



**Eminox**  
**MASTER FORMS**

<b>SERIAL NUMBER</b>	SCM – PROC05
<b>ORIGINATOR</b>	SC Engineer
<b>DATE ORIGINATED</b>	September 2016
<b>LATEST REVISION</b>	April 2018
<b>APPROVED</b>	SC Manager

**EMINOX LIMITED**

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STANDARD TERMS AND CONDITIONS  
FOR THE PURCHASE OF GOODS & SERVICES

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## STANDARD TERMS & CONDITIONS FOR THE PURCHASE OF GOODS & SERVICES

### 1. INTERPRETATION

#### 1.1 Definitions:

**Bribery Act:** An Act of the United Kingdom Parliament (2010/C23) that covers the criminal law relating to Bribery;

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks are open for business;

**Buyer:** A duly authorised representative of the Company;

**Company:** Eminox Limited, company number 1349209, the registered office of which is at The Old Court House, 24 Market Street, Gainsborough, Lincolnshire, DN21 2BE;

**Conditions:** the terms and conditions set out in this document;

**Contract:** The Order and the Seller's acceptance of the Order;

**DDP:** Delivered Duty Paid – An Incoterm by which the Supplier fulfils their obligations to deliver when the goods have been made available at the named place in the country of importation. The Supplier has to bear the risks and costs, including duties, taxes and other charges of delivering the Goods thereto, cleared for importation;

**Delivery Date:** the date specified in the Order on which delivery is required;

**Delivery:** where the Company takes possession of the Goods from the Supplier as per the Order;

**Goods:** Any goods or service agreed in writing in the Contract to be purchased by the Company from the Seller (including any part or parts of them);

 <b>Eminox</b> <b>MASTER FORMS</b>	<b>SERIAL NUMBER</b>	SCM – PROC05
	<b>ORIGINATOR</b>	SC Engineer
	<b>DATE ORIGINATED</b>	September 2016
	<b>LATEST REVISION</b>	April 2018
	<b>APPROVED</b>	SC Manager

**Hazardous Goods:** Any item or agent (biological, chemical, radiological, and/or physical), which has the potential to cause harm to the humans, animals, or the environment, either by itself or through interaction with other factors;

**HSE:** Health, Safety and Environment;

**INCOTERMS 2010:** International commercial terms that are a series of pre-defined commercial terms published by the International Chamber of Commerce (ICC) relating to international commercial law. Consists of a series of three-letter acronyms related to common contractual sales practices, which clearly communicates the tasks, costs, and risks associated with the transportation and Delivery of goods;

**Intellectual Property:** refers to creation of the intellect for which a monopoly is assigned to designated owners by law;

**Normal Business Hours:** hours between 8:00am to 17:00pm on a Business Day;

**Order:** The Company's written instruction to supply Goods;

**Production Part Approval Process (PPAP):** a process that is required of all new Suppliers of new or modified goods, where deliveries and part submissions should be accompanied by appropriate documentation. ([refer to PPAP document](#))

**REACH:** Regulation for Registration, Evaluation, Authorisation and Restriction of Chemicals. Under single system for the registration, evaluation and authorisation of chemicals information on the risks posed by substances and how they should be handled must be supplied throughout the production chain.

**Special Terms and Conditions:** Specific terms and conditions that relate only to a certain Supplier.

**Specification:** The technical description, drawing, and/or the requirement (if any) of the Goods contained or referred to in the Order;

 <b>Eminox</b> <b>MASTER FORMS</b>	<b>SERIAL NUMBER</b>	SCM – PROC05
	<b>ORIGINATOR</b>	SC Engineer
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	<b>LATEST REVISION</b>	April 2018
	<b>APPROVED</b>	SC Manager

**Supplier:** The person, firm or company who accepts the Company’s Order;

**Vendor Creation Form:** a form issued by the Company to the Supplier to facilitate setting up an account facility, ensuring that Supplier meets with the Company’s legal, financial, health and safety requirements.

- 1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or provision as from time to time amended, consolidated, modified, extended, re-acted or replaced, and
- 1.3 to the masculine include the feminine and the neuter and to the singular includes the plural and vice versa as the context admits or requires.
- 1.4 The headings will not affect the construction of these Conditions.

**2. APPLICATION OF TERMS**

- 2.1 All Orders whether in writing or placed orally by the Buyer shall be upon these terms and conditions and where applicable including Special Terms and Conditions of Purchase
- 2.2 The Supplier acknowledges that acceptance of the Order implies acceptance of these terms and conditions, any Special Terms and Conditions of Purchase applicable to this Order which shall both prevail over any terms and conditions of the Supplier, whether contained in a quotation, catalogue, price list, Order acknowledgement, credit application or another other document, except so far as provided in any amendments or modifications which have been agreed in writing by the Buyer.
- 2.3 These Conditions apply to all the Company’s purchases and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by the Buyer.



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<b>SERIAL NUMBER</b>	SCM – PROC05
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<b>LATEST REVISION</b>	April 2018
<b>APPROVED</b>	SC Manager

### 3. QUALITY AND DEFECTS

- 3.1 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and Specification and/or patterns supplied or advised by the Company to the Seller.
- 3.2 The Company's right under these Conditions are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979.
- 3.3 At any time prior to Delivery of the Goods, the Company shall have the right to inspect and the test the Goods at all times, such inspection shall not constitute acceptance by the Company nor reduce the Suppliers obligation.
- 3.4 The Company requires all production Suppliers to adopt the Production Part Approval Process (PPAP) for all new and revised Goods Delivery. Parts Submission Warrants (PSW) together with First Article Inspection Reports (FAIR) and/or Initial Inspection Reports (ISR) must accompany Delivery.
- 3.5 The Suppliers quality performance will be measured and the Company will take the necessary actions to manage, improve and maintain an acceptable performance. The Company and the Supplier agree to cooperate in order to achieve a continuous improvement of quality with a goal of zero defects, but not less than 98%. The Supplier will manage poor performance, with assistance from the Company.
- 3.6 The Supplier will adhere to the Company's quality statement. Refer [Vendor quality statement](#)
- 3.7 Defect Management
- 3.7.1 If the Supplier has delivered a defective part, The Company shall be entitled to demand immediate rectification or immediate Delivery of replacement parts.
- 3.7.2 If due to a Delivery of a defective part, the Company considers it necessary to inspect all parts of the same kind delivered by the Supplier, the Company shall be entitled to give the Supplier notice thereof and make such an inspection at the Suppliers expense and without awaiting the Suppliers approval. The Company and the Supplier will work together to eliminate the causes of defective parts.
- 3.7.3 The Company shall be entitled to set-off any amount against any amount that has to be paid by the Company, against Goods that have been scrapped due to poor quality.
- 3.7.4 The Company reserves the right to dispose of any Goods not collected for return and credit within 30 days (calendar month) of notice being sent to the Supplier requiring such return.



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<b>SERIAL NUMBER</b>	SCM – PROC05
<b>ORIGINATOR</b>	SC Engineer
<b>DATE ORIGINATED</b>	September 2016
<b>LATEST REVISION</b>	April 2018
<b>APPROVED</b>	SC Manager

#### **4. WARRANTY**

- 4.1 Supplier warrants the Goods for a period of Two (2) years from the date the Goods are delivered to the Company.
- 4.2 If any defects arise under normal use and are attributed to faulty material or workmanship, the Supplier shall without prejudice to any other rights or remedies of the Company promptly remedy the defect by either repair or replacement of the defected Goods, without charge to the Company.
- 4.3 Services will be discharged in a proper, professional and timely manner.

#### **5. HEALTH AND SAFETY**

- 5.1 The Supplier undertakes and warrants that all action required to minimize and eliminate any risk to health and safety resulting from the use of Goods, for the purpose for which they are designed has been carried out, and that any information which is relevant, in any way whatsoever, to risk or health and safety will be brought to the attention of the Buyer in writing upon acceptance of the Order. The Buyer has the right to demand and receive proof that the above undertaking has been performed.
- 5.2 It is the duty of the Supplier to ensure that when designing, manufacturing, importing or supplying the Order, that:
  - 5.2.1 They are safe and without risk to health when used properly.
  - 5.2.2 The appropriate tests or examinations have been carried out to ensure that Goods are safe and without risk to health when properly used.
  - 5.2.3 They will provide warnings about significant exposures to chemicals that cause cancer, birth defects and other reproductive harm contained or released into the environment by their products or the manufacturing or use of the products. (Prop 65 – safe Drinking water and Toxic Enforcement Act of 1986)
  - 5.2.4 They will provide any information necessary to ensure that they are safe and without risk to health when properly used.
- 5.3 The Supplier will at all times for the duration of the contract performed pursuant to these Conditions ensure that it complies with all the relevant health, safety and environmental legislation, including REACH. It shall be incumbent upon the Supplier to ensure that every member of its

 <b>Eminox</b> <b>MASTER FORMS</b>	<b>SERIAL NUMBER</b>	SCM – PROC05
	<b>ORIGINATOR</b>	SC Engineer
	<b>DATE ORIGINATED</b>	September 2016
	<b>LATEST REVISION</b>	April 2018
	<b>APPROVED</b>	SC Manager

Staff is aware of the HSE requirements of the Company. Hazardous Goods must be suitable marked with the identification labels, including what the Goods are and detailing the hazard.

## 6. INDEMNITY

The Supplier shall keep the Company indemnified in full against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against, incurred, or paid by the Company because of or in connection with:

- 6.1 Defective workmanship, quality or materials;
- 6.2 An infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; or
- 6.3 Any claim made against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company's employees or agent or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods.

## 7. DELIVERY

- 7.1 Time of Delivery shall be of the essence. The Suppliers Delivery performance will be measured and the Company will take the necessary actions to manage, improve and maintain an acceptable performance. The Company and the Supplier agree to cooperate in order to achieve a continuous improvement of Delivery with a goal of 100% on time in full, but not less than 95%. The Supplier will manage poor performance with assistance from the Company.
- 7.2 The Goods shall be delivered to the Company's place of business or to such other place of Delivery as is agreed by the Company in writing prior to Delivery of the Goods. The Supplier shall off-load the Goods as directed by the Company.
- 7.3 Delivery terms are delivered or DDP (INCOTERMS 2010) at Corringham Industrial Estate, Miller Road, Gainsborough, DN21 1QB, United Kingdom.
- 7.4 The date for Delivery shall be specified in the Order.
- 7.5 The Supplier shall ensure that a Delivery note, which shows, inter alia, the order number, date of the order, and number of packages, description of Goods or services, in the case of part Delivery, the



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<b>SERIAL NUMBER</b>	SCM – PROC05
<b>ORIGINATOR</b>	SC Engineer
<b>DATE ORIGINATED</b>	September 2016
<b>LATEST REVISION</b>	April 2018
<b>APPROVED</b>	SC Manager

outstanding balance remaining to be delivered and material certificates if required, accompanies each Delivery.

- 7.6 Unless otherwise stipulated by the Company in the Order, deliveries shall only be accepted by the Company in Normal Business Hours.
- 7.7 If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Company reserves the right to:
- 7.7.1 cancel the Contract in whole or in part;
- 7.7.2 refuse to accept any subsequent Delivery of the Goods which the Supplier attempts to make;
- 7.7.3 recover from the Supplier any expenditure reasonably incurred by the Company in obtaining Goods in substitution from another Supplier; and
- 7.7.4 Impose a charge that equals to 1% of the Order price for each week or part thereof from the wanted Delivery Date until the order is completed in terms of this agreement, if such charge shall not exceed 5% of the Order price. The Company shall be entitled to set that sum off against any amount owing to the Supplier.
- 7.7.5 Claim damages for any additional costs, loss or expenses incurred by the Company, which are in way attributable to the Supplier's failure to deliver the Goodson the wanted Delivery Date.
- 7.8 If the Supplier requires the Company to return any packaging material to the Supplier that fact must be clearly stated on any Delivery note delivered to the Company and any such packaging material will only be returned to the Supplier at the cost of the Supplier.
- 7.9 When the Company agrees in writing to accept Delivery by instalments the Contract will be construed as a single contract in respect of each instalment. Nevertheless, failure by the Supplier to deliver any one instalment shall entitle the Company at its option to treat the whole contract as repudiated by the Supplier.
- 7.10 If Goods are delivered to the Company in excess of the quantities ordered, the Company shall not be bound to pay for the excess and any excess will be and will remain at the Supplier's risk and may be returnable at the Supplier's expense.
- 7.11 Should the Goods/Services contained within the purchase order not be delivered/completed in full to the agreed specification, within the agreed lead time, the Company reserves the right to cancel the purchase order with no financial loss to the Company.



 <b>Eminox</b> <b>MASTER FORMS</b>	<b>SERIAL NUMBER</b>	SCM – PROC05
	<b>ORIGINATOR</b>	SC Engineer
	<b>DATE ORIGINATED</b>	September 2016
	<b>LATEST REVISION</b>	April 2018
	<b>APPROVED</b>	SC Manager

## 8. TITLE

- 8.1 Subject to the provisions of condition 8.2, the property and risk of the Goods shall pass to the Company on acceptance by the Company of the Goods (or in case of Delivery by instalments) on the acceptance of the Company of each instalment.
- 8.2 If the Supplier postpones Delivery at the request of the Company, the property in the Goods shall pass to the Company on a mutually agreed date, but the Goods shall nevertheless remain the Suppliers risk until actual Delivery has been completed.
- 8.3 The Supplier shall not have a lien over the Goods,

## 9. PRICE

- 9.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by the Company shall be exclusive of value added tax, but inclusive of all other charges.
- 9.2 The Company will accept no variation in the price or extra charges.

## 10. PAYMENT

- 10.1 The Company shall pay the price of the Goods, as per payment terms agreed to on the Vendor Creation Form, to the Supplier, but time for payment shall be not be of essence of the Contract.
- 10.2 The period of payment shall begin to run from acceptance of Goods by the Company or receipt of the invoice, whichever is the later.
- 10.3 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Supplier to the Company against any amount payable by the Company to the Supplier under the Contract.
- 10.4 Payment does not necessarily mean that the Goods provided have been accepted, a credit note will be requested and provided if the Company rejects the Goods.



**Eminox**  
**MASTER FORMS**

<b>SERIAL NUMBER</b>	SCM – PROC05
<b>ORIGINATOR</b>	SC Engineer
<b>DATE ORIGINATED</b>	September 2016
<b>LATEST REVISION</b>	April 2018
<b>APPROVED</b>	SC Manager

## 11. CONFIDENTIALITY

11.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Company or its agents and any other confidential information concerning the Company's business or its products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Company and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.

11.2 The Supplier shall not without written authorisation, announce or publicise any aspect of the trading relationship with the Company or any projects or products involved.

11.3 If the Supplier has entered into a Non-Disclosure Agreement (NDA) with the Company, the terms of the said NDA shall continue to operate.

## 12. THE COMPANY'S PROPERTY

Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Company to the Supplier or not so supplied but used by the Supplier specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of the Company and shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Company and shall not be disposed of other than in accordance with the Company's written instructions, nor shall such items be used otherwise than as authorised by the Company in writing.

## 13. TERMINATION

13.1 The Company shall have the right at any time and for any reason terminate the Contract in whole or in part by giving the Supplier written notice (90 days) whereupon all work on the Contract shall be discontinued and the Company shall pay to the Supplier fair and reasonable compensation for work-in-

 <b>Eminox</b> <b>MASTER FORMS</b>	<b>SERIAL NUMBER</b>	SCM – PROC05
	<b>ORIGINATOR</b>	SC Engineer
	<b>DATE ORIGINATED</b>	September 2016
	<b>LATEST REVISION</b>	April 2018
	<b>APPROVED</b>	SC Manager

progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

13.2 The Company shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:

- 13.2.1 the Supplier commits a breach of any of the terms and conditions of the Contract;
- 13.2.2 any distress, execution of the other process is levied upon any of the assets of the Supplier;
- 13.2.3 the Supplier enters into any compromise or arrangement with its creditors, commits any act of bankruptcy or if any order is made or an effective resolution is passed for its winding up (except for the purposes of amalgamation or reconstruction as a solvent company) or if a petition is presented to court, or if a receiver and/or manager, receiver, administrative receiver, or administrator is appointed in respect of the whole or any part of the Suppliers undertaking or assets;
- 13.2.4 the Supplier ceases or threatens to cease to carry on its business; or
- 13.2.5 the financial position of the Supplier deteriorates to such an extent that in the opinion of the Company the capability of the Supplier to fulfil its obligations adequately under the Contract has been placed in jeopardy.

13.3 The termination of the Contract, however arising, will be without prejudice to the rights and duties of the Company accrued prior to termination. The Conditions, which expressly or impliedly have an effect after termination, will continue to be enforceable notwithstanding termination.

#### **14. REMEDIES**

14.1 Without prejudice to any other right or remedy which the Company may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of this Contract the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Company:

- 14.1.1 to rescind the Order;
- 14.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;
- 14.1.3 at the Company’s option to give the Supplier the opportunity at the Suppliers expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

 <b>Eminox</b> <b>MASTER FORMS</b>	<b>SERIAL NUMBER</b>	SCM – PROC05
	<b>ORIGINATOR</b>	SC Engineer
	<b>DATE ORIGINATED</b>	September 2016
	<b>LATEST REVISION</b>	April 2018
	<b>APPROVED</b>	SC Manager

- 14.1.4 to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;
- 14.1.5 to carry out at the Suppliers expense any work necessary to make the Goods comply with the Contract;  
and
- 14.1.6 to claim such damages as may have been sustained in consequence of the Suppliers’ breaches of the Contract

**15. WAIVER**

Failure by the Company to exercise or enforce any right conferred by the Order shall not be deemed to be waiver of any such right nor operate to limit exercise or enforcement thereof or of any other right on any later occasion.

**16. ASSIGNMENT**

- 16.1 The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company
- 16.2 The Company may assign the Contract or any part of it to any person, firm or company.

**17. FORCE MAJEURE**

- 17.1 The Company reserves the right to defer the date of Delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party’s workforce), or restraints or delays affecting carriers or inability or adequate or suitable materials.
- 17.2 If the Supplier is in a position of force majeure (as described above) or is aware of the likelihood of a situation constituting force majeure arising it shall notify the Company forthwith and take such steps as may be appropriate to mitigate the effects of such force majeure.

 <b>Eminox</b> <b>MASTER FORMS</b>	<b>SERIAL NUMBER</b>	SCM – PROC05
	<b>ORIGINATOR</b>	SC Engineer
	<b>DATE ORIGINATED</b>	September 2016
	<b>LATEST REVISION</b>	April 2018
	<b>APPROVED</b>	SC Manager

## 18. REGULATORY REQUIREMENTS

18.1 The Supplier warrants that it is and will remain for the duration of the Contract, fully cognisant of any relevant laws or regulatory requirements and rulings of any competent authority that has jurisdiction over provision of its Goods specified in the Contract.

18.2 The Supplier shall as soon as possible identify and notify the Company in writing of any relevant changes in any laws, legislative enactments and/or regulatory requirements and of rulings or any competent authority that may relate to the Supplier's provision of the Goods.

18.3 The Supplier and the Company shall co-operate to identify the impact of such changes on how the Supplier provides the Goods.

18.4 The Supplier shall be responsible for any fines and charges arising from any non-compliance with any laws or rulings of any competent authority relating to the Delivery or use of the Goods.

18.5 The Supplier hereby indemnifies the Company and holds the Company harmless against any losses suffered or sustained by the Company arising from any such non-compliance by the Supplier.

18.6 The Company shall consult with the Supplier regarding regulatory changes to the extent the Company deems appropriate, and the Supplier shall make itself available for such consultation as reasonably required by the Company.

18.7 The Supplier shall ensure that all suppliers within their supply chain meet the necessary statutory and regularity requirements.

18.8 In particular the Supplier will adopt the OECD Model Supply Chain Policy (Annex II OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from conflict affected and high risk areas, 3<sup>rd</sup> edition) and apply its provisions generally throughout its supply chain and without prejudice to the generality of the foregoing will :-

### 18.7.1 SLAVERY AND HUMAN TRAFFICKING

The Supplier will comply at all times with the provisions of the Modern Slavery Act 2015 (2015/C30), whether or not they apply to the supplier. The Supplier will, if asked by the Company, provide to Company a statement of steps taken to ensure that neither slavery nor human trafficking is taking place in its business or supply chain within 10 working days at the request.

### 18.7.2 BRIBERY AND CORRUPTION

18.7.2.1 The Supplier shall:

 <b>Eminox</b> <b>MASTER FORMS</b>	<b>SERIAL NUMBER</b>	SCM – PROC05
	<b>ORIGINATOR</b>	SC Engineer
	<b>DATE ORIGINATED</b>	September 2016
	<b>LATEST REVISION</b>	April 2018
	<b>APPROVED</b>	SC Manager

18.7.2.2 comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act;

18.7.2.3 comply with the Company’s ethics, anti-bribery and anti-corruption policies as communicated to it from time to time or as available to view on the company’s website;

18.7.2.4 have and maintain in place throughout the Contract its own policies and procedures under the Bribery Act and will enforce them where appropriate;

18.7.2.5 promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract.

18.7.3 adopt and comply with the provisions of the Supplements on Tin, Tantalum and Tungsten as well as on Gold contained in the said OECD Due Diligence Guidance.

## **19. CONFLICT OF INTEREST**

19.1 The Supplier undertakes that it shall not engage in practices or pursue interests which are in conflict with the interests of the Company and which could result in financial damage or loss being suffered by the Company or the Company’s reputation being harmed.

19.2 Conflict of interest will exist when the Supplier has an interest in, or derives some benefits from transactions to which the Company is a Party, whether directly or indirectly. It also includes instances where there is reasonable possibility, in the Company’s opinion, of such conflict occurring.

19.3 All conflicts of interest must be disclosed to the Company in writing immediately on the conflict arising.

19.4 The Supplier shall inform its staff of the contents of this term and shall ensure their adherence thereto.

## **20. INSURANCE**

20.1 The Supplier shall have and maintain in force at its own cost sufficient insurance (to the satisfaction of the Company), to cover any losses, which may arise out of or in connection with its obligations and liabilities under these Conditions. The Supplier shall provide on request a copy of such insurance policy to the Company. Such insurance shall include without limitation: public liability insurance and specifically comprehensively insure all its own plant, material and equipment on an all risk basis. There

 <b>Eminox</b> <b>MASTER FORMS</b>	<b>SERIAL NUMBER</b>	SCM – PROC05
	<b>ORIGINATOR</b>	SC Engineer
	<b>DATE ORIGINATED</b>	September 2016
	<b>LATEST REVISION</b>	April 2018
	<b>APPROVED</b>	SC Manager

is no subrogation against the Company, its agents or representatives under these insurances, whether mentioned herein or not, and taken out by or maintained by the Supplier.

20.2 The Supplier should on demand furnish written proof of its insurer’s knowledge of the above undertaking.

20.3 Where Hazardous Goods are transported pursuant to a transaction document, the Supplier shall observe the requirements of the British government and international agreements relating to the packaging, labelling and carriage of Hazardous Goods and shall obtain adequate insurance to cover any potential hazards, which may be occasioned through the transportation of such Goods.

20.4 The Company reserves the right to amend the terms this clause as instructed from time to time by its insurers. Any amendments resulting from such instructions will be negotiated between the Parties and failing agreement within 7 (seven) days of that instruction, the Supplier will comply with all reasonable requirements of the Company’s insurers.

## **21. INTELLECTUAL PROPERTY RIGHTS**

21.1 The Company retains all right, title and interest in and to the Company’s Intellectual Property.

21.2 Data, literacy works and other works of authorship generated in the course of performing Services, such as manuals, training materials, reports and the Company shall own other documentation. The Company shall have sole and exclusive ownership of reports generated by the Supplier arising from performance of this Contract and of all the Company’s data. Further, all Intellectual Property rights in such items shall be the sole property of the Company, notwithstanding termination of these Terms and Conditions or any Transaction Document, and the Supplier hereby assigns, without any further consideration, all right, title and interest in and to such items to the Company.

21.3 The Supplier retains all right, title and interest in and to the Suppliers Intellectual Property that is used in connection with the Goods.

21.4 The Supplier shall not introduce into the Company’s environment any third party Intellectual Property for the continued duration of these Conditions or otherwise use such third party Intellectual Property to provide the Services without first obtaining the Company’s written consent thereto. To the extent that the Company grants such consent, the Supplier shall be responsible for obtaining a license from the third party on behalf of the Company and in the Company’s name, to use such third party Intellectual Property.

 <b>Eminox</b> <b>MASTER FORMS</b>	<b>SERIAL NUMBER</b>	SCM – PROC05
	<b>ORIGINATOR</b>	SC Engineer
	<b>DATE ORIGINATED</b>	September 2016
	<b>LATEST REVISION</b>	April 2018
	<b>APPROVED</b>	SC Manager

**22. GENERAL**

22.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

22.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable, or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

22.3 English Law shall govern the formation, existence, construction, performance, validity and all aspects of the Contract and the parties submit to the exclusive jurisdiction of the English courts.

**ANY SPECIAL CONDITIONS OF PURCHASE APPLICABLE TO THE ORDER SHALL  
TAKE PRECEDENCE OVER THESE GENERAL TERMS AND CONDITIONS OF  
PURCHASE**