

**TENDER DOCUMENT FOR THE
SUPPLY AND DELIVERY OF WELDING
& GAS WELDING CONSUMABLES**

Tender Reference No:
JV/WELDING&GAS/06/2019

1. INVITATION TO TENDER

The recipient of this document (hereinafter referred to as the “**Invitee**”) is invited by Minopex Lesotho (Proprietary) Limited (registration number 2003/518) (hereinafter referred to as the “**Principal**”) to submit a tender for the rendering of the services and/or supply of the goods as fully described in annexure “**B**” hereto.

2. ACKNOWLEDGMENT OF INVITATION TO TENDER

- 2.1 All invitees are required to complete and return the Acknowledgment of Invitation to Tender document annexed hereto as annexure “**C**”.
- 2.2 The Acknowledgment of Invitation to Tender document must be completed and returned to Jessica.Volschenk@minopex.com by no later than Wednesday, 19 June 2019.

3. INFORMATION TO TENDERERS

All invitees wishing to submit a tender (hereinafter referred to as the “**Tenderer**”) for the rendering of the goods and or services as fully described in annexure “**B**” hereto are advised as follows:

3.1 Governing Terms and Conditions

- 3.1.1 The Tenderer shall be deemed to have accepted the terms and conditions annexed as Annexure ‘I’ hereto.
- 3.1.2 The Tenderer’s standard terms and conditions will not be considered.
- 3.1.3 No deposit is to be paid by a Tenderer.

3.2 Site Location

- 3.2.1 The Letšeng site is situated at Letšeng Diamond Mine, Mokhotlong, Lesotho.

3.3 **Site Visit**

3.3.1 The Principal may require the Tenderer to attend at the site at which the Tenderer will be rendering the services and/or supplying the goods (hereinafter referred to as the “**Site**”) on a date and time to be advised by the Principal.

3.3.2 The Tenderer will not be given prior access to the Site whatsoever.

3.4 **Queries**

3.4.1 All queries relating to this Tender Document must be directed in writing via email to Jessica Volschenk on Jessica.Volschenk@minopex.com

3.5 **Completion of Tender Forms**

3.5.1 All Tenderers must complete annexures “**D**”, “**E**”, “**F**”, “**G**”, “**H**”, “**I**” and “**J**”. (hereinafter referred to as the “**Tender Forms**”).

3.5.2 The Tender Forms must be completed in English.

3.5.3 The Tender Forms must not be retyped or redrafted. Photocopies of the original tender documentation may be used, but an original signature must appear on such photocopies.

3.5.4 Use of correction fluid on the Tender Forms is prohibited. Any deletion or correction on the Tender Forms must be initialled.

3.5.5 All Tenderers must ensure that the Tender Forms are complete and that the Tender Forms are accurate in all respects.

3.5.6 The Tender Forms must be signed by an authorised director or employee of the Tenderer and must be accompanied by the completed resolution appearing at annexure “**A**”.

3.6 **Mandatory Documents**

3.6.1 **Lesotho Based Companies:** All submissions must be accompanied with:

3.6.1.1 Declaration by Tenderer (Annexure D)

3.6.1.2 Company Registration Certificate (if applicable);

3.6.1.3 Directors' Details (Annexure H)

3.6.1.4 Shareholders' Details (Annexure I)

3.6.1.5 A TAX compliance certificate from LRA;

3.6.1.6 VAT Registration Certificate if registered for VAT

3.6.1.7 Letter from Tenderer's bank confirming bank details;

3.6.1.8 Traders Licence; and

3.6.1.9 Letšeng Diamonds Governance Questionnaire.

3.6.2 **South African Registered Companies:** All submissions must be accompanied with:

3.6.2.1 Declaration by Tenderer (Annexure D)

3.6.2.2 Company (CIPRO) registration documents;

3.6.2.3 Directors' Details (CIPC documents);

3.6.2.4 Shareholders' Details (Annexure I)

3.6.2.5 SARS Letter of Good Standing;

3.6.2.6 Letter from Tenderer's bank confirming bank details, and

3.6.2.7 Letšeng Diamonds Governance Questionnaire.

3.7 **Additional Documentation**

3.7.1 Tenderer's may submit additional documentation, which it believes is in the interests of the Principal.

3.7.2 If the Tenderer intends to submit any additional documentation with the Tender Forms such additional documentation must accompany the Tender Forms.

3.7.3 All additional documentation must be accurate in all respects.

3.8 **Submission of Tender**

3.8.1 Indicative timetable as follows, namely

Tender Communication	Jessica Volschenk
Acknowledgement of Receipt of Tender and Intention to Tender	12h00 Wednesday, 19 June 2019
Site Visit	Not Required
Closing Date for Submissions of Tender	12h00 Friday, 28 June 2019
Submission Format Hand delivery submission to Minopex Offices in Maseru	Minopex Lesotho Office Lenyora House, Suite 11, 190 Nightingale Road New Europa Maseru
Submission Hours	08h00 – 16h00 – 26 & 27 June 2019 08h00 – 12h00 – 28 June 2019

3.8.2 If the Tenderer intends to submit additional documentation in support of its tender, the Tenderer must include such additional documentation in the sealed envelope marked as indicated below.

3.8.3 Tender submission to be submitted in a sealed envelope and marked as indicated below.

Minopex Lesotho (Pty) Ltd	
For Attention	Jessica Volschenk
<i>By Hand to</i> Tender Box Hand delivery submission to Minopex Offices in Maseru	Minopex Lesotho Office Lenyora House, Suite 11, 190 Nightingale Road New Europa Maseru
Enquiry No:	JV/WELDING&GAS/06/2019
Closing Date:	12H00 Friday, 28 June 2019
CONTRACTOR'S Name:	

3.8.4 If the additional documentation comprises schedules, a copy of such schedules must be included in hard copy in the sealed envelope. The schedules must also be saved onto a memory stick which must be included in the sealed envelope.

3.8.5 Tenders will only be considered if delivered to the abovementioned address.

3.9 Value Added Tax

3.9.1 Value Added Tax is applicable however prices reflected in the rates schedule must be exclusive of VAT.

3.10 Discrepancies

3.10.1 The Tenderer shall check the page numbers of the enquiry before submission of its Tender. Should any page be found to be missing or figures or writing be indistinct, or any obscurity or doubt arise as to the meaning of any description or particulars of any item or if this document contains any discrepancies or obvious errors, then the Tenderer shall immediately inform the Principal in writing and have the problem rectified or explained as the case may be.

3.10.2 No claims whatsoever shall be considered for faults in the Tender price or in the terms and conditions of the Tender resulting from the abovementioned discrepancies.

3.11 **Rejection of Tenders**

3.11.1 Tenders will be rejected if:

3.11.1.1 It is received after the time and/or date established for the closing of the Tender submissions; or

3.11.1.2 it contains any omissions, erasure, alteration, text additions or irregularities of any kind determined by the Principal; or

3.11.1.3 Tender Documents are not signed; or

3.11.1.4 It is considered manifestly incorrect; or

3.11.1.5 It does not include the required information necessary for the proper comparison and evaluation of the Tender;

3.11.1.6 The Tenderer does not comply with the requirements of this Tender Document; or

3.11.1.7 The Tenderer attempts in any way whatsoever to canvas support for its Tender by contacting or soliciting (other than contacting the indicated staff for information purposes) any of the staff of the Principal; or

3.11.1.8 There is a conflict of interest that has not been disclosed by the Tenderer; and/or

3.11.1.9 The Tenderer is involved in suspected fraudulent activities.

3.12 **Information to Tenderers**

3.12.1 All information is furnished in good faith for the guidance of Tenderers, but in no way shall such information relieve a Tenderer of the responsibility of ascertaining to its own satisfaction, the scope and conditions of this tender. Tenderers shall make investigations necessary to inform itself thoroughly as to the character and magnitude of the work, the facilities for delivery, placing and operating the necessary plant and for delivery and handling material at the site. No plea of

ignorance of conditions which exist or may hereafter exist, or of conditions or difficulties which may be encountered will be accepted as a reason for failure to render the services and/or supply the goods or as a basis for claims for additional compensation or extension of time.

3.13 Tenderer's Capability

3.13.1 The Principal seeks tenders from Tenderers with the necessary managerial, financial and technical capability to render the services and/or supply the goods referred to in annexure "B".

3.13.2 The rendering of the services and/or supply of goods is as described in annexure "B" and the Tenderer must ensure that the Principals' requirements are satisfied.

3.14 Conflict of Interest

3.14.1 Tenderers shall clearly indicate in their Tenders, any situation or relationship vis-à-vis any of the Principal's official/s that may reasonably be construed and/or a potential conflict of interest as constituting a conflict of interest applicable in this Tender.

3.14.2 Should there be any conflict of interest, the Principal, in its sole discretion shall then decide on a suitable course of action.

3.14.3 Tenderers shall note that should they not declare a conflict of interest, which omission later proves to have been in bad faith, the Principal reserves all its rights including but not limited to (and at its election) reject the Tender, cancel contract and claim compensation for damages it may suffer.

3.15 Confidentiality

3.15.1 All Tenders received will be treated as confidential and will not be opened in public. Furthermore, the Principal will not disclose any aspect of a Tender to third parties (unless required to by legal process, law or due legal order), however should any such disclosure occur, the Principal does not accept any liability to the Tenderer or any third parties so arising from such disclosure.

3.15.2 The Tenderer undertakes to keep and hold secret and confidential any and all information contained in this Tender Document and not to disclose the same to any third party other than those necessarily required to assist the Tenderer in the

submission of its Tender, and then only to the extent required to enable such third party to render such assistance.

4. EVALUATION OF TENDERS

4.1 General

4.1.1 All tenders received in sealed envelopes with the relevant tender number on the envelope will be kept unopened in safe custody in the tender box provided until the closing time of the Tender.

4.1.2 The Principal's evaluation process will seek to identify the Tenderer who is a superior renderer of the services and/or supplier of the goods. In the event that a superior renderer of the services and/or supplier of the goods is not identified a shortlist of Tenderers will be identified who will be able to offer the Principal the greatest overall benefit having regard to the relevant criteria for evaluation.

4.1.3 Tenderers may be invited to make a formal presentation of limited duration as part of the assessment process.

4.1.4 The Principal will not evaluate on pricing alone and consideration is given to quality, technical expertise, experience and price.

4.1.5 The Principal reserves the right to accept any tender, not necessarily the lowest priced, and will not be obliged to give reasons for its decisions. Furthermore, the Principal reserves the right to accept any tender wholly or in part.

4.2 Localisation

4.2.1 The Principal will evaluate –

4.2.1.1 If the Tenderer has a locally registered company in Lesotho including local ownership looking at:

- 4.2.1.1.1 Operational Office in Lesotho
- 4.2.1.1.2 Ownership
- 4.2.1.1.3 Registration

4.3 Technical merit

4.3.1 The Principal will evaluate –

4.3.1.1 the extent to which the Tenderer meets the minimum required requirements and standards of the required product.

4.4 **Supply experience**

4.4.1 The Principal will evaluate –

4.4.1.1 the Tenderer's prior exposure and experience in carrying out similar supply;

4.4.1.2 the Tenderers turnover in relation to the required supply, and

4.4.1.3 the extent of the tenderers stock holding for the supply of the required goods.

4.5 **Stock Holding**

4.5.1 The Principal will evaluate –

4.5.1.1 the Tenderer's current stock holding or willingness to keep stock of the product;

4.6 **Rates Schedule**

The Principal will evaluate the supply rates as indicated in the rates schedule annexed as annexure "E".

4.7 **Mandatory Requirements**

4.7.1 Mandatory requirements will include

4.7.1.1 Certified traders Licence.

4.7.1.2 Shareholding Certificate or Company Extract detailing Shareholding.

4.7.1.3 Completed Letseng Diamonds Due Diligence Questionnaire.

5. **GENERAL**

5.1 **Cost of Tender**

All costs and expenses incurred by the Tenderer in any way associated with the development, preparation and submission of their tender including, but not limited to, attendance at meetings, discussions and providing any additional information

required by the Principal, which may or may not lead to the Tenderer being selected, will be borne entirely and exclusively by the Tenderer.

5.2 No Legal Relationship

No binding legal relationship will exist between the Tenderer and the Principal.

5.3 Statements in Writing

No statement by an officer of the Principal made to a Tenderer whether or not in respect to any inquiry, is binding on the Principal unless the statement is expressly stated to be so in writing. The record of any meetings between a Tenderer and the Principal will not constitute a statement in writing.

ANNEXURE A

COMPANY / BOARD RESOLUTION

This is a Certified Copy of Resolution that was passed at a Meeting of the Board of Directors / Members of the company (Company Name) _____, at which a quorum was present on date ____/____/_____.

RESOLVED, that this Board of Directors / Members hereby authorizes and directs (Name of Individual) _____ in his capacity as (Title)_____ to sign tenders and contracts.

Signature of authorising Member / Director

Dated

ANNEXURE B

SCOPE OF WORKS / RENDERING OF SERVICES / SUPPLY OF GOODS

The Scope of Supply covers the supply and delivery of Welding & Gas Welding Consumables for Minopex Lesotho as per the specifications and anticipated volumes as indicated in the table below (The volumes are based on annual consumption with a two (2) year duration of Tender)

PRODUCT CODE	DESCRIPTION	UOM	ANTICIPATED ANNUAL CONSUMPTION
16731113	Oxygen Cylinder - 13.6kg	CYL	395
16731115	Oxygen Cylinder Portapack (Refilled) 3 - GD 0.94Kg	CYL	2
16731118	Oxygen Cylinder 20kg	CYL	0
16731213	Acetylene Cylinder - 8.6kg	CYL	166
16731214	Acetylene Cylinder Portapack (Refilled) 16 - DA	CYL	1
16731216	Acetylene Cylinder 20kg	CYL	0
16731301	Arcal Speed (Ash5) Cylinder 20kg	CYL	0
16731311	Argon Cylinder - 17.4kg	CYL	4
16731312	Argon Cylinder 20kg	CYL	0
16731411	Nitrogen Cylinder 11kg	CYL	1
17525001	Chalk Boilermaker	BX	5
17813015	Brazing Rod Fluxcoat 34% Silver - Cadmium Bearing (Blue Flux) - 100grm Pack	KG	0
17815002	Welding Rod Vitemax 2.5mm 5kg Pk	BX	18
17815003	Welding Rod Vitemax 3.2mm 5kg Pk	BX	315
17815004	Welding Rod Vitemax 4.0mm 5kg Pk	BX	23
17815009	Welding Rod Yawata FT-51 E6013 3.2mm 5kg Pack	BX	20
17815053	Welding Rod Afrolux 3.2mm (5kg Pack)	BX	20
17815054	Welding Rod Afrolux 4.0mm (5kg Pack)	BX	8
17815111	Welding Rod Low Hydrogen 2.5mm (4kg Pack)	BX	8
17815112	Welding Rod Low Hydrogen 3.2mm (4kg Pack)	BX	119
17815113	Welding Rod Low Hydrogen 4.0mm (4kg Pack)	BX	45
17817001	Welding Rod Stainless Steel 316L 2.0mm, (4kg Pack)	BX	6
17817002	Welding Rod Stainless Steel 316L 2.5mm (4kg Box)	BX	13
17817003	Welding Rod Stainless Steel 316L 3.25mm (4kg Box)	BX	8
56481003	Cable Welding 35mm ² x 100m Grey	M	150
61521111	Heating Torch LPG Handle with Economiser	EA	1
61521112	Heating Torch LPG Neck Tube	EA	1
61521113	Heating Torch LPG Nozzle 29mm	EA	1
61521114	Heating Torch LPG Rubber Hose Orange (per Meter)	M	0
61521115	Heating Torch LPG Regulator High Pressure	EA	1
61521116	Heating Torch LPG Grease Coupler Button Head GROZ	EA	5
61521117	Heating Torch LPG G-Gun Hold On Coupler	EA	5
61621001	Hose Acetylene Red 8mm x 30m	ROL	7
61621002	Hose Oxygen Blue 8mm x 30m	ROL	9
61623001	Cutting Nozzle Saffire A-NM6 (Oxy / Acet) 0.8mm Short	EA	8
61623002	Cutting Nozzle Saffire A-NM6 Oxy/Acet 1.2mm Short	EA	18
61623003	Cutting Nozzle Saffire A-NM6 (Oxy / Acet) 1.6mm Short	EA	96
61623004	Cutting Nozzle Saffire A-NM6 (Oxy / Acet) 2.0mm Short	EA	65

61623014	Cutting Nozzle Harris - 1F	EA	0
61623711	Nozzle Cleaner 13 Piece Standard	EA	33
61623712	Triple Flint Lighter	EA	53
61623713	Triple Flint Lighter Replacement Flint	EA	5
61623714	Parallel Hose Clips 8mm Oxy / Acetelene	EA	10
61623715	Hose O - Clips 8mm Oxy / Acetelene	EA	16
61623718	Safetest Leak Detector Spray 300ml	EA	21
61623750	Brush Wire Cup - C652 - 140 x 14	EA	2
61623751	Brush Wire with Handle	EA	61
61623752	Hose Jointers - 8mm	EA	5
61623753	Spindle Key - Afrox	EA	0
61623754	Tip Contact 0.9mm - 25AK Torch	EA	2
61623755	Tip Contact 1.0mm - 25AK Torch	EA	2
61623756	Tip Contact 1.2mm - 25AK Torch	EA	0
61623757	Tip Holder - 25AK Torch	EA	2
61623758	Welding Plug Female 70mm	EA	0
61623759	Welding Plug Male 70mm	EA	0
61623760	Hose 20ft V4 NPT + THC7062 - Enerpack	EA	0
61624005	Universal Cutting Torch	EA	16
61624006	Monarch Cutting Torch - Harris	EA	0
61624111	Regulator Acetylene Multi - Stage 150kpa Series 8500 AGM	EA	13
61624112	Regulator Oxygen Multi - Stage 400kpa Series 8500 OGM	EA	17
61624127	Regulator Model 896 - 1000kPA - Harris	EA	0
61624128	Regulator Model 896 - 150kPA - Harris	EA	0
61624217	Coupling Quick Release & FB Arrestor (Acet) Torch - Harris	EA	25
61624219	Coupling Quick Release & FB Arrestor (Oxy) Torch - Harris	EA	0
61624226	Coupling Quick 1" Galvanized	EA	0
61626002	Arrestor Flashback (Acet) F5 Reg. Mount	EA	8
61626003	Arrestor Flashback (Acet) F7 Torch Mount	EA	0
61626005	Arrestor Flashback (Oxy) F5 Reg. Mount	EA	0
61626006	Arrestor Flashback (Oxy) F7 Torch Mount	EA	0
61626012	Arrestor Flashback (Acet) & QRC DGNDK (REG) SS Pin 9/16 LH - Harris	EA	0
61626013	Arrestor Flashback (Oxy) & QRC DGNDK (REG) SS Pin 9/16 LH - Harris	EA	0
61626014	Pressure Gauge DA - Content	EA	0
61626015	Pressure Gauge DA - Outlet	EA	0
61626016	Pressure Gauge O2 - Content	EA	0
61626017	Pressure Gauge O2 - Outlet	EA	0
61626018	Quick Release Arrestor DA Coupling Regulator Mount	EA	0
61629099	Blanket Welding - Siltemp - Double Layered - Size 1.2m x 2.5m	EA	3
61629100	Inlet Stem + Nut - O2	EA	0
61629102	Blanket Welding - Fireman	EA	15
61634003	Holder Electrode 600Amp Twist Type	EA	29
61634013	Earth Clamp 600Amp Crocodile	EA	14
61644002	Inverter Welding 200A 230V - Tradeweld	EA	3
61644003	Inverter Welding 250A 220V	EA	3

61679004	Lens Clear Polytec Inner Impact	EA	0
61679009	Lens Dark Welding Shade 12	EA	4
61679011	Welding Helmet Flip Front 108 x 51mm - Afrox	EA	2
61679012	Welding Helmet Auto Darkening Transarc 0HE350 - Afrox	EA	11
61679031	Screen Welding 8m x 2m - Yellow	EA	1
64112054	Sanding Paper Disc 115 - P16A	ROL	3
64114002	Grinding Wheel 115mm x 7.2mm x Ø22.23 Hole Steel - Pferd	EA	135
64114009	Grinding Wheel 230mm x 7.2mm x Ø22.23 Hole Steel - Pferd	EA	0
64116002	Cutting Wheel 115mm x 2.4mm x Ø22.23 Hole Steel - Pferd	EA	500
64116009	Cutting Wheel 230mm x 2.4mm x Ø22.23 Hole Steel - Pferd	EA	410
64116010	Cutting Wheel 350mm x 3mm x Ø25.4mm Hole Steel (Cut off Machine) - Pferd	EA	0
65117109	Brush Steel Wire C/W Handle	EA	5

Duration of Supply.

- Duration of supply will be for a period of 2 years subject to clauses 14, 21 and 23;

Pricing and INCOTERM.

- Tenderers will be required to complete the Rate / Pricing schedule see Annexure E;
- Pricing Welding & Gas Welding Consumables must be quoted as each, delivered to Letšeng Diamond Mine; exclusive of VAT, Including Transport;
- INCOTERM for the supply of Welding & Gas Welding Consumables will be DAP, and named place will be Letšeng Diamond mine, Mokhotlong district, Lesotho;
- South African registered suppliers to raise Zero Rated Vat invoice, and

Engineering Standards for the supply of Welding & Gas Welding Consumables

The supply of Welding & Gas Welding Consumables must comply with the standard specifications as per the detailed stock list as shown above in Annexure B.

- ***All tenderers will be required to submit proof of their compliance to the abovementioned standard.***

ANNEXURE C
ACKNOWLEDGMENT OF INVITATION TO TENDER

Tender Reference		
Invitee/Tenderer		
We acknowledge receipt of invitation to tender and hereby confirm that we will be submitting a tender		
We acknowledge receipt of invitation to tender and hereby confirm that we will not be submitting a tender		

In the event that you have indicated that you will not be submitting a tender, please set out your reasons below:

SIGNED BY:

DESIGNATION:

DATE:

ANNEXURE D
TENDERER'S DETAILS

Registered name	
Trading name (if applicable)	
Previous name (if applicable)	
Physical address	
Postal address	
Web-site address	
Name of representative	
Job Title	
Telephone Number	
Fax Number	
Cell phone Number	
E-mail Address	

ANNEXURE E
RATES SCHEDULE

Tenderers will be required to complete the pricing and information schedule as indicated on the following page.

The tenderer will be required to complete the rates schedule below. Please read pricing notes in Annexure B.

Product Code	Product Description	UOM	Price per Each (Inclusive of Transport)	Do you hold stock of this product (Yes / No)	Average Stock Holding of this product (Qty)	Product Delivery Lead time (Days)	Emergency Lead Time requirement (Days_
16731113	Oxygen Cylinder - 13.6kg	CYL					
16731115	Oxygen Cylinder Portapack (Refilled) 3 - GD 0.94Kg	CYL					
16731118	Oxygen Cylinder 20kg	CYL					
16731213	Acetylene Cylinder - 8.6kg	CYL					
16731214	Acetylene Cylinder Portapack (Refilled) 16 - DA	CYL					
16731216	Acetylene Cylinder 20kg	CYL					
16731301	Arcal Speed (Ash5) Cylinder 20kg	CYL					
16731311	Argon Cylinder - 17.4kg	CYL					
16731312	Argon Cylinder 20kg	CYL					
16731411	Nitrogen Cylinder 11kg	CYL					
17525001	Chalk Boilermaker	BX					

17813015	Brazing Rod Fluxcoat 34% Silver - Cadmium Bearing (Blue Flux) - 100grm Pack	KG					
17815002	Welding Rod Vitemax 2.5mm 5kg Pk	BX					
17815003	Welding Rod Vitemax 3.2mm 5kg Pk	BX					
17815004	Welding Rod Vitemax 4.0mm 5kg Pk	BX					
17815009	Welding Rod Yawata FT-51 E6013 3.2mm 5kg Pack	BX					
17815053	Welding Rod Afrolux 3.2mm (5kg Pack)	BX					
17815054	Welding Rod Afrolux 4.0mm (5kg Pack)	BX					
17815111	Welding Rod Low Hydrogen 2.5mm (4kg Pack)	BX					
17815112	Welding Rod Low Hydrogen 3.2mm (4kg Pack)	BX					
17815113	Welding Rod Low Hydrogen 4.0mm (4kg Pack)	BX					
17817001	Welding Rod Stainless Steel 316L 2.0mm, (4kg Pack)	BX					
17817002	Welding Rod Stainless Steel 316L 2.5mm (4kg Box)	BX					
17817003	Welding Rod Stainless Steel 316L 3.25mm (4kg Box)	BX					
56481003	Cable Welding 35mm ² x 100m Grey	M					

61521111	Heating Torch LPG Handle with Economiser	EA					
61521112	Heating Torch LPG Neck Tube	EA					
61521113	Heating Torch LPG Nozzle 29mm	EA					
61521114	Heating Torch LPG Rubber Hose Orange (per Meter)	M					
61521115	Heating Torch LPG Regulator High Pressure	EA					
61521116	Heating Torch LPG Grease Coupler Button Head GROZ	EA					
61521117	Heating Torch LPG G-Gun Hold On Coupler	EA					
61621001	Hose Acetylene Red 8mm x 30m	ROL					
61621002	Hose Oxygen Blue 8mm x 30m	ROL					
61623001	Cutting Nozzle Saffire A-NM6 (Oxy / Acet) 0.8mm Short	EA					
61623002	Cutting Nozzle Saffire A-NM6 Oxy/Acet 1.2mm Short	EA					
61623003	Cutting Nozzle Saffire A-NM6 (Oxy / Acet) 1.6mm Short	EA					
61623004	Cutting Nozzle Saffire A-NM6 (Oxy / Acet) 2.0mm Short	EA					
61623014	Cutting Nozzle Harris - 1F	EA					

61623711	Nozzle Cleaner 13 Piece Standard	EA					
61623712	Triple Flint Lighter	EA					
61623713	Triple Flint Lighter Replacement Flint	EA					
61623714	Parallel Hose Clips 8mm Oxy / Acetelene	EA					
61623715	Hose O - Clips 8mm Oxy / Acetelene	EA					
61623718	Safetest Leak Detector Spray 300ml	EA					
61623750	Brush Wire Cup - C652 - 140 x 14	EA					
61623751	Brush Wire with Handle	EA					
61623752	Hose Jointers - 8mm	EA					
61623753	Spindle Key - Afrox	EA					
61623754	Tip Contact 0.9mm - 25AK Torch	EA					
61623755	Tip Contact 1.0mm - 25AK Torch	EA					
61623756	Tip Contact 1.2mm - 25AK Torch	EA					
61623757	Tip Holder - 25AK Torch	EA					

61623758	Welding Plug Female 70mm	EA					
61623759	Welding Plug Male 70mm	EA					
61623760	Hose 20ft V4 NPT + THC7062 - Enerpack	EA					
61624005	Universal Cutting Torch	EA					
61624006	Monarch Cutting Torch - Harris	EA					
61624111	Regulator Acetylene Multi - Stage 150kpa Series 8500 AGM	EA					
61624112	Regulator Oxygen Multi - Stage 400kpa Series 8500 OGM	EA					
61624127	Regulator Model 896 - 1000kPA - Harris	EA					
61624128	Regulator Model 896 - 150kPA - Harris	EA					
61624217	Coupling Quick Release & FB Arrestor (Acet) Torch - Harris	EA					
61624219	Coupling Quick Release & FB Arrestor (Oxy) Torch - Harris	EA					
61624226	Coupling Quick 1" Galvanized	EA					
61626002	Arrestor Flashback (Acet) F5 Reg. Mount	EA					
61626003	Arrestor Flashback (Acet) F7 Torch Mount	EA					

61626005	Arrestor Flashback (Oxy) F5 Reg. Mount	EA					
61626006	Arrestor Flashback (Oxy) F7 Torch Mount	EA					
61626012	Arrestor Flashback (Acet) & QRC DGNDK (REG) SS Pin 9/16 LH - Harris	EA					
61626013	Arrestor Flashback (Oxy) & QRC DGNDK (REG) SS Pin 9/16 LH - Harris	EA					
61626014	Pressure Gauge DA - Content	EA					
61626015	Pressure Gauge DA - Outlet	EA					
61626016	Pressure Gauge O2 - Content	EA					
61626017	Pressure Gauge O2 - Outlet	EA					
61626018	Quick Release Arrestor DA Coupling Regulator Mount	EA					
61629099	Blanket Welding - Siltemp - Double Layered - Size 1.2m x 2.5m	EA					
61629100	Inlet Stem + Nut - O2	EA					
61629102	Blanket Welding - Fireman	EA					
61634003	Holder Electrode 600Amp Twist Type	EA					
61634013	Earth Clamp 600Amp Crocodile	EA					

61644002	Inverter Welding 200A 230V - Tradeweld	EA					
61644003	Inverter Welding 250A 220V	EA					
61679004	Lens Clear Polytec Inner Impact	EA					
61679009	Lens Dark Welding Shade 12	EA					
61679011	Welding Helmet Flip Front 108 x 51mm - Afrox	EA					
61679012	Welding Helmet Auto Darkening Transarc 0HE350 - Afrox	EA					
61679031	Screen Welding 8m x 2m - Yellow	EA					
64112054	Sanding Paper Disc 115 - P16A	ROL					
64114002	Grinding Wheel 115mm x 7.2mm x Ø22.23 Hole Steel - Pferd	EA					
64114009	Grinding Wheel 230mm x 7.2mm x Ø22.23 Hole Steel - Pferd	EA					
64116002	Cutting Wheel 115mm x 2.4mm x Ø22.23 Hole Steel - Pferd	EA					
64116009	Cutting Wheel 230mm x 2.4mm x Ø22.23 Hole Steel - Pferd	EA					
64116010	Cutting Wheel 350mm x 3mm x Ø25.4mm Hole Steel (Cut off Machine) - Pferd	EA					
65117109	Brush Steel Wire C/W Handle	EA					

Product Pricing Adjustment

All tenderers must indicate how pricing adjustments (increases) will be reported and managed, and what indices will be applied in the table below.

What is the minimum price movement required for a price adjustment?

Component	Percentage	Indices	Base Index	Value

Tenderers will be required to give 30 days' notice of a price increase, together with all supporting documents / indices

**ANNEXURE F
TENDER REPLIES**

For what period are your prices fixed? i.e. 3, 6, 12 months	
What is your weekday operating hours?	
What is your company's annual turnover?	
Is your company registered for VAT?	
Where is your Operational office located?	
What is your Lesotho Owned Shareholding %	
Are you fully registered in Lesotho or registered in Lesotho as an External Company?	
Indicate the number of years' experience in the supply of Welding & Gas Welding Consumables	
What is your company's annual turnover for the supply of Welding & Gas Welding Consumables?	
Is your company locally registered in Lesotho?	
Where is your stock holding facility located?	
Would you consider providing Minopex Lesotho with Consignment stock and what are the conditions to the consignment stock	
What technical services and technical surveys does your company offer? (i.e. Maintenance, audits, surveys or repairs?)	

<p>Who will be conducting these technical services and surveys and what are their years' experience in conducting these services?</p>	
<p>List any potential conflict of interest as outlined in 3.14 of the tender documents.</p>	
<p>List 3 of your current customers that your company is currently supplying</p>	

ANNEXURE G
DECLARATION BY TENDERER

1. I/We hereby tender to render the services and/or supply the goods described in annexure “**B**” to the Principal on the terms and conditions described in annexure “**H**” at the prices stipulated in annexure “**E**”.

2. I/We agree that:
 - 2.1 The tender herein shall remain binding upon me and open for acceptance by the Principal during the validity period indicated and calculated from the closing time of the tender;
 - 2.2 If my tender is accepted, the acceptance may be communicated to me by post or email.
 - 2.3 The law of the Kingdom of Lesotho shall govern the contract created by the acceptance of my tender.
 - 2.4 I choose domicilium citandi et executandi at (full physical address):
.....
.....
 - 2.5 I furthermore confirm that I have satisfied myself as to the correctness and validity of my tender: that the price(s), rate(s) and preference quoted cover all of the work/item(s) and my obligations under a resulting contract, and I accept that any mistakes regarding the price(s) and calculations will be at my risk.
 - 2.6 I hereby accept full responsibility for the proper execution and fulfilment of all obligations and conditions devolving on me under this agreement, as the Principal(s) liable for the due fulfilment of this contract.
 - 2.7 I agree that any action arising from this contract may in all respects be instituted against me and I hereby undertake to satisfy fully any sentence of judgment which may be pronounced against me as a result of such action.

2.8 I certify that the information supplied in terms of this document is correct and true, that the signatory to this document is duly authorised and acknowledge that:

2.8.1 The tender will furnish documentary proof regarding any tendering issue to the satisfaction of the Principal, if requested to do so.

2.8.2 If the information supplied is found to be incorrect and/or false, the Principal, in addition to any remedies it may have, may: -

2.8.2.1 Recover from the contractor all costs, losses or damages incurred or sustained by the Principal as a result of the award of the contract, and/or

2.8.2.2 Cancel the contract and claim any damages which the Principal may have suffered by having to make less favourable arrangement after such cancellation.

Signed at _____ On this _____ Day of _____ 2019

Signature of Tenderer or Duly
Authorised Representative

Name of duly
authorised

Position

Witness Signature

Date

ANNEXURE H
DIRECTORS' DETAILS

DIRECTOR 1	
Full Names	
Surname	
Identity Number	
Nationality	
Shareholder %	
Residential Address	
DIRECTOR 2	
Full Names	
Surname	
Identity Number	
Nationality	
Shareholder %	
Residential Address	
DIRECTOR 3	
Full Names	
Surname	
Identity Number	
Nationality	
Shareholder %	
Residential Address	
DIRECTOR 4	
Full Names	
Surname	
Identity Number	
Nationality	
Shareholder %	
Residential Address	

DIRECTOR 5	
Full Names	
Surname	
Identity Number	
Nationality	
Shareholder %	
Residential Address	

ANNEXURE I
SHAREHOLDERS' DETAILS

Shareholder 1	
Full Names	
Surname	
Identity Number	
Nationality	
Residential Address	
Shareholder 2	
Full Names	
Surname	
Identity Number	
Nationality	
Residential Address	
Shareholder 3	
Full Names	
Surname	
Identity Number	
Nationality	
Residential Address	
Shareholder 4	
Full Names	
Surname	
Identity Number	
Nationality	
Residential Address	
Shareholder 5	

Full Names	
Surname	
Identity Number	
Nationality	
Residential Address	

ANNEXURE J
TERMS AND CONDITIONS

1. INTERPRETATION

In these Terms and Conditions -

- 1.1 clause headings shall not be used in its interpretation;
- 1.2 unless the context clearly indicates a contrary intention -
 - 1.2.1 an expression which denotes -
 - 1.2.1.1 any gender includes the other genders;
 - 1.2.1.2 a natural person includes an artificial person and vice versa;
 - 1.2.1.3 the singular includes the plural and vice versa;
 - 1.2.2 the following expressions shall bear the following meanings and related expressions bear corresponding meanings –
 - 1.2.2.1 "**Agreement**" – these Terms and Conditions together with the Tender Document (once accepted by the Principal) (the provisions of which shall be deemed to have been incorporated herein by reference, interpreted in accordance with the priority of interpretation recorded in clause 1.10);
 - 1.2.2.2 "**Applicable Laws**" – all laws (including environmental, health and safety, mining and regulatory laws) including regulations, proclamations, subordinate legislation, ordinances, by-laws and the like promulgated in the Kingdom of Lesotho which apply to or otherwise impact upon the rendering of the Services or the supply of the Goods in terms of this Agreement
 - 1.2.2.3 "**Business Day**" – any day other than a Saturday, Sunday or public holiday in Lesotho;
 - 1.2.2.4 "**Good Industry Practice**" – in relation to any activity conducted by or an obligation of the Successful Tenderer hereto as contemplated by or provided for in this Agreement, the exercise of the degree of skill, diligence, prudence

and operating practice which would reasonably and ordinarily be expected from a skilled and experienced professional organisation performing (as the case may be) the Services;

- 1.2.2.5 "**Goods**" – the goods described in annexure "**B**", if any;
 - 1.2.2.6 "**Parties**" – collectively the Principal and the Successful Tenderer and "Party" shall be construed as a reference to either of them as the context may require;
 - 1.2.2.7 "**Principal**" – the principal described in clause 1 of the Tender Document;
 - 1.2.2.8 "**Services**" – the services described in annexure "**B**", if any;
 - 1.2.2.9 "**Site/s**" – the site/s described in clause 3.3.1 of the Tender Document;
 - 1.2.2.10 "**Successful Tenderer**" – the tenderer selected and appointed by the Principal pursuant to the written acceptance by the principal of the Tender Document;
 - 1.2.2.11 "**Tender Date**" – the date of signature of the Tender Document by the Successful Tenderer;
 - 1.2.2.12 "**Tender Document**" – the tender document specifying the Goods and/or Services to be supplied by the Successful Tenderer (if accepted by the Principal in writing), together with all annexures, and to which these Terms and Conditions are annexed;
 - 1.2.2.13 "**Terms and Conditions**" – these terms and conditions which are annexed to the Tender Document;
 - 1.2.2.14 "**VAT**" – Value Added Tax levied in terms of the Value Added Tax
- 1.3 where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that the term has not been defined in this interpretation clause;
- 1.4 any reference to any legislation is to such legislation as at the Tender Date and as amended or re-enacted from time to time;

- 1.5 if any provision in a definition is a substantive provision conferring any right or imposing any obligation on any party, then notwithstanding that it is only in the interpretation clause effect shall be given to it as if it were a substantive provision in this Agreement;
- 1.6 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 day which is not a Business Day, in which case the last day shall be the next succeeding day which is a Business Day;
- 1.7 the use of a specified example/s (whether or not after the word "including" or "such as") 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. Accordingly, without limiting the generality of the a foregoing, wherever the words "includes" or "including" are used in this Agreement, the words "without limitation" shall be deemed to follow them;
- 1.8 the rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of the Agreement shall not apply; and
- 1.9 the use of any expression in this Agreement covering a process available under the laws of the Lesotho, such as winding up or business rescue, shall, if any of the Parties to this Agreement is subject to the law of any other jurisdiction, be construed as including a reference to any equivalent or analogous proceedings under the law of such jurisdiction;
- 1.10 if any provisions forming part of this Agreement conflict with each other, then the order of precedence in which such provisions shall be interpreted shall be as follows –
 - 1.10.1 firstly, these Terms and Conditions;
 - 1.10.2 thereafter, the Tender Document.

2. APPLICATION

- 2.1 This Agreement applies to both the rendering of Services and / or the supply of Goods.

2.2 Should the Supplier, in terms of this Agreement, only render Services to the Customer then the provisions of this Agreement relating to the supply Goods shall not be applicable.

2.3 Should the Supplier, in terms of this Agreement, only supply Goods to the Customer then the provisions of this Agreement relating to the rendering of Services shall not be applicable.

3. RENDERING OF THE SERVICES

3.1 The Successful Tenderer shall render the Services to the Principal, on the terms set out herein, with effect from the date indicated in the Tender Document.

3.2 The Successful Tenderer hereby undertakes to render the Services to the Principal in accordance with the provisions contained in this Agreement and in doing so, to discharge the responsibilities allocated to it as well as to comply with the other obligations imposed upon it in terms of this Agreement.

3.3 The Principal shall not be obliged to utilize the Successful Tenderer to render the Services and nothing herein contained shall be construed as a limitation on the Principal's entitlement to appoint any other third party to render services which are the same as and/or like the Services.

4. PAYMENT FOR THE SERVICES

4.1 All sums payable by the Principal to the Successful Tenderer in terms of this Agreement shall be paid by electronic funds transfer into a bank account nominated by the Successful Tenderer in a written notice communicated to the Principal.

4.2 The Principal shall be invoiced (with a valid VAT invoice) by the Successful Tenderer for the Services rendered to the Principal. The Successful Tenderer shall furnish the Principal at the end of each month during the continuance of this Agreement with a statement in which all invoices in respect of the Services rendered during the month in question are summarised. The Principal shall pay the amount set out in the statement as aforesaid to the Successful Tenderer in the manner and in accordance with the provisions set out in this clause 4.

4.3 The Principal shall pay the amount set out in the monthly statement/s furnished by the Successful Tenderer to the Principal from time to time as envisaged in this clause 4, by not later than 30 (thirty) days after the date of such statement.

5. THE SUCCESSFUL TENDERER'S OBLIGATIONS IN RESPECT OF THE SERVICES

5.1 The Successful Tenderer acknowledges and agrees to –

5.1.1 provide all the employees necessary to perform and fulfil its obligations;

5.1.2 ensure that its employees are provided with all protective clothing and necessary health and safety equipment at the cost of the Successful Tenderer as are required by the Letšeng Diamond Contractors, regulations and specifications;

5.1.3 ensure that its employees and all persons working on its behalf shall submit to –

5.1.3.1 medical examination/s at a medical facility advised by the Principal as and when advised by the Principal from time to time;

5.1.3.2 any training or site induction/s advised by the Principal from time to time.

5.1.4 The Successful Tenderer undertakes that, it shall –

5.1.4.1 as a material element of its obligations, perform and complete the Services –

5.1.4.1.1 in accordance with this Agreement;

5.1.4.1.2 exercising due care, skill and judgment;

5.1.4.1.3 in an efficient, professional and cost-effective manner in accordance with all Applicable Laws, standards and Good Industry Practice;

5.1.4.1.4 be responsible for the adequacy, stability and safety of all equipment and operations in performing the Services;

5.1.4.1.5 ascertain the Principal's requirements and regularly consult with the Principal;

5.1.4.1.6 consult and interface with the Principal and the Principal's other Successful Tenderers and clients (where this is necessary or desirable) for the proper

performance of the Services, including attending all meetings as reasonably requested by the Principal;

5.1.4.1.7 throughout the performance of the Services, identify risks and/or opportunities for the Principal in relation to the Services and provide notice of such risks and/or opportunities to the Principal.

5.1.5 For the avoidance of doubt, the obligations of the Successful Tenderer under this clause 2, includes repairing or replacing any damage to any equipment that arises consequent to it carrying out the Services in a manner consistent with its obligations under this Agreement, at the Successful Tenderer's cost.

6. WARRANTIES IN RESPECT OF THE SERVICES

6.1 In complying with its obligations in terms of this Agreement, the Successful Tenderer warrants that –

6.1.1 it and its personnel are suitably experienced and properly qualified and equipped to perform the Services in accordance with this Agreement;

6.1.2 each employee appointed to render any of the Services will be adequately trained and have the necessary experience, formal qualifications, competencies and expertise to fulfil the function for which such employee is required;

6.1.3 it will ensure that each employee's training and capabilities in respect of health and safety are considered before assigning any task to that employee and that tasks are performed under the supervision of persons trained to understand the hazards associated with the tasks in question;

6.1.4 each of its employees responsible for rendering the Services will have an employment status and levels of competency and qualification that is compliant with all Applicable Laws;

6.1.5 it is fully experienced and properly organized, skilled, financed, trained, staffed, equipped, manned, qualified, licensed and able to fulfil its obligations in terms of this Agreement.

- 6.2 All warranties made by the Successful Tenderer apply to any sub-contractor appointed by the Successful Tenderer. The appointment of any sub-contractor may only be done with the prior consent of the principal, see clause 15.1.1.10
- 6.3 The Successful Tenderer acknowledges that the Principal has entered into this Agreement relying on the warranties contained in this clause 2 and elsewhere in this Agreement.
- 6.4 The Successful Tenderer must coordinate and interface for the purposes of performing the Services with the Principal.

7. ORDER ACCEPTANCE

- 7.1 All Orders placed by the Customer shall:
- 7.1.1 be in writing, and signed by the Customer's Authorised Representative(s), failing which the Customer shall not be bound; and
 - 7.1.2 subject to clauses 7.2 and 7.3 below, be based on written acceptance by the Supplier within the Acceptance Period and shall be subject to withdrawal or revision by the Customer at any time prior to acceptance thereof by the Supplier.
- 7.2 Failure by the Supplier to respond in writing to any Order within the time period stipulated in clause 7.1.2 above shall constitute unconditional acceptance thereof by the Supplier and the Customer shall not enter into any disputes in regard to said Order, including but not limited to in respect of the price of the Goods and the Delivery Date thereof.
- 7.3 Notwithstanding acceptance or deemed acceptance by the Supplier in terms of clauses 7.1.2 or 7.2 above, the Customer may terminate any Order or any part thereof within 7 (seven) days after the placement of the relevant Order by written notice to the Supplier of its intention to do so. Any work performed by the supplier prior to the cancellation of the order will be considered for payment on a percentage completion basis.
- 7.4 All Orders placed by the Customer shall always be entirely subject to the condition that the Goods shall be supplied by the Supplier strictly in accordance with:

- 7.4.1 any written specifications furnished to the Supplier by the Customer in the Orders from time to time;
 - 7.4.2 the requirements set out in this Agreement, including the Information Schedule; and
 - 7.4.3 any Applicable Laws in respect of the Goods.
- 7.5 If the Supplier is unable to provide the Customer with particular Goods in accordance with the specifications stipulated in the relevant Order, the following shall apply:
- 7.5.1 the Supplier shall, during the Acceptance Period, notify the Customer in writing of such inability or, if the Supplier only becomes aware of such inability after the expiry of the Acceptance Period, then immediately upon becoming aware of such inability;
 - 7.5.2 the Supplier may recommend alternative Goods to the Customer;
 - 7.5.3 the Customer may, in its sole discretion and without prejudice to any other rights that it may have in terms of this Agreement, elect whether or not it wishes to order the alternative Goods from the Supplier;
 - 7.5.4 if the Customer elects to order the alternative Goods from the Supplier, the original Order for the Goods that the Supplier was unable to supply shall be cancelled and a new Order shall be placed by the Customer with the Supplier for the alternative Goods.
 - 7.5.5 Unless otherwise specified on a particular Order, all correspondence pertaining to Orders, including all invoices and correspondence concerning payments, shall be sent by the Supplier to the Customer, in writing, via the preferred means of communication indicated on the Information Schedule.

8. ORDERS

- 8.1 The Principal will, from time to time, place orders (each such Order being hereinafter referred to as an "**Order**") on the Successful Tenderer in respect of each item or items of the Goods for the specified quantity stipulated therein, the anticipated delivery date ("**Delivery Date**") and the delivery address ("**Delivery Address**") applicable in respect of each item or items of the Goods so ordered, provided that the Order shall be –

- 8.1.1 in such form and as the Successful Tenderer may reasonably require from time to time;
- 8.1.2 regarded as a separate contract on the Terms and Conditions contained in this Agreement for the supply and delivery of goods ordered therein.
- 8.2 Orders for the Goods shall be placed by the Principal on the Successful Tenderer not less than 4 (four) days prior to the Delivery Date for the Goods described therein.
- 8.2.1 The Successful Tenderer shall not be entitled to reject the Order.
- 8.2.2 All Goods ordered by the Principal from the Successful Tenderer in terms of this Agreement shall be delivered by the Successful Tenderer to the Delivery Address and the provisions of clause 9 shall apply to such delivery.
- 8.2.3 The Successful Tenderer shall procure that the specified quantity of the Goods is delivered to the Delivery Address between 07:00 and 14:00 on the Delivery Date.
- 8.2.4 It is recorded that it is the intention of the Parties to ensure that a steady and continuous supply of the Goods is made available to the Principal. The provisions of this Agreement relating to delivery and specification of the Goods is intended to regulate the predictability and reliability of the frequency and timing of the supply of the Goods (as well as the quality and specifications of the Goods) and such provisions are all recorded as constituting material provisions of this Agreement and any failure by the Successful Tenderer to adhere to such provisions may result in significant losses, damages and expenses to not only the Principal, but the persons and entities with whom the Principal has, in turn, contracted. Such losses are hereby expressly recorded as being foreseen by the Parties.
- 8.2.5 The Principal shall not be obliged to satisfy any minimum commitment in respect of the Goods.

9. DELIVERY AND RETURN OF GOODS (if any)

- 9.1 The Successful Tenderer shall, subject always to clause 8.2, ensure that the Goods are delivered to the Principal's premises by not later than the Delivery Date.

- 9.2 If the Successful Tenderer becomes aware that delivery of the Goods will not be made on the Delivery Date, the Successful Tenderer must immediately notify the Principal of this.
- 9.3 The Principal, in its sole discretion, may elect to accept later delivery of the Goods or to invoke the breach clause.
- 9.4 The delivery of the Goods by the Successful Tenderer to the Principal's premises shall be at the cost and risk of the Successful Tenderer.
- 9.5 The Successful Tenderer undertakes to check all Goods which are the subject matter of a delivery to the Principal, prior to such Goods leaving the Successful Tenderer's premises. The Successful Tenderer shall procure that a document evidencing the fact that the Goods have been checked and dispatched from the Successful Tenderer's premises be prepared for presentation to the Principal upon arrival at the Delivery Address. The aforesaid document which evidences that the Goods have been checked and dispatched at the Successful Tenderer's premises as aforesaid is hereinafter referred to as a "**Proof of Delivery**".
- 9.5.1 On arrival at the Delivery Address the –
- 9.5.1.1 Successful Tenderer's representative shall furnish the Principal's representative with the Proof of Delivery and copy invoice;
- 9.5.1.2 Principal's representative shall procure that the Goods are checked and, if satisfied that the Goods so delivered by the Successful Tenderer accords with the contents of the Proof of Delivery, sign the Proof of Delivery as acknowledgement of receipt of the Goods.
- 9.6 The Principal shall be entitled, within 7 (seven) days after the date on which the Proof of Delivery is signed by the Principal's representative as referred to in clause 9.5.1 above, to notify the Successful Tenderer of any errors or omissions in the Goods (including the specifications) so delivered and which form the subject matter of the Proof of Delivery in question. If and to the extent that the Goods so delivered by the Successful Tenderer are incorrect and fail to correlate with the description or specifications referred to in the Tender Document, then the Successful Tenderer shall, within 5 (five) days after receipt of the aforesaid notification, procure that correct

Goods are delivered to the Principal's premises and the provisions of this clause 9 shall again apply *mutatis mutandis* to such delivery as if it were a new Order.

10. SALE OF GOODS

- 10.1 The Parties agree that a sale of the Goods shall be deemed to have occurred upon the delivery of the Goods to the Principal at the Delivery Address and shall render the Principal liable for payment of the selling price in respect of such goods (determined in accordance with clause 11.1) in accordance with the provisions of clause 13.
- 10.2 The Successful Tenderer shall raise a VAT invoice in respect of the sale of any goods, forthwith upon the occurrence of any event of sale referred to in clause 10.1, recording therein the selling price and all discounts and rebates applicable to such Goods as at the date on which such sale occurs.

11. SELLING PRICE OF THE GOODS

- 11.1 The selling price of the Goods payable by the Principal to the Successful Tenderer upon a sale of the Goods as more fully provided for in clause 10, shall, subject to clause 11.3, be in accordance with the provisions of the Tender Document.
- 11.2 The Principal shall, notwithstanding anything to the contrary herein contained, be entitled to utilise and/or on-sell, the Goods on such terms and conditions and at such prices as the Principal, at its discretion, may determine.
- 11.3 The selling price of the Goods shall not increase during the currency of this Agreement.

12. PAYMENT FOR THE GOODS

- 12.1 All sums payable by the Principal to the Successful Tenderer in terms of this Agreement shall be paid by electronic funds transfer into a bank account nominated by the Successful Tenderer in a written notice communicated to the Principal.
- 12.2 The Principal shall be invoiced (with a valid VAT invoice) by the Successful Tenderer for Goods sold to the Principal in accordance with the provisions of clause 10. The Successful Tenderer shall furnish the Principal at the end of each month during the continuance of this Agreement with a statement in which all invoices in respect of

Goods sold during the month in question are summarised, setting out the quantities and selling price for all Goods sold by the Successful Tenderer to the Principal during the month in question together with the discounts applicable. The Principal shall pay the amount set out in the statement as aforesaid to the Successful Tenderer in the manner and in accordance with the provisions set out in this clause 12.

- 12.3 The Principal shall pay the amount set out in the monthly statement/s furnished by the Successful Tenderer to the Principal from time to time as envisaged in this clause 12, by not later than 30 (thirty) days after the date of such statement.

13. RISK AND BENEFIT / OWNERSHIP

- 13.1 Ownership in and to the Goods shall pass to the Principal on the Delivery Date.
- 13.2 All risk in and to the Goods shall vest in the Principal from the time the Principal takes delivery of the Goods as provided for in clause 9.

14. WARRANTIES IN RESPECT OF THE GOODS

- 14.1 The Successful Tenderer warrants, represents and undertakes in favour of the Principal that as at the date on which each order is placed and on each Delivery Date the –
- 14.1.1 Goods shall meet the description and specifications referred to in the Tender Document;
- 14.1.2 the Goods shall be delivered regularly and timeously and in accordance with the provisions of this Agreement (including in particular clause 9);
- 14.1.3 the Goods shall be fit for the purposes for which they are intended to be used by the Principal and shall be free of all defects of every nature whatsoever.

15. DURATION

- 15.1 This Agreement shall commence in accordance with the provisions of the Tender Document and shall continue for the period stipulated therein.
- 15.2 Notwithstanding anything herein contained, the Principal has the right to terminate and / or suspend the Agreement with immediate effect by giving the Successful Tenderer written notice of such termination and / or suspension, if the

Principal should at any time for the duration of the Agreement, terminate or suspend (in whole or in part) plant processing or plant maintenance activities at the applicable plant for any reason whatsoever. Any orders placed with the Successful Tenderer by the Principal, prior to the Principal communicating the termination of any plant site will be considered for settlement on a percentage completion basis.

16. WARRANTIES

16.1 The Successful Tenderer warrants, represents and undertakes in favour of the Principal that –

15.1.2 all information disclosed by it in (and in support of) the Tender Document is complete and accurate in all respects;

15.1.2.1 it is a company duly incorporated and validly existing under the Applicable Laws;

15.1.2.2 it has full power, authority and legal right to execute this Agreement, to assume the obligations contained in this Agreement, and further to perform and observe the terms and provisions hereof;

15.1.2.3 it and its representative(s) has the requisite power, right and authority to enter into and perform the obligations to be assumed or performed by it in accordance with this Agreement and any other documents to be executed in accordance with this Agreement and the obligations assumed by it under this Agreement constitute legal, valid, binding and enforceable obligations in accordance with the terms hereof;

15.1.2.4 as at the Tender Date, no legal proceedings of any kind or administrative proceedings in terms of any law, and which shall prevent it from fulfilling its obligations in terms of this Agreement, have been instituted against it;

15.1.2.5 at all times during the currency of this Agreement it has obligations/duties to third Parties which, if discharged, shall prevent it from fulfilling its obligations in terms of this Agreement;

15.1.2.6 all necessary action has been taken to authorise the execution and performance of this Agreement and the execution and performance of this Agreement will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound;

- 15.1.2.7 the rendering of the Services and/or supply of the Goods does not and will not infringe any law or any rights of any person (including intellectual property rights);
- 15.1.2.8 all authorisations as and apparels required to be obtained, corporate, regulatory or otherwise, in order for the Successful Tenderer to lawfully enter into and perform the obligations expressed to be assumed by it in this Agreement have been obtained and will continue to be maintained for the duration of this Agreement;
- 15.1.2.9 each employee appointed to perform any of the Successful Tenderer's obligations in terms of this Agreement will be adequately trained and have the necessary experience, formal qualifications, competencies and expertise to fulfil the function for which such employee is required.
- 15.1.2.10 it shall not sub-contract or assign, transfer or in any manner alienate its obligations hereunder without the prior written consent of the Principal.

17. INDEMNITY

- 17.1 The Successful Tenderer hereby indemnifies and holds harmless the Principal against all losses, liabilities, damages, cost (including legal costs on the scale as between attorney and own client and disbursements) and expenses of every nature whatsoever which are suffered and/or incurred by the Principal in connection with –
 - 17.1.1 a breach of this Agreement by the Successful Tenderer; and/or
 - 17.1.2 any failure to comply with any Applicable Laws; and/or
 - 17.1.3 the rendering of the Services; and/or
 - 17.1.4 the supply of the Goods.
- 17.2 The Successful Tenderer shall defend, fully indemnify and hold harmless the Principal (and its respective directors, officers, elected officials, employees, Successful Tenderers, Successful Tenderers, guests and agents) (“**Indemnified Party**”) against and from any and all third party actions, suits, claims, costs, demands, damages, expense, loss and liability for –
 - 17.2.1 damage to or loss of property,
 - 17.2.2 death of or injury to persons, and

- 17.2.3 response costs related to health and safety, in all cases caused by or arising out of the negligence or wilful acts of the Successful Tenderer (or its directors, officers, elected officials, employees and agents).
- 17.3 In addition, the Successful Tenderer agrees (at the option of the Indemnified Party) to either –
- 17.3.1 reimburse the Indemnified Party for all loss of or damage to the Indemnified Party's property (including fines and penalties levied against the injured party) caused by or arising out of the negligent or wilful acts or omissions of the Successful Tenderer (or its directors, officers, elected officials, employees and agents); or
- 17.3.2 replace or repair such lost or damaged property to the reasonable satisfaction of the Indemnified Party, or
- 17.3.3 an appropriate combination of the foregoing remedies.
- 17.4 The provisions of this clause 17 constitute an irrevocable *stipulatio alteri* for the benefit of each Indemnified Party, which Indemnified Party shall be entitled to accept same without having to give written notice to that effect to the Successful Tenderer

18. INSURANCE

- 18.1 The Successful Tenderer shall take out and maintain as valid and enforceable –
- 18.1.1 all insurances (including passenger liability, third party insurance and such other insurance as may be prudent in the circumstances and as dictated by Good Industry Practice); and
- 18.1.2 such other insurances as may be required by Applicable Laws and cause its designees to effect and maintain such insurance(s) (where appropriate).
- 18.2 The Successful Tenderer shall not at any time do (or omit to do) or permit or allow any other person to do (or omit to do) anything (including failure to disclose any facts) whereby any insurance taken out pursuant to this clause 17.4 may be rendered void, voidable, unenforceable, suspended, impaired or defeated in whole or in part and the Successful Tenderer agrees to use all reasonable endeavours to avoid any increase in the premiums payable in respect of the following events –

- 18.2.1 it is becoming aware of any circumstance which may lead to the cancellation, non-renewal, suspension or impairment of any insurance taken out pursuant to this clause 18;
- 18.2.2 an insurer denying coverage or liability for a claim;
- 18.2.3 an insurer asserting orally or in writing, that one or more of the insurances is void, voidable or otherwise unenforceable; or
- 18.2.4 it is becoming aware of any circumstances which might lead to one or more of the insurances becoming void, voidable or unenforceable.
- 18.3 As far as reasonably possible, the Successful Tenderer will provide the Principal with not less than 30 days written notice in advance of the cancellation, non-renewal, suspension or impairment of any of the insurances taken out pursuant to this clause 17.4 to the terms and conditions of such insurances.
- 18.4 The Successful Tenderer shall keep the Principal informed of any material changes in their methods or procedures of working which may affect insurance cover. The Successful Tenderer shall not make any material alteration to the terms of any insurance without the prior approval of the Principal. If an insurer makes (or attempts to make) any alteration, the Successful Tenderer shall promptly give notice to the Principal of that fact together with the necessary details in respect thereof.
- 18.5 If the Successful Tenderer fails to maintain or procure the maintenance of such insurances, or fails to provide satisfactory evidence and copies of policies in accordance with this clause 17.4, the Principal may (at its option and without prejudice to any other right or remedy) pay any premiums or take such other steps as may be required to keep such insurance in force or itself procure such insurance and may in either case recover the amounts thereof on written demand from the Successful Tenderer.
- 18.6 The Successful Tenderer will give the Principal written notice immediately upon –
 - 18.6.1 the occurrence of any loss which will or may exceed the deductible on an insurance policy; and
 - 18.6.2 becoming aware of any circumstance which might give rise to a loss which will exceed the deductible or the applicable insurance.

- 18.7 Any notice given by the Successful Tenderer pursuant to clause 18.6 will include full details of the nature of the loss or the circumstances which may give rise to the loss, its amount and the steps that have been taken, or will be taken in respect of such loss or circumstance.
- 18.8 In respect of the subject matter of this Agreement, the Successful Tenderer shall not –
- 18.8.1 make any admission of liability to a third party;
- 18.8.2 enter into any negotiation to settle or compromise a claim on an insurance policy;
- 18.8.3 enter into a settlement or compromise a claim on an insurance policy; or
- 18.8.4 commence litigation or arbitration proceeding, without the written consent of the Principal, such consent not to be unreasonably withheld or delayed.

19. NON-EXCLUSIVE

The appointment of the Successful Tenderer by the Principal to render the Services and/or supply the Goods shall be a non-exclusive appointment. As such, the Principal shall not be excluded from, at any time while this Agreement is in force, appointing, engaging and/or utilising, whether directly or indirectly, any other person, agency, firm, entity or otherwise to render and/or provide any of the Services and/or supply any of the Goods to the Principal.

20. NO PARTNERSHIP

Nothing in this Agreement shall be construed as constituting a partnership in any shape or form between the Parties hereto and no Party shall have any right, power and authority to incur any obligation of any nature whatsoever on behalf of the other Party hereto.

21. CODE OF CONDUCT

- 21.1 The Successful Tenderer agrees and undertakes to procure that its designated employees shall conduct themselves in a proper and professional manner at all times.
- 21.2 Conduct which is not proper and/or professional includes but is not limited to –
- 21.2.1 Fraud and theft;
 - 21.2.2 participating in any illegal, unethical, deceptive or misleading conduct;
 - 21.2.3 possession or use of illegal and/or dangerous items;
 - 21.2.4 being under the influence of intoxicants;
 - 21.2.5 utilizing foul or offensive language;
 - 21.2.6 misuse, damage or abuse of property;
 - 21.2.7 prejudicial and/or racist behavior;
 - 21.2.8 disobedience and/or insubordination.
- 21.3 The successful tenderer also agrees, accepts and binds himself to the terms and conditions of the Letšeng Anti Bribery and Corruption Policy.
- 21.4 The Parties undertake in all matters to act in good faith towards each other and to work cooperatively and constructively with the other's representatives and/or employees.

22. FORCE MAJEURE

- 22.1 Neither Party will be liable to the other for any default or delay in the performance of its obligations under this Agreement:
- 22.1.1 if and to the extent that such default or delay is caused by, but not limited to, acts of God, war, riot, terrorism, embargoes, acts of civil or military authorities, denial of or delays in processing of import and/or export license applications, fire, floods, earthquakes, accidents, strikes, or fuel crises, any delay in any performance due from the other party, or any other circumstance beyond its reasonable control,

including without limitation, failures and fluctuations in electrical power or communications; and

22.1.2 provided the non-performing party is without fault in causing such default or delay, and such default or delay could not have been prevented by the non-performing party through the use of alternative sources, workaround plans or other means.

22.2 Following any circumstance of Force Majeure, the non-performing party shall:

22.2.1 notify the other party as soon as possible; and

22.2.2 be excused from further performance or observance of its obligations so affected for so long as such circumstances prevail, and such party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay; and

22.2.3 the time for performance will be extended for a period equal to the duration of the Force Majeure, but in no event longer than thirty (30) days, following which, the party not affected by the Force Majeure may immediately terminate this Agreement on written notice;

22.2.4 co-operate with the other party in implementing such contingency measures as that other party may reasonably require.

23. SAFETY, HEALTH AND ENVIRONMENT

23.1 The Successful Tenderer acknowledges that the prevention of accidents, safety performance and adherence to sound and safe work standards and practices are essential provisions of this Agreement. The Successful Tenderer and its employees shall co-operate with the Principal in all efforts to prevent accidents and improve safety performance.

23.2 The Successful Tenderer undertakes to, in rendering the Services and/or supplying the Goods, conduct itself at all times in accordance with the Applicable Laws, regulations and specifications. Further, the Successful Tenderer undertakes to conduct itself in accordance with the provisions of the health and safety policies and procedures and codes of practice adopted by the Principal from time to time which are applicable to the Site/s and which have been furnished to the Successful Tenderer. The Successful Tenderer undertakes to immediately notify the Principal in

writing of each serious injury which occurs in connection with the rendering of the Services and/or supply of the Goods.

- 23.3 In addition to any statutory obligations imposed by the Applicable Laws, the Successful Tenderer shall report every accident and/or environmental incident immediately, whether such accident and/or environmental incident is in respect of damage to persons, property or things. The report shall first be made verbally to the site manager and thereafter be reduced to writing and shall contain full details of the occurrence. The Principal shall be entitled to investigate either on the site or elsewhere as to the cause and consequences of any such accident and/or environmental incident and the Successful Tenderer shall give the Principal consent and full co-operation for any investigation, to temporarily impound anything or any property for such an investigation and to interview any employee or any person for the purpose of the investigation.
- 23.4 Should the Successful Tenderer's employees become ill or be injured on the Site/s through any cause whatsoever, including assault, the Principal shall in no way be responsible or liable and reserves the right to arrange for such medical, surgical and hospital services as it considers necessary.
- 23.5 The Successful Tenderer shall ensure that all its employees comply with all relevant Road and Freight Regulations.
- 23.6 The Successful Tenderer shall ensure that its employees are familiar with and comply with the Principal's health, safety and environmental rules, procedures and codes of practice, as amended from time to time. In addition, the Successful Tenderer shall comply with all instructions given by representatives of the Successful Tenderer from time to time relating to health and safety.
- 23.7 The Successful Tenderer shall ensure that all its employees are properly trained in order to perform their work safely and with due regard to health standards.
- 23.8 The Successful Tenderer shall –
- 23.8.1 provide its employees with any and all information, instruction, training or supervision that is necessarily required to enable them to perform their work safely and without risk to health and safety;

- 23.8.2 ensure that all its employees becomes familiar with work-related hazards and risks and the measures that must be taken to eliminate, control and minimise those hazards and risks;
- 23.8.3 ensure that its employees are properly trained in all work and emergency procedures.

24. BREACH AND TERMINATION

24.1 Should the Successful Tenderer -

- 24.1.1 materially breach any essential provision of this Agreement and fail to remedy such breach within fourteen days after receiving written notice requiring such remedy from the Principal; or
- 24.1.2 not being a natural person, be wound-up, liquidated, deregistered or placed under judicial management or business rescue proceedings, in any such event whether provisionally or finally and whether voluntarily or compulsorily, or pass a resolution providing for any such event; or
- 24.1.3 have any application or other proceedings brought against or in respect of it in terms of which it is sought to be sequestrated or placed under curatorship if a natural person, or, if not a natural person, deregistered, wound-up, liquidated or placed under judicial management, in any such event whether provisionally or finally; or
- 24.1.4 have any judgement or similar award ("**Judgement**") awarded against it and fail to satisfy such judgment within 30 (thirty) days after becoming aware thereof and –
 - 24.1.4.1 if such Judgement is appealable, fail to appeal against such Judgement within the time limits prescribed by law or fail to diligently prosecute such appeal thereafter or ultimately fail in such appeal; or
 - 24.1.4.2 if such Judgement is a default judgment, fail to apply for the rescission thereof within the time limits prescribed by law or fail to diligently prosecute such application thereafter or ultimately fail in such application; or

- 24.1.4.3 if such Judgement is reviewable, fail to initiate proceedings for the review thereof within the time limits prescribed by law or fail to diligently prosecute such proceedings thereafter or ultimately fail in such proceedings; or
- 24.1.4.4 be or become insolvent or commit any act which is or, if it were a natural person, would be an act of insolvency in terms of any Applicable Laws; or
- 24.1.4.5 being a company, be unable or deemed to be unable to pay its debts in terms of any Applicable Laws; or
- 24.1.4.6 compromise or attempt to compromise with, or defer or attempt to defer payment of debts owing by it to, its creditors generally; or
- 24.1.4.7 then the Principal shall be entitled, without prejudice to its other rights in law including the right to claim damages, (provided that such default has not been remedied by the Successful Tenderer) to cancel this Agreement or to claim immediate specific performance of all of Successful Tenderer's obligations, whether or not otherwise then due for performance.
- 24.1.5 Notwithstanding anything to the contrary contained in this Agreement, the Principal shall be entitled to terminate this Agreement on 30 (thirty) days written notice to the Successful Tenderer.

25. DISPUTE RESOLUTION

- 25.1 Any disputes arising from or in connection with this Agreement shall be referred to the managing directors for the time being (or, in their absence, their duly authorised deputies) of the Parties ("**Managing Directors**").
- 25.2 The Managing Directors shall consider the dispute and use all reasonable endeavours to resolve such dispute and shall be deemed to have done so when they have reached a unanimous decision.
- 25.3 The unanimous decision of the Managing Directors shall be binding on and effect shall be given to such decision within a period of forty-eight hours from receipt of written notification of such decision. If the Managing Directors cannot unanimously agree within forty-eight hours after the matter has been referred to them, the Managing Directors shall utilise the services of an expert (such expert to be appointed by way of agreement between the Managing Directors within twelve hours, failing

which, to be appointed by the Principal's auditors), who shall act as mediator to assist them in arriving at their decision. The Managing Directors shall endeavour to ensure that such mediation process does not endure for more than forty-eight hours. If after such mediation the Managing Directors still cannot unanimously agree, then the matter shall be referred to arbitration as provided for in terms of clause 26.

26. ARBITRATION

26.1 Subject to the provisions of clause 25, any disputes arising from or in connection with this Agreement shall if so required by either Party by giving written notice to that effect to the other be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("**AFSA**") by an arbitrator or arbitrators appointed by AFSA. There shall be right of appeal as provided for in article 22 of the aforesaid rules.

26.2 Each Party to this Agreement -

26.2.1 expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and

26.2.2 irrevocably authorises the other to apply, on behalf of the parties to such dispute, in writing, to the secretariat of AFSA in terms of article 23(1) of the aforesaid rules for any such arbitration to be conducted on an urgent basis.

27. GOVERNING LAW AND JURISDICTION

This Agreement shall to the extent possible (including its existence, validity, interpretation, implementation, termination and enforcement) be governed by the law of Lesotho.

28. CESSION AND ASSIGNMENT

The Successful Tenderer shall not be entitled to cede any of its rights or delegate any of its obligations in terms of this Agreement without having first obtained the written consent of the Principal, such consent not to be unreasonably withheld.

29. DOMICILIUM AND NOTICES

The Parties choose *domicilium citandi et executandi* ("**domicilium**") for the purposes of the giving of any notice, the serving of any process and for any other purpose arising

from this Agreement the physical address, electronic mail address or telefacsimile number set out in the Tender Document.

30. SOLE RECORD

This Agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof.

31. NO VARIATION OR INDULGENCE

- 31.1 No Party shall be bound by any representation, warranty, promise or the like not recorded herein.
- 31.2 No addition to, variation, or agreed cancellation of this Agreement (including without limitation the scope of the Services) shall be of any force or effect unless in writing and signed by or on behalf of the Parties.
- 31.3 No indulgence which any party ("**the grantor**") may grant to any other ("**the grantee**") shall constitute a waiver of any of the rights of the grantor, which shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past or which might arise in the future.

THUS DONE AND SIGNED AT _____ ON THIS _____ DAY OF
_____ 2019.

AS WITNESSES:

1

2

for: **PRINCIPAL**

THUS DONE AND SIGNED AT _____ ON THIS _____ DAY OF
_____ 2019.

AS WITNESSES:

1

2

for: **TENDERER**