such as labour, imported materials and equipment. Prices may be adjusted by the use of a prescribed formula (or formulae) which breaks down the total price into components that are adjusted by price indices specified for each component or, alternatively, on the basis of documentary evidence (including actual invoices) provided by the Tenderer. The use of the formula method of price adjustment is preferable to that of documentary evidence. The method to be used, the formula (if applicable) and the base date for application shall be clearly defined in the tender documents. If the payment currency is different from the source of the input and corresponding index, a correction factor shall be applied in the formula, to avoid incorrect adjustment. Price adjustment shall be computed separately for each currency of payment.

## **CURRENCY**

The United States Dollar (USD) or equivalent amount in Congolese Franc (FC) should be used to quote the Price. The Employer shall make payments in the currency of the Agreement.

## **TERMS OF DELIVERY**

The scope of matters relating to the rights and obligations of the parties in relation to delivery of the Goods shall be specified using Incoterms 2010 terminology. The Tenderer shall motivate the advantages of its choice of Incoterm to KCSA.

## **ACCEPTANCE OF TENDER**

KCSA reserves the right to reject or accept the whole or part of any tender, or reject all tenders without being obliged to give reasons.

## **REJECTION OF TENDER**

A tender may be rejected if:

- It is received after the closing date and time stipulated in the RFQ or subsequent official written amendment thereto;
- It contains any unauthorized erasure, alteration, text addition or irregularity;
- There is no adherence to communication protocol for communication during the enquiry process;
- It is considered unbalanced, or does not include the required information necessary for proper comparison and evaluation;
- It is not submitted on the forms provided or is not in accordance with the commercial and technical requirements of the RFQ;
- The Tenderer fails to attend meetings convened by KCSA to which he is invited;
- The tender is delivered to individuals;
- It contains conditions of sale;
- The Tenderer or some person's apparently acting on behalf of the tenderer, approaches a member of KCSA's team in an inappropriate manner concerning this RFQ;
- A single invited Tenderer, tendered as a consortium or a joint venture or some other form of collaboration without KCSA's written authorisation.
- Any other reason which KCSA views as valid.

## **CONFIDENTIALITY OF ENQUIRY DOCUMENTATION**

The RFQ issued by KCSA and the tender submitted by the Tenderer shall be treated as confidential and no aspects thereof shall be disclosed to any third parties, except as necessary for the purpose of the RFQ.

Tenders submitted by the Tenderer along with all other responses will become the property of KCSA.

#### **EXPENSES IN THE PREPARATION OF TENDERS**

The Tenderer shall investigate, calculate, compile and issue his tender and incur such costs at the sole expense of the Tenderer.

The Employer shall not be responsible for any direct or indirect expenses and / or losses that the Tenderer may incur in the preparation and submission of this tender.

#### **EMPLOYER'S LIABILITY**

Tenderer's are hereby advised that KCSA will not accept any financial liability whatsoever should the Tenderer's or prospective Tenderer's wish to place orders on their suppliers and / or subcontractors prior to receiving KCSA's official written acceptance and / or order.

#### **ATTENDANCE AT MEETINGS**

The Employer may during the adjudication process convene several types of meetings. These may include site inspection meetings, tender clarification meetings and pre-award meetings. When invited to attend, the Tenderer shall ensure that he is properly represented at such meeting by experienced employees familiar with the tender.

## **SECTION 2: SCOPE OF WORK**

### **BACKGROUND OF PROJECT.**

Kamoa Copper SA ("KCSA"), a joint venture between Ivanhoe Mine and Zijin Mining, is currently developing a Greenfields underground copper mine, concentrator, tailings storage facility and supporting infrastructure called the Kakula Mine (the "Site"). The Site is accessed from Kolwezi by means of a gravel road.

### **PROJECT SITE LOCATION.**

The Kamoa Kakula Project is located approximately 45 km west of Kolwezi, the provisional capital of the Lualaba Province in the DRC.

### **1. SPECIFICATIONS FOR THE SUPPLY OF GAS COMMODITIES.**

- 1.1. An agreement will be entered into for a period to be agreed between KCSA and the Service Provider.
- 1.2. The Service Providers shall supply Gas items to KCSA, these are listed below.
  - a) Oxygen (Technical & Medical)
  - b) Acetylene (Technical & Lab grade)
  - c) Nitrogen Gas
  - d) Liquid Nitrogen (25 Kgs canisters)
  - e) Carbon dioxide
  - f) Base line Argon
  - g) Helium IV
  - h) Nitrous Oxide
  - i) Argo shield
  - j) Stain Shield
  - k) Refrigerant gases (R22, R134 A, R404A, R407A, R410, R507A and others)
  - l) LPG
  - m) Any other mixer of gases
- 1.3. KCSA does not give any guarantee regarding quantities.

## **2. SERVICE LEVELS.**

- 2.1. The Service Provider must demonstrate in its Tender that it has the capacity to supply the Goods reliably and has a suitable storage and distribution network to achieve this. The Service Provider must guarantee delivery within two (02) working days of a request from KCSA.
- 2.2. If deliveries are made later than the prescribed time limit after receiving a purchase order from KCSA, a penalty may be applied

## **3. TAXES/FEES.**

- 3.1. Exoneration on import duties should be taken into account in cases where items are sent from abroad.

## **4. PAYMENT.**

- 4.1. An invoice shall be submitted by the last day of the month after reconciliation; payment should be expected within 30 days of invoice reception and control.
- 4.2. The Service Provider shall inform KCSA in writing of any charges that may affect the Price, and enclose copies of support documents.
- 4.3. The Service Provider shall provide KCSA with all relevant documents to help KCSA in recovering duties, which includes proof of product deliveries to KCSA, invoice, proof of payment on duties, etc.
- 4.4. As a minimum, each invoice submitted shall:
  - 4.4.1. include the delivery slip, duly signed by KCSA;
  - 4.4.2. quote the agreement reference number and purchase order number on each document;
  - 4.4.3. state the names of KCSA's and the Service Provider's representatives;
  - 4.4.4. Failure to include the agreement and purchase order numbers on any Service Provider invoice will result in returning such invoice to the Service Provider.
  - 4.4.5. Invoice shall be submitted at the end of the month after consolidating all supplies and reconciliation is done. Payment will be processed within thirty (30) days from date of receipt of a correct and acceptable invoice.

## **5. GENERAL.**

- 5.1. The ownership and risk shall remain with the Service Provider while the Goods are under its responsibility.
- 5.2. Goods shall be delivered to the KCSA site; an inspection of the Goods will be performed by KCSA upon reception, with a partial or full acceptance of the Goods.
  - 5.2.1. If some Goods are damaged, they will be returned to the Service Provider, at the latter's expense, and shall be replaced within 48 hours.
  - 5.2.2. If some Goods are defective, under the manufacturer's warranty, the Service Provider shall be responsible for repatriation and replacement of the defective Goods, and shall supply new Goods, at its expense, within 48 hours.

## **6. DELIVERY TIME.**

- 6.1. The KCSA Site is located 45 km west of Kolwezi in the Province of Lualaba, Democratic Republic of Congo.
- 6.2. If the Service Provider is unable to deliver within 48 hours after a purchase order is sent by KCSA, it shall inform KCSA as soon as possible. KCSA shall be entitled to apply the penalty for late completion, as provided for in its Purchase Agreement described in Section 3 hereof.
- 6.3. KCSA shall be entitled to source Goods elsewhere and recover any additional costs and/or expenses from the Service Provider.
- 6.4. The scope of supply includes the following:
  - 6.4.1. The supply and delivery of the items listed above to the KCSA Site.
  - 6.4.2. The Service Provider shall be responsible for the unloading of the parts at the KCSA Site.
  - 6.4.3. The Service Provider shall supply, issue and record all receiving transactions of goods.
  - 6.4.4. The Service Provider shall supply the Goods in dedicated, quality packaging. Reservations may be expressed regarding the quality of transport, should packaging be damaged.
  - 6.4.5. The Service Provider shall supply the Goods, the packing slip and the delivery slip for every delivery.

6.5. Lead times and key performance indicators (KPIs):

- 6.5.1. KCSA will issue Purchase Orders to the Service Provider, indicating the quantity required; following receipt of the purchase order, the Service Provider will have 48 hours to supply the KCSA site.
- 6.5.2. The Service Provider shall make its deliveries as per prescribed schedules for access to the Kamoia site. Delivery times to the various sites are as follows:  
Monday to Friday 08:00 to 17:00, Saturday from 08:00 to 13:00; no deliveries on Sundays.
- 6.5.3. The Service Provider shall provide details regarding lead time in the dry season (in working days) and lead time in the wet season (in working days).

**7. KEY PERFORMANCE INDICATOR.**

- 7.1. Product delivery on time (excluding delivery time from Kolwezi to Site) as per agreed dates in weekly delivery schedule. Number of orders delivered by requested date / total number of orders delivered \*100 (based on summary of weekly delivery schedule) 100% - 91 acceptable.
- 7.2. Product conformity indicator calculates the value of non-conforming products during a demand period of time (quarter) (invoice, delivery slip) total value of damaged products / value of shipped products \* 100 100% - 95% - acceptable.

**8. PRODUCT SPECIFICATION.**

- 8.1. The Service Provider shall supply items under specific Standards. The goods shall respect the Standards established by the SABS (South African Bureau of standards) or ISO (International Organisation for Standardization) or IEC (International Electro-technical Commission) according to the nature of the goods.

**9. QUALITY CONTROL.**

- 9.1. In the event of problems relating to the manufacturer's warranty, under the terms and conditions defined by the manufacturer, the Service Provider shall process and manage such instances at its expense.

## **10. SECURITY OF EQUIPMENT, GOODS AND MATERIALS.**

- 10.1. The Service Provider shall provide adequate security (subject to KCSA's approval) during the transportation of Goods to the Site.
- 10.2. The Service Provider will have sufficient environmental insurance cover including spillage support services, in case of unforeseen spillages of chemicals on route.

## **11. TRAVEL.**

- 11.1. The Service Provider shall at its sole expense be responsible for travel and transportation of its personnel, where required, to perform the Services.
- 11.2. The Service Provider shall comply with KCSA's transportation policies while on the Site.

## **12. HEALTH AND SAFETY.**

- 12.1. Without limiting safety requirements of the Agreement, the Service Provider shall take cognizance of the following safety-related procedures and specifications:
- 12.2. The Service Provider shall provide the necessary safety, health and environmental (SHE) management system in accordance with the Regulations, as applicable;
- 12.3. The Service Provider shall provide or ensure that all sub-contracted issue all personal with protective equipment (PPE) and personal protective clothing (PPC) pertaining to the Services, and ensure that all sub-contractors comply with the Regulations.
- 12.4. The Service Provider shall comply with the Regulations throughout performance of the Services.

## **13. SAFETY VIOLATIONS.**

- 13.1. KCSA will have the right to stop any and all of the Services if in KCSA's reasonable opinion it considers that safety of persons or property is at risk. The cost and risk of any such stoppage of Services shall be for the account of the Service Provider.



13.2. KCSA will have the right to remove from the Services any of the Service Providers personnel, or any personnel of the Service Provider's sub-contractors who in KCSA's reasonable opinion it considers is a risk to the safety of persons or property. The cost and risk of any such removal shall be the sole responsibility of the Service Provider.

**14. SAFETY REPORTING.**

14.1. The Service Provider shall maintain, and require its sub-contractors to maintain, accurate accident and injury reports. The Service Provider shall provide to KCSA a copy of all reports that will lead to lost time or injury when onsite.

14.2. The Service Provider shall be required to comply with accident reporting in accordance with the requirements set forth in KCSA's Policies.

**15. INDUSTRIAL RELATIONS.**

15.1. The Service Provider must pursue a policy of training to ensure that it follows the most efficient work practices.

15.2. The Service Provider must advise KCSA immediately of any work stoppages, bans, and limitations on work or other industrial relations difficulties affecting; or which may affect the Service Provider or performance of the Services, and must keep KCSA fully informed of any dispute with the Service Provider's employees.

15.3. If industrial relations difficulties of any kind develop that are the result of the existence of any subcontract of the Service Provider which KCSA considers to be detrimental to either the progress of the Services as a whole or the Service Provider's operations, the Service Provider must at the direction of KCSA immediately terminate that subcontract and make other arrangements to perform the obligations under the Agreement which are the subject matter of that subcontract, without in either case KCSA being liable for, nor Service Provider being entitled to, any compensation or payment by reason of doing so.

## SECTION 3 : PURCHASE AGREEMENT

### PURCHASE AGREEMENT

Entered into between

**KAMOA COPPER SA**

1148-6 Avenue de la Libération  
Quartier Golf les Battants, Lubumbashi Commune  
Lubumbashi  
Haut-Katanga Province DRC  
Registration Number: 6-118-N37233J  
(Hereafter called "KCSA")

and

**THE SUPPLIER**

**TABLE OF CONTENTS**

1	DEFINITIONS, INTERPRETATION AND PRECEDENCE.....	3
2	WHOLE AGREEMENT .....	7
3	SCOPE OF SUPPLY.....	8
4	PURCHASE ORDERS .....	8
5	PRICE AND PAYMENT.....	9
6	OWNERSHIP AND RISK IN AND TO THE GOODS .....	9
7	WARRANTIES BY SUPPLIER .....	10
8	SUPPLIER' S GENERAL OBLIGATIONS .....	11
9	OCCUPATIONAL HEALTH AND SAFETY.....	12
10	INDEMNITY.....	13
11	LIQUIDATED DAMAGES .....	15
12	ETHICAL BUSINESS PRACTICES .....	15
13	GIFTS AND ENTERTAINMENT .....	16
14	INTELLECTUAL PROPERTY RIGHTS.....	16
15	CONFIDENTIALITY.....	16
16	AUDIT.....	16
17	BREACH .....	17
18	FORCE MAJEURE.....	17
19	DOMICILIUM CITANDI ET EXECUTANDI.....	18
20	CESSION AND SUB-CONTRACTING .....	18
21	DISPUTE RESOLUTION.....	19
22	GENERAL .....	21

Document Reference: **[COMPLETE]**

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**1 DEFINITIONS, INTERPRETATION AND PRECEDENCE**

1.1 Definitions

The expressions defined below shall have the meanings assigned to them unless inconsistent with the context of this Agreement:

“Agreement” means the documents comprising the RFQ, the Response to RFQ, the Purchase Order, the Terms and Conditions set out in this document, the Annexures referenced in this document, and documents incorporated by reference by KCSA, as amended from time to time.

“Anti-Corruption Legislation” includes, but is not limited to, the United Kingdom Bribery Act 2010, the U.S. Foreign Corrupt Practices Act, the US OFAC Regulations, the US Export Administration Regulations and the South African Prevention of Organised Crime Act of 1998, as amended from time to time and any applicable law, rule, regulation and other legally binding measure relating to the prevention of bribery, corruption, fraud or similar or related activities in South Africa, the DRC or any other relevant jurisdiction, as well as any relevant policies listed in KCSA’ Policies attached as Annexure B.

“Applicable Laws” means all laws (including common law), regulations, codes, rules, judgments, notices, approvals, orders, decrees, permits, directives, protocols, consents, authorisations, guidelines, orders, policies, generally applied standards and similar requirements by any Authority

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

applicable to the Supply and/or to the performance and/or subject matter of this Agreement (as applicable).

“Authority”

is any government department, local government council, government or statutory authority or any other party under a law which has a right to impose a requirement or whose consent is required either in respect to the Supply or for the Supplier's performance of its other obligations under this Agreement.

“Confidential Information”

any information disclosed by a Party to the other Party prior to the signature date or thereafter, in terms of this Agreement or otherwise in connection with this Agreement, which is not readily available to third parties, in the ordinary course of business.

“Default”

means any failure by either Party to comply with its obligations in terms of this Agreement.

“DRC”

Democratic Republic of Congo.

“Delivery Date”

the delivery date stipulated in the Purchase Order *alternatively* the RFQ.

“Effective Date”

the date when KCSA issues the Purchase Order to the Supplier.

“Goods”

means the brand new goods that are to be sold by the Seller to KCSA according to technical specification set out in the RFQ.

“Party or Parties”

the party or parties to this Agreement.

Document Reference: **[COMPLETE]**

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

“Price”	the amount stated in a Purchase Order and interpreted in accordance with clause 5.
“Purchase Order”	a printed, official purchase order form with a unique order number issued to the Supplier by KCSA, a template of which is attached as Annexure A.
“Response to RFQ”	The response to the RFQ by the Service Provider, which is attached as Annexure C.
“RFQ”	a request for quotation which may be issued by KCSA, from time to time, which is attached as Annexure D.
“Public Holiday”	includes currently existing Public Holidays and any day decreed as such by official order in the DRC.
“Site(s)”	any site stipulated in the Purchase Order to which the Goods must be delivered, where KCSA instructs the Supplier to deliver the Goods and/or where the Goods are manufactured or stored.
“Terms and Conditions”	the terms and conditions as set out in this document.
“KCSA”	Kamoa Copper SA, Registration Number: 6- 118-N37233J, a company duly registered and incorporated in accordance with the laws of the DRC, with its principal place of business at 1148-6 Avenue de la Libération, Commune of Lubumbashi, Lubumbashi, Haut- Katanga Province, DRC.

Document Reference: **[COMPLETE]**

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

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“KCSA’s Policies”	those policies and procedures of KCSA as listed in Annexure B and those policies and procedures of KCSA applicable to staff and suppliers, service providers, contractors and other third parties which policies and procedures may be amended from time to time.
“The Supplier”	the supplier of the Goods as appointed in terms of the Purchase Order, with particulars reflected in its Vendor Application Form submitted to KCSA.
“Working Day”	Monday through Friday between the hours 07:30 to 16:30 excluding Saturdays, Sundays and Public Holidays in the DRC.

1.2 Interpretation

In this Agreement:

- 1.2.1 Clause headings are for convenience only and shall not be used in its interpretation.
- 1.2.2 Unless the context clearly indicates a contrary intention, an expression which denotes any gender includes the other genders, a natural person includes an artificial person and *vice versa*, the singular includes the plural and *vice versa*.
- 1.2.3 Should any provision in a definition be a substantive provision conferring rights or imposing obligations on any Party, then effect shall be given to such provision as if it were a substantive provision in the body of this Agreement.
- 1.2.4 The Supplier’s standard terms and conditions and/or those contained in the Supplier’s credit application, notwithstanding their reference to or inclusion in any quotation, offer, order, invoice, or otherwise, shall not apply to KCSA.
- 1.2.5 Any reference to any enactment, regulation, law, rule or by-law is to that enactment, regulation, law, rule or by-law as at the signature date, and as amended from time to time.

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Document Reference: **[COMPLETE]**

Parties to initial here ►

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

- 1.2.6 When any number of days is prescribed, such number shall exclude the first and include the last day, unless the last day falls on a Saturday, Sunday or Public Holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or Public Holiday.
- 1.2.7 Any schedule or annexure to this Agreement shall, save where the context indicates otherwise, form part of this Agreement.
- 1.2.8 Where any term is defined within a particular clause, other than the interpretation clause, the term shall bear the meaning ascribed to it in that clause wherever it is used in this Agreement.
- 1.2.9 The use of the word "including" followed by a specific example/s shall not be construed as limiting the meaning of the general wording preceding it and the *eiusdem generis* rule shall not be applied in the interpretation of such general wording or such specific example/s.
- 1.2.10 The expiration or termination of this Agreement shall not affect such provisions of this Agreement that 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 the fact that the clauses themselves do not expressly provide this.
- 1.2.11 The rule of interpretation that vagueness or ambiguities shall be interpreted against the drafting party, shall not apply to this Agreement.

**2 WHOLE AGREEMENT**

- 2.1 The Agreement between the Parties comprises the documents listed below:
  - 2.1.1 these Terms and Conditions;
  - 2.1.2 the Purchase Order;
  - 2.1.3 the RFQ;
  - 2.1.4 Supply Specification;
  - 2.1.5 the Response to the RFQ;
  - 2.1.6 the annexures referenced in this document;
  - 2.1.7 the Vendor Application Form completed by the Supplier in connection with its supply of Goods to KCSA.

Document Reference: **[COMPLETE]**

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

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- 2.2 These Terms and Conditions and the other documents listed in clause 2 above shall be taken to be mutually explanatory of one another but in the event of ambiguity, discrepancy, divergence or inconsistency in or between them, the order of priority shall be as listed in clause 2 above.
- 2.3 The Agreement is the sole record of the agreement between the Parties and may only be varied or waived in a written, signed document between KCSA and the Supplier.
- 2.4 No undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement and/or any Purchase Order shall be binding on either of the Parties.
- 2.5 The Parties agree that the Supplier is an independent contracting party and that the Agreement does not constitute a contract of agency, representation, employment or partnership with the Supplier. The Supplier acknowledges that it has no authority to bind KCSA and nor is it entitled to incur any liability for or on behalf of KCSA.

**3 SCOPE OF SUPPLY**

- 3.1 The Supplier is hereby appointed on a non-exclusive basis to supply the Goods. The Supplier shall supply and KCSA shall purchase the Goods in accordance with the terms of this Agreement. The Goods to be supplied by the Supplier are set out in the Purchase Order.

**4 PURCHASE ORDERS**

- 4.1 Purchase Orders will be system generated and placed by KCSA electronically by emailing a copy thereof to the Supplier, and may contain details of the Goods ordered (including the specification) and confirmation of the Price.
- 4.2 Should there appear to be any discrepancy or ambiguity in description or quantities in a Purchase Order, the Supplier shall immediately submit the matter to KCSA's Procurement Manager for decision before proceeding to execute the Purchase Order.
- 4.3 Amendment to the Purchase Order shall be subject to KCSA's prior written approval and the Supplier's acceptance. No amendment to a Purchase Order will be valid unless agreed to in writing by both Parties and incorporated in a revised and duly issued Purchase Order.
- 4.4 Purchase Orders may be cancelled by KCSA at any time provided that KCSA shall pay the Supplier for costs reasonably incurred up to the date of cancellation. The Supplier will use all reasonable and practical endeavours to mitigate its losses in this regard.

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

**5 PRICE AND PAYMENT**

5.1 Unless expressly stated to the contrary in the Purchase Order:

5.1.1 the Price shall be exclusive of TVA and shall include standard packaging, delivery and installation (where applicable); and

5.1.2 no additional charges of whatever nature shall be recoverable from KCSA unless the Supplier has, prior to the execution of the Purchase Order, obtained KCSA's Agreement in writing on such additional charges.

5.2 Should the Purchase Order be issued on a basis of "price to be advised or agreed" or "estimate price", "subject to change" or any other similar description, the Purchase Order shall stipulate the agreed terms applicable in this respect. KCSA may demand, before payment is made, that the Supplier substantiate the price computation.

5.3 Payment shall be made by EFT into the account nominated in writing by the Supplier in the Vendor Application Form.

5.4 KCSA shall be entitled to set off against any invoice issued by the Supplier. If the amount which the Supplier owes KCSA is not liquidated, set-off will operate to the extent of the amount which, in the written opinion of KCSA's auditors, is the value of KCSA's claim against the Supplier, without prejudice to the rights of either Party subsequently to have the amount determined by arbitration.

5.5 If, after set-off in terms of clause 5.4 the amount which the Supplier owes KCSA is determined in an amount different from that assessed by KCSA's auditors, the Party to whom money is owed may immediately recover it from the other Party via set off.

5.6 KCSA shall be invoiced within 3 (three) months for all valid expenses incurred as part of the supply. KCSA shall be entitled to demand any supporting documentation that it deems fit. Such expenses will be incorporated as a sub-section of the relevant invoice. Should any expenses be issued/invoiced to KCSA after this date, they are deemed to be rejected and KCSA shall be absolved of all liability in relation to these expenses and payment thereof.

**6 OWNERSHIP AND RISK IN AND TO THE GOODS**

6.1 If Goods are delivered by the Supplier:

6.1.1 Subject to clause 6.1.2, ownership of and risk in and to the Goods shall pass to KCSA upon physical delivery or, if the Supplier is responsible for installation of the Goods, completion of installation at the Site. A Purchase Order shall not be considered fulfilled until the certificates of conformance and technical data sheets

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

have been satisfactorily supplied with each delivery.

6.1.2 The following shall be required for risk to pass to KCSA:

6.1.2.1 For delivery of Goods, the signature of an unendorsed delivery note by KCSA; and

6.1.2.2 For installation of Goods, a written certification by KCSA of the completion of the installation.

6.2 If the Goods are collected by KCSA, ownership of and risk in and to the Goods shall pass to KCSA upon the physical collection thereof by KCSA.

6.3 KCSA shall have the right to inspect the Goods, to measure progress on the execution of the supply at all reasonable times, and to reject Goods that do not comply with the terms of the Agreement. Any inspection, checking or approval by KCSA shall not relieve the Supplier from any obligation under the Agreement.

**7 WARRANTIES BY SUPPLIER**

7.1 The Supplier shall exercise that degree of skill, care and diligence which could reasonably and ordinarily be expected from a skilled and experienced operator complying with all Applicable Laws, engaged in the same or a similar type of undertaking.

7.2 The Supplier warrants that its premises, its production and packaging systems, processes, machinery, facilities, materials and the Goods comply with all Applicable Laws and industry standards, special certification (where applicable), including, without limitation, all laws relating to occupation health and safety and environmental laws.

7.3 The Supplier warrants that Goods shall (unless otherwise stated in the Purchase Order) be new, merchantable, of agreed quality and description, in working order, fit for their intended purpose and free from contaminants, defects in materials, workmanship and design and shall be usable and durable for a reasonable period of time.

7.4 The Supplier warrants that the Goods are not subject to any lien, hypothec, pledge, mortgage, notarial bond, judicial attachment or other encumbrance and that the Supplier is entitled to transfer ownership to KCSA.

7.5 The Supplier warrants that there are no circumstances, facts or reasons which are known, or ought to be known by the Supplier, which should have been disclosed to KCSA and which would have influenced KCSA's decision in appointing the Supplier to supply the Goods.

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

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7.6 The Supplier holds all permits and authorisations, of any nature whatsoever, required to perform in full compliance with all Applicable Laws, and commits to maintain, as needed, the validity of said permits and authorisations for the full term of the Agreement, and its performance is not in breach of any Applicable Law as of the Effective Date.

7.7 Without prejudice to the other possible causes and modalities for termination of the Agreement arising out of Applicable Law and regulations at the time, KCSA will be entitled, in the event of the non-performance by the Supplier of all or part of its essential obligations, after a formal demand remains unheeded for more than thirty (30) business days following the receipt thereof by the Supplier, to unilaterally terminate the Agreement by means of a notification to the Supplier, without any further formality and without the exercise of this right entitling the Supplier to claim damages or any other payment, with the exception of the payment of undisputed invoices for Goods delivered by the Supplier in accordance with the Agreement.

**8 SUPPLIER' S GENERAL OBLIGATIONS**

The Supplier shall:

8.1 Furnish KCSA with copies of all relevant certification in respect of special requirements and shall comply with the requirements of the relevant Authorities and bodies in respect of such certification; and

8.2 Maintain regular contact with the representatives of KCSA at the Sites at which it is required to provide the Goods for the duration of this Agreement; and

8.3 Take all necessary steps to ensure that its staff do not engage in any demonstrations, or other disorderly or riotous conduct on or near the perimeter of the premises of KCSA; and

8.4 Refrain from any conduct which may be detrimental to the image, good name and reputation of KCSA; and

8.5 Supply KCSA with any information or documentation relating to the Goods which it requires within a reasonable time, including any reports which may be requested from time to time in the manner, format and frequency required; and

8.6 Comply with all Applicable Laws and will obtain all necessary licenses, permits and approvals that it requires to perform its obligations and shall ensure that its employees do the same; and

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

8.7 Take all reasonable steps to ensure that the Goods are delivered timeously without any undue delay acknowledging that time is of the essence in the performance of its obligations under this Agreement.

**9 OCCUPATIONAL HEALTH AND SAFETY**

9.1 The Supplier is responsible for the occupational health and safety at all times of all personnel engaged by it including its employees, subcontractors, agents and their respective employees working or attending at Site or any other place related to the Supplier's execution of its obligation in terms of this Agreement.

9.1.1 The Supplier shall comply with all Applicable Laws as well as KCSA's Policies; and

9.1.2 The Supplier must ensure that the supply of Goods are carried out in a safe manner in compliance in all respects with all Applicable Law and KCSA's Policies; and

9.1.3 The Supplier must ensure, at no additional cost to KCSA that all personnel promptly obey all reasonable directions and instructions given by KCSA relating to the safety of persons or property, or to the proper compliance with any law which is its duty to enforce. KCSA's decision is final and any such directions or instructions it may give must be obeyed in the manner it directs. If there is any inconsistency, this clause prevails over all other provisions of this Agreement.

9.2 The Supplier accepts sole liability for such due compliance with the relevant duties, obligations and prohibitions imposed on it, and expressly absolve KCSA from itself being obliged to ensure compliance with any of the aforesaid duties, obligations and prohibitions.

9.3 The Supplier agrees that any duly authorized KCSA employee is entitled, although not obliged, to take such steps as may be necessary to ensure that the Supplier has complied with the undertakings mentioned in paragraphs 9.1.1, 9.1.2 and 9.1.3 above, which steps may include without limitation, the right to inspect any records held by the Supplier.

9.4 The Supplier is obliged to immediately report to KCSA any investigation, complaint or criminal charge that may arise as a result of non-compliance with the Applicable Laws, pursuant to work performed in terms of this Agreement, and must, upon written demand, provide full details in writing to KCSA of such investigation, complaint or criminal charge.

9.5 The Supplier must, on demand by KCSA appoint a safety coordinator to liaise with KCSA on safety matters and inform KCSA in writing of the identity of the safety coordinator.

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

9.6 In addition and without prejudice to its other rights in terms of this Agreement or in law, KCSA may at any time require the Supplier to remove from Site any person against whom KCSA has reasonable objection and/or to immediately stop work if, in the reasonable opinion of KCSA, the Supplier has breached any provision of this clause 9 and KCSA may recover from Supplier any loss suffered as a result of the cessation of work, including the cost of having the Agreement performed by a third party.

9.7 In addition to the remedies set out above, KCSA may elect to impose penalties upon the Supplier as set out below:

Schedule of Deficiencies and Penalties		
Item	Deficiency	Per offence
1	Non-compliance with obligations imposed on the Supplier in terms of the Agreement.	USD5 000.00 (Five thousand United States Dollars) or termination of the Agreement.

Before a penalty is imposed in terms of the Schedule of Deficiencies and Penalties, KCSA will notify the Supplier, in writing, stating reasons and / or details of the Supplier's conduct which will be penalized. Within one week of receipt of these reasons the Supplier shall present reasons to KCSA, in writing, indicating either the Supplier's acceptance of the penalty or reasons why the Supplier believes the penalty should not be imposed by KCSA. KCSA notifies its decision with regards to the imposition of the penalty to the Supplier within one week of receipt of the aforementioned reasons. If the Supplier does not deliver a notice of acceptance and / or rejection with reasons within the one week stipulated in this clause, the penalty will be deemed accepted by the Supplier.

**10 INDEMNITY**

10.1 The Supplier indemnifies and absolves KCSA from any claims, damages, losses and any other liability (whether jointly or individually) arising from any cause whatsoever or based on any ground of liability (including liability without fault) to the extent that such liability is attributable, whether wholly or in part, to any defect or deficiency in any of the Goods supplied by the Supplier or is due to the Supplier's failure to comply strictly with the provisions of this Agreement and/or Applicable Laws. This indemnity shall specifically apply in respect of any claims arising from unsafe, defective, contaminated, hazardous or deficient Goods.

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

- 10.2 The Supplier agrees to indemnify, hold harmless and defend KCSA and its officers, employees, agents, representatives, advisors, contractors and consultants from and against the following damages, losses and liabilities arising as a result of the negligent or wilful acts or omissions of the Supplier:
- 10.1.1 Any claims by any Authority or others for non-compliance by the Supplier with the provisions of Applicable Laws.
  - 10.1.2 Claims arising out of any wilful or negligent acts or omissions to act, of the Supplier.
  - 10.1.3 Claims with regard to the death of/or injury to the employees of the Supplier or the death of/or injuries to third parties due to the Supplier's negligence.
  - 10.1.4 Claims arising from any loss of/or damage to property which is the property of KCSA or any third party.
- 10.3 Without limiting the Supplier's liabilities or responsibilities in terms of this Agreement, the Supplier will provide adequate insurance, to cover its liability and responsibilities in terms of this Agreement, which insurance is to be taken out from a reputable insurance company.
- 10.4 In addition to the insurance aforementioned and without prejudice to its obligations under this Agreement or otherwise at law the Supplier shall effect and use its best endeavours to maintain for the duration of this Agreement and for a period of 1 (one) year from the termination date with a well-established insurance office or underwriter of repute, adequate professional indemnity insurance with a limit of indemnity commensurate to the risk at hand (adequacy to be determined by KCSA), for any one occurrence or a series of occurrences arising out of any one event (which for the avoidance of doubt shall include any negligent act, error, omission or default) on the part of the Supplier in the performance of its duties under this Agreement and shall produce to KCSA on demand from time to time reasonable evidence that the terms of this clause have been complied with.
- 10.5 The Supplier warrants that the provisions of this Agreement have been disclosed to the Supplier's insurers and such insurers have expressly accepted that any breach of such provisions by the Supplier is covered by the Supplier's insurance.
- 10.6 KCSA will have the right to examine the policies maintained by the Supplier at any time during the existence of this Agreement and to demand from the Supplier to appoint another underwriter if it is not satisfied with the underwriter.

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**11 LIQUIDATED DAMAGES**

11.1 If at any time an event of Default with respect to the Goods has occurred and is continuing due to the actions or bad faith of the Supplier, KCSA may claim liquidated damages, as follows:

Days late	Amount
Day 1 – 4	0.02% of total Purchase Order value /day;
Day 5 – 8	0.06% of total Purchase Order value/day;
Day 9 – 12	0.10% of total Purchase Order value day;

Thereafter 0.20% of total Purchase Order per day, up to 15% of the total Price. The aforementioned will not affect the effectiveness and performance of this Agreement.

**12 ETHICAL BUSINESS PRACTICES**

12.1 KCSA is committed to conducting its business ethically and to achieving and maintaining the highest standards of corporate governance. KCSA requires all of its business partners, consignors, vendors, contractors and service providers, who play an important and valued role in its continuing business success, to behave ethically and to avoid engaging in corrupt business activities. KCSA's requirements are contained in Annexure B to this Agreement.

12.2 The Service Provider undertakes to comply with the above and all Applicable Laws and specifically all Anti-Corruption Legislation.

12.3 The Supplier shall not give or offer to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or any other thing of value for obtaining favourable treatment or taking any action for the purpose of influencing any act or decision of official or any Authority to obtain or retain business, or to direct business to any person.

12.4 The Supplier undertakes to comply with and implement policies in furtherance of the Voluntary Principles on Security and Human Rights and the United Nations Guiding Principles on Business and Human Rights.

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

12.5 The Supplier shall ensure fair labour practice by complying with the industrial relations and personnel policies and/or directives of KCSA.

**13 GIFTS AND ENTERTAINMENT**

13.1 Save for gifts of minimal value, KCSA discourages the exchange of gifts between the Parties or to third parties. The prior written approval of KCSA is required for the exchange of significant gifts between KCSA, its employees, representatives or agents and the Supplier.

**14 INTELLECTUAL PROPERTY RIGHTS**

14.1 The Supplier warrants that its supply of Goods to KCSA does not infringe any intellectual property rights and hereby indemnifies and holds harmless KCSA against any loss, damages or expense sustained by KCSA as a consequence of any breach of this warranty.

14.2 Any and all intellectual property owned, developed or acquired by a Party prior to this Agreement coming into effect shall remain the sole and exclusive property of the Party who is the lawful proprietor thereof and any and all rights of the Parties in terms of this Agreement shall be subject to the other Party's intellectual property rights.

14.3 Any intellectual property made, created or discovered by the Supplier in the course and scope of this Agreement in connection with or relating to the business of KCSA, shall be disclosed to KCSA and shall belong to and be the absolute property of KCSA.

**15 CONFIDENTIALITY**

15.1 The Supplier agrees to treat as strictly confidential the operations, business and affairs of KCSA and to only divulge information relating thereto to a third party, agent or employee for the purpose of performing their obligations in terms of this Agreement, save as is required by law.

**16 AUDIT**

16.1 The Supplier's production processes will be operated within a structured and documented quality management system, which will be continuously updated and kept current. KCSA may inspect and audit the facilities and premises of the Supplier for any purposes associated with the manufacture, distribution and/or supply of the Goods at any time during Working Days on reasonable notice to the Supplier to measure its implementation of the quality management system, compliance with applicable laws and/or the Agreement.

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

**17 BREACH**

17.1 If any Party breaches any material provision or term of this Agreement (other than those which contain their own remedies or limit the remedies in the event thereof without derogating the provisions of this clause) and fails to remedy such breach within 14 (fourteen) days of receipt of written notice requiring it to do so (or if it is not reasonably possible to remedy the breach within 14 (fourteen) days, within such further period as may be reasonable in the circumstances, provided that the Party in breach furnishes evidence within the period of 14 (fourteen) days, reasonably satisfactory to the other Party, that it has taken whatever steps are available to it, to commence remedying the breach) then the aggrieved Party shall be entitled without notice, in addition to any other remedy available to it at law or under this Agreement (except as provided for in 20), including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party's right to claim damages.

17.2 In addition KCSA shall be entitled to cancel the Agreement and/or any Purchase Order forthwith if:

17.2.1 the Supplier commits a breach of the Agreement which cannot be rectified; or

17.2.2 the Supplier is guilty of any act of fraud, bribery, corruption, intentional misrepresentation or contravention of Clause 12; or

17.2.3 during the course of supplying the Goods, the Supplier contravenes the provisions of any Applicable Law.

17.3 In the event of any legal proceedings against the Supplier, KCSA shall be entitled to recover its legal costs on an attorney-and-client scale.

**18 FORCE MAJEURE**

18.1 "Force Majeure Event" means an event that prevents or delays a Party from being able to perform an obligation other than the payment of money under this Agreement.

18.2 Force Majeure refers to such circumstances such as wars, insurrections, strikes, acts of God, governmental actions or controls, water restrictions or other causes beyond the control of a Party.

18.3 Should any Party be prevented by reason of Force Majeure from performing its obligations in terms hereof, then such failure shall not be regarded as a breach of its obligations in terms hereof provided that:

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

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18.3.1 the Party hereto subject to Force Majeure shall give prompt notice to the other Party hereto of the nature and estimated duration of the Force Majeure concerned;

18.3.2 the Parties hereto shall co-operate and collaborate together and use all reasonable efforts to overcome the Force Majeure concerned and/or nullify its effect; and

18.3.3 any suspension of performance within the provisions of the above shall be limited to the period during which such inability shall exist and the period of this Agreement shall be interrupted by the period of such suspension.

18.4 If the aforementioned inability substantially or permanently prevents the continued performance by either Party of its obligations in terms of this Agreement for a period exceeding fourteen (14) consecutive Working Days, then either Party shall be entitled, by giving notice in writing, to terminate this Agreement.

**19 DOMICILIUM CITANDI ET EXECUTANDI**

19.1 KCSA nominates as its *domicilium citandi et executandi* its registered address for service upon it of all processes in connection with any claim arising from the Agreement. The Supplier nominates as its *domicilium citandi et executandi* its address as stipulated in the Vendor Application Form for service upon it of all processes in connection with any claim arising out of the Agreement.

19.2 All notices and communications under the Agreement shall be given in English and in writing. For the purposes of the Agreement, "writing" means e-mails that have been acknowledged by the recipient. Oral agreements, notices or instructions are not binding on KCSA.

**20 CESSION AND SUB-CONTRACTING**

20.1 The Supplier shall not, without the prior written consent of KCSA sub-contract any of its obligations or cede or assign any of its rights or obligations in terms of this Agreement (including but not limited to, the right to receive payment from KCSA). Notwithstanding any such consent, the Supplier shall at all times be liable for the acts or omissions of its employees, agents, sub-contractors, cessionary, assigns or any other associated party utilised by it, as if they had been acts or omissions of the Supplier.

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

20.2 The Supplier agrees to strictly comply, for the full term of the Agreement, with all applicable provisions of the Subcontracting Law, as specified, inter alia, in Decree No. 18/019 of 24 May 2018 establishing implementation measures for the Subcontracting Law. The Parties agree that this is an essential obligation of the Service Provider.

20.3 Any practice designed to interpose a third party or to introduce a third party in a transaction between KCSA and the Supplier shall, in the absence of express consent from KCSA, be deemed to be a deliberate misrepresentation on the part of the Supplier and shall constitute a material breach of this Agreement.

**21 DISPUTE RESOLUTION**

21.1 Save as may be otherwise provided for in this Agreement, any dispute of whatsoever nature which arises out of or in connection with this Agreement, including any disputes as to the validity, existence, enforceability, interpretation, application, implementation, breach, termination or cancellation of this Agreement or as to the Parties' rights and/or obligations in terms of this Agreement or in connection with any documents furnished by the Parties pursuant to this Agreement, shall be resolved in accordance with this clause.

21.2 Amicable resolution

21.2.1 If a dispute (of any kind whatsoever) arises between the Parties in connection with, or arising out of, the Agreement or the execution of the Agreement, a Party shall give notice to the other Party to resolve such dispute. The notice shall identify the issue(s) in dispute and the relief sought and shall state that it is a notice given in terms of this sub-clause.

21.2.2 Within five Working Days after the date of the notice, the Parties shall, through its senior representatives, attempt to settle the dispute in good faith before the commencement of arbitration.

21.2.3 Any resolution of a dispute in terms of this clause shall (unless expressly otherwise stated therein) be final and binding on the Parties when reduced to writing and signed by the senior representatives of each Party. To this end, the Parties respectively agree and warrant to each other that the senior representatives have full authority to so bind them.

21.2.4 Where the dispute is not resolved within 20 days of the notice given in terms of this sub-clause, arbitration may be commenced.

21.3 Arbitration

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

- 21.3.1 Unless settled amicably, a dispute (of any kind whatsoever) arising between the Parties in connection with, or arising out of, the Agreement or the execution of the Supply, including any dispute as to any certificate, determination, instruction, opinion or valuation of KCSA, or a dispute as to whether or not the Agreement was induced by a fraudulent misrepresentation, shall be finally settled by arbitration.
- 21.4 Unless otherwise agree by both Parties:
- 21.4.1 the dispute shall be finally settled by private arbitration under the latest edition of the OHADA Uniform Act on Arbitration and revised Rules on Arbitration of the Common Court of Justice and Arbitration (the "Rules");
- 21.4.2 the dispute shall be settled by a single arbitrator to be appointed by the Parties by agreement, failing such agreement, by the President of the Common Court of Justice and Arbitration, or his nominee;
- 21.4.3 the arbitration shall be held at KCSA's Kamoa-Kakula Project located approximately 40km west of the town Kolwezi in the Katanga province of the DRC;
- 21.4.4 the arbitration shall be conducted in English.
- 21.5 The arbitrator shall have full power to open up, review and revise any certificate, determination, instruction, opinion or valuation of (or on behalf of) KCSA.
- 21.6 Nothing in this sub-clause shall preclude either Party from seeking urgent interim relief, not otherwise provided for herein, from a Court of competent jurisdiction.
- 21.7 Subject to the time limits set out in clause 5.6, arbitration may be commenced prior to or after completion of performance in terms of the Agreement. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the supply.
- 21.8 For the avoidance of doubt, this arbitration clause shall be severable from this Agreement and shall survive the termination of this Agreement.
- 21.9 Notwithstanding that a formal dispute may have been declared, the Supplier must:
- 21.9.1 continue without delay to provide the Goods and perform its other obligations under this Agreement; and

Document Reference: **[COMPLETE]**

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

- 21.9.2 comply with all directions of KCSA in connection with this Agreement which do not otherwise affect the ultimate resolution or determination of the dispute.
- 21.10 The arbitrator shall have discretionary powers to make orders as to any matters which he may consider proper in the circumstances of the case with regard to submissions, pleadings, discovery, inspection of documents, examination of witnesses and any other matter relating to the conduct of the arbitration.
- 21.11 The arbitrator shall fully motivate any of his findings and his final determination and shall make an appropriate costs order.
- 21.12 The award of the arbitrator shall be final and binding upon the Parties (who hereby agree to carry out the award).
- 21.13 The arbitrator's award may be made an order of any Court of competent jurisdiction.
- 21.14 The Parties agree to keep the arbitration proceedings including the subject matter thereof and the evidence heard during such proceedings confidential and not to disclose same to anyone except for the purposes of the arbitration proceedings in terms of this clause.
- 21.15 The language of this Agreement shall be English. All communications, technical and commercial documents as well as any other information related to this Agreement shall be provided by each Party to the other in the English language.
- 21.16 This constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and is severable from the other provisions of this Agreement and shall remain in effect notwithstanding the termination or invalidity for any reason of this Agreement.

**22 GENERAL**

- 22.1 No failure or neglect by a Party to exercise any rights hereunder or to insist upon strict compliance with or performance of another Party's obligations under the Agreement, shall constitute a waiver of the provisions of the Agreement and a Party may at any time require strict compliance with the provisions of the Agreement.
- 22.2 No indulgences or extensions of time or latitude which one of the Parties may allow to the other Party shall constitute a waiver by that Party of any of its rights, and it shall not thereby be prevented from exercising any of its rights which may have arisen in the past or may arise in the future.

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

- 22.3 Each of the provisions of the Agreement shall be considered as separate terms and conditions. In the event that the Agreement is affected by any legislation or any amendment thereto, or if the provisions herein contained are by virtue of such legislation or otherwise held to be illegal, invalid or unenforceable, then any such provisions shall be ineffective only to the extent of the illegality, invalidity or unenforceability and each of the remaining provisions hereof shall remain in full force and effect as if such illegal, invalid or unenforceable provision was not a part hereof.
- 22.4 The law of the Democratic Republic of Congo shall govern this Agreement.
- 22.5 No alteration or variation or agreed cancellation of this Agreement shall be of any effect unless it is recorded in writing and signed by all the Parties.
- 22.6 This Agreement constitutes the whole Agreement between the Parties in regard to the subject matter thereof and no warranties or representations of any nature whatever other than as set out in this Agreement read with its appendices have been made or given by any of the Parties.
- 22.7 No relaxation or indulgence which any Party may show to any other Party to this Agreement shall in any way prejudice or be deemed to be a waiver of any Parties' rights hereunder.
- 22.8 In the event that any provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be deemed to be deleted from this Agreement, while the remaining provisions of this Agreement will be unaffected and continue in full force and effect.
- 22.9 Unless otherwise agreed in writing by KCSA the Supplier and its personnel shall have no interest in nor receive remuneration in connection with any of the Goods except provided for in the Agreement.
- 22.10 This Agreement supersedes any previous oral or written agreements or arrangements between the Parties relating to the matters contained in this Agreement and shall be the entire contract between the Parties.

Document Reference: **[COMPLETE]**

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

\_\_\_\_\_  
**SIGNED** on behalf of the Supplier at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
**SIGNED** on behalf of KCSA at \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.


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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

ANNEXURE "A"

		<b>Contact Details</b> Tel: _____ Email: _____ Vat No. _____ Reg No. _____					
<b>Purchase Order</b>							
<b>Supplier</b>		<b>Ship To</b>	<b>Order</b>				
_____		_____	Number: _____ Date: _____ Requested: _____ PR Number: _____ Page: 1 of 1 Print Date: _____				
<b>Payment Terms:</b>		<b>Delivery Instructions</b>	<b>Internal</b>				
IncoTerms 2010: _____		_____	Department: _____				
Supplier Reference: _____		_____	Buyer: _____				
Line No.	Revision Number	Revision Description	Country	UoM	Description	Unit Price	Extended Price
<b>EXAMPLE</b>							
						<b>Subtotal:</b>	0.00
						<b>VAT:</b>	0.00
						<b>Order Total: (€)</b>	
Procurement Manager _____				Date _____			

\*Please refer to the standard terms and conditions of purchase and service which govern all orders for goods and/or services placed by the Inshore Mines Group (including any division or subsidiary company thereof, ("Company") and all contracts and sub-contracts entered into by the Company with the counterparty to the order ("Supplier") for the purchase of any goods and/or the supply of any services ("Terms and Conditions"). This Order has been placed under the Terms and Conditions, which shall be read with the Order as containing the entire agreement between the Company and the Supplier in relation to the subject matter hereof. The Supplier shall be bound by the Terms and Conditions upon acceptance of this Order. The Terms and Conditions can be obtained from the Company's procurement department at the contact details above.

Document Reference: **[COMPLETE]**

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**ANNEXURE "B"**

The responsibility to ensure compliance with KCSA's Ethics, rest with the Supplier.  
KCSA'S Ethics Compliance Framework is detailed in the below.

<b>DOCUMENT NO.</b>	<b>TITLE</b>
2014-02	IVN Companion Booklet to the Code of Business Conduct and Ethics
2014-02	IVN Code of Business Conduct and Ethics
2014-02	IVN Corporate Disclosure, Confidentiality and Securities Trading policy
2014-02	IVN Corporate Citizenship

Document Reference: **[COMPLETE]**

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**ANNEXURE "C"**  
**Response to RFQ**

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Document **{COMPLETE}**  
Reference:

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**ANNEXURE "D"**  
**Request for Quotation**

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Document **[COMPLETE]**  
Reference:

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**ANNEXURE "E"**

**Supply Specification**

**11.1 AUTHORISED AND DESIGNATED REPRESENTATIVE**

1.1 The authorised and designated representative of KCSA is:

Name: .....

E-mail: .....

1.2 The authorised and designated representative of the Supplier is:

Name: .....

E-mail: .....

**2 DELIVERY**

2.1 Should the Goods be imported, then the Supplier will ship the Goods DDU KCSA's Clearing Agent, Lubumbashi, Democratic Republic of Congo. All references to delivery terms shall be interpreted in accordance with Incoterms 2010. The Goods will be delivered on weekdays between 09:00 and 15:00.

2.2 After customs clearance by KCSA, if applicable, the Seller shall provide transportation of the Goods to the final destination, being KCSA's Kamoa-Kakula Copper Project, Lualaba Province, Democratic Republic of Congo ("Final Destination"). The Supplier shall bear the cost of delivery to the Final Destination. Non-imported items shall be delivered directly to the Final Destination.

2.3 Delivery is to take place within 7 days from receipt of the Purchase Order, unless a shorter period is specified by KCSA.

**3 CONTAINERS / PACKING MATERIAL**

3.1 Unless otherwise stated in the Purchase Order, no payment is made for containers or packing materials or their return to the Supplier.

Document Reference: **[COMPLETE]**

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

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**4 REJECTION**

4.1 If the Supplier fails to comply with his obligations under the Purchase Order KCSA may reject any part of the Goods by giving written notice to the Supplier specifying the reason for rejection and whether replacement Goods are required and within what time. Thereafter, KCSA returns the rejected Goods to the Supplier at the Supplier's risk and expense. Any money paid to the Supplier in respect of Goods not replaced within the time required, together with the costs of returning rejected Goods to the Supplier and obtaining replacement goods from a third party are paid by the Supplier to KCSA.

**5 WEIGHTS AND MEASURES**

5.1 The quantities of Goods delivered shall be according to South African standard weights and measures.

**6 PACKAGING, MARKING AND DELIVERY**

6.1 The Goods shall be properly packed for long term storage in containers suitable to protect the contents against damage through rough handling and for over-storage in transit or whilst in store.

6.2 All containers (including packing cases, boxes, tins drums and wrappings) supplied by the Supplier shall be considered as non-returnable, and their cost having been included in the price of the Goods.

6.3 The Supplier shall:

6.3.1 clearly mark the outside of each consignment or package with the Supplier's name and full details of the destination in accordance with KCSA's Purchase Order and include a packing note stating the contents thereof; and

6.3.2 on despatch of each consignment, send to KCSA, an advice note specifying the means of transport, weight, number or volume as appropriate and the point and date of despatch; and

6.3.3 send to KCSA a detailed priced invoice as soon as is reasonably practical after despatch of the Goods; and

6.3.4 state on all communications the relevant Purchase Order number.

Document Reference: **[COMPLETE]**

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

6.4 Delivery, shall be effected within 7 days from receipt of the Purchase Order, subject to 2.3. Should the Supplier have reason to suspect delays in delivery, the Supplier shall advise KCSA upon receipt of an order in writing of any anticipated delays citing reasons therefore and put forward a new anticipated delivery date. KCSA may then extend the delivery date if and as it seems fit. Unless and until the Supplier receives a notification of the new, extended delivery date, there shall be no extension to the date.

6.5 Should the Supplier fail to supply any of the Goods on the date or dates or within the period or periods specified, or should the Supplier fail to replace any rejected Goods as required by KCSA, the Supplier shall be liable to make good to KCSA all loss and damage occasioned by such failure, including any reasonable price (whether greater than the appropriate price in terms of the Agreement or not) paid by KCSA in purchasing the Goods on which default has been made, from a source other than the Supplier. In such an event KCSA shall be at liberty to retain the amount of any such loss or damage from any money due by KCSA to the Supplier but without prejudice to other methods of recovery open to KCSA.

**7 QUALITY**

7.1 All Goods covered by this Agreement shall be the subject of KCSA's inspection and test at all times before, during or after manufacture. The Supplier shall furnish without extra charge all reasonable facilities and assistance for the safe and convenient inspection or test required by appointed inspectors. Such inspections may be carried out on the Supplier's premises or at such other place as deemed appropriate by KCSA.

7.2 If the Supplier fails to supply Goods, materials, workmanship or services in accordance with the provisions of the Agreement, KCSA may reject any part of the Goods by giving written notice to the Supplier specifying the reason for rejection and whether replacement Goods are required and within what time.

7.3 All rejects shall be held at the Supplier's risk and expense including all transportation and handling costs until returned to or collected by the Supplier. All rejects shall be replaced or rectified and made good at the Supplier's expense within the specified replacement period to the full satisfaction of the inspectors and in conformity with the standards, specification or samples specified in the Agreement or KCSA.

7.4 In the event of the Supplier failing to remove such rejected Goods within 5 days of notification of the rejection, KCSA shall be at liberty to return them at the Supplier's risk, the cost of carriage being recoverable from the Supplier.

Document Reference: **[COMPLETE]**

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STANDARD COMMERCIAL TERMS AND CONDITIONS FOR PURCHASE OF GOODS

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**8 WARRANTY**

8.1 Without prejudice to any other rights of KCSA under these conditions, the Supplier warrants that:

8.1.1 all Goods delivered will be free from defective materials or workmanship; and

8.1.2 this warranty shall survive any inspection, delivery, acceptance or payment by KCSA; and

8.1.3 the Goods will remain free from defects for a period of one year from acceptance of the Goods by KCSA.

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Document Reference: **[COMPLETE]**

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