

**SOCIÉTÉ DES MINES DE MORILA SA**

**General Conditions of Contract**

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 In these conditions:

“**Acceptance**” means acceptance of the work by Morila in accordance with paragraph 4 (Acceptance).

“**Contract**” means the Purchase Order, these conditions and all documents included or incorporated by reference into the Purchase Order.

“**Contract Price**” means the sum payable to the Contractor under the Contract and as stated in the Purchase Order.

“**Contractor**” means the person, firm or company to whom the Purchase Order is addressed and includes the Contractor’s successors and permitted assignees.

“**Contractor Certificate of Completion**” means the certificate to be issued by Morila in accordance with paragraph 5 (Defects).

“**Firefinch**” means Firefinch Limited ACN 113 931 105, a company incorporated in Australia.

“**Goods**” means all goods covered by the Purchase Order, including raw materials, processed materials and/or fabricated products.

“**Morila**” means Société des Mines de Morila SA, a company incorporated under the laws of Mali with Company Number: Ma.Bko.2007.B.3752 and having its registered office at Faladié, Rue 800, Porte 97 BPE 2070’, Bamako, Mali and its subsidiary and affiliated companies.

“**Notice of Acceptance**” means the notice of acceptance of the Work to be issued by Morila in accordance with paragraph 4 (Acceptance).

“**Performance Tests**” has the meaning given to it in paragraph 2.1.

“**Plant**” means machinery, apparatus, materials, articles and things to be provided under the Purchase Order and forming a permanent part of the Work.

“**Purchase Order**” means the purchase order issued by Morila to the Contractor, to which shall be appended these conditions and all documents included or incorporated by reference into the Purchase Order.

“**Retention Percentage**” means the percentage set out in the Purchase Order.

“**Site**” means the location where the Work is to be performed.

“**Work**” means all Plant, goods and other items to be provided and work to be done as detailed in the Purchase Order.

1.2 The headings in these conditions shall not be deemed to be part thereof or to be taken into consideration in the interpretation or construction thereof.

1.3 The Contract contains the entire agreement between the parties and supersedes any and all prior and contemporaneous written or oral agreements, proposals, negotiations, understandings, notices and representations relating to or connected to the subject matter of the Contract.

1.4 These conditions shall prevail over any terms and conditions provided by the Contractor notwithstanding any statement to the contrary in any document provided by the Contractor or included in the Contract.

1.5 Should there be any conflict between the documents comprising the Contract, they shall be construed in the order stated in the Purchase Order save that these conditions shall take precedence over all other documents. If no order is stated, then these conditions shall take precedence over all other documents and the other documents shall be construed in the order specified by Morila from time to time.

1.6 The provisions of the Contract that are intended to survive the termination, cancellation, completion or expiry of the Contract including without limitation, any provision limiting or releasing liability, indemnities, the license in paragraph 9 (*Contractor’s Intellectual Property*) and the confidentiality requirements in paragraph 18 (*Confidentiality*) shall continue as valid and enforceable provisions notwithstanding any such termination,

cancellation, completion and expiry.

- 1.7 Unless expressly stated otherwise in writing by the relevant party, any failure to exercise or to delay in exercising a right or remedy under or in relation to the Contract shall not constitute a waiver of such right or remedy nor a waiver of any other right or remedy. No waiver of a breach or of a default under the Contract shall constitute a waiver of any other breach or of default under the Contract or affect the terms of the Contract. Any waiver by a party of any of its rights or remedies under or in relation to the Contract shall be received in writing by that party.
- 1.8 The parties acknowledge and agree that the terms of the Contract have been freely and fairly negotiated between them. Each party acknowledges that in executing the Contract they have relied solely on their judgment, belief, and knowledge and such advice as they may have received and they have not been influenced by any representations or statements made by any other party (save for any express representations made by the Contractor in his tender or in these conditions). No provision of the Contract is to be interpreted for or against any party because that party or its lawyer drafted such provision.
- 1.9 Where any number of days is prescribed in this Contract, it shall be reckoned exclusive of the first day and inclusive of the last day.

## 2. TESTING

- 2.1 The Work to be carried out and Goods to be supplied will be subject to such performance tests as may be required by Morila ("**Performance Tests**").
- 2.2 Where any Performance Test or plant start-up is to be carried out by the Contractor (or one of its subcontractors), the Contractor shall provide sufficient prior written notice to Morila to enable Morila or its representative to attend and witness such Performance Test and/or plant start-up.

## 3. REJECTION

- 3.1 If, at any time before the Contractor achieves Acceptance under paragraph 4 (*Acceptance*), Morila shall:
- (a) decide that any of the Work / Goods is not in accordance with the Contract or is otherwise defective (all such matters being hereinafter in this paragraph 3 called "**defects**"); then
  - (b) as soon as reasonably practicable Morila shall give to the Contractor notice in writing of the said decision specifying particulars of the defects; and, following such notice shall so far as may be necessary place the Work / Goods at the Contractor's disposal.
- 3.2 Thereafter the Contractor shall, at its own expense and with all speed, make good the defects so specified. Morila may, at its option, specify a time by which the relevant defects are to be made good. If the Contractor fails to make good the defects by the time specified, Morila may do so at the sole cost and risk of the Contractor.

## 4. ACCEPTANCE

- 4.1 The Contractor shall carry out and complete the Work and/or supply the Goods in order to achieve Acceptance by the date specified in the Purchase Order unless agreed otherwise in writing between Morila and the Contractor. If no date or time is specified in the Purchase Order the Contractor shall carry out and complete the Work and/or supply the Goods so as to achieve Acceptance within a reasonable time period.
- 4.2 Acceptance shall be achieved under the Contract where the Work has been completed in accordance with the Purchase Order and all Goods have been supplied in accordance with the Purchase order and the Work / Goods have passed the Performance Tests (if applicable).
- 4.3 The Contractor shall furnish such programmes of manufacture, delivery and site works as Morila may reasonably require and the Contractor shall give notice to Morila as soon as practicable if such programmes are, or are likely to be, delayed together with a proposal to recover the delays and shall specify the steps to be taken to have the Work completed / Goods supplied on the specified date.
- 4.4 When the conditions for Acceptance set out in paragraph 4.1 have been met, the Contractor may apply in writing to Morila for a Notice of Acceptance. Within fourteen (14) days after receipt of such application, Morila may inspect the Work / Goods and shall either:

- (a) reject the application, setting out those defects and/or incomplete elements of the Work / Goods to be rectified in order to meet the conditions for Acceptance; or
  - (b) shall issue a Notice of Acceptance stating the date on which Acceptance was achieved for the purposes of the Contract.
- 4.5 Morila reserves the right to waive inspection upon giving written notice to the Contractor. Such waiver shall not relieve the Contractor of its obligations under the Contract.
- 4.6 Should Morila reject the application, the Contractor shall promptly rectify those defects and/or incomplete elements of the Work / Goods specified by Morila, at the Contractor's sole risk and expense.
- 4.7 The Contractor hereby acknowledges that time is of the essence and should Acceptance not be achieved by the date stated in the Purchase Order (subject to any extension of time that Morila may grant in accordance with paragraph 17 (*Variations*) or paragraph 11 (*Force Majeure*) on receipt of a written request for such extension from the Contractor), Morila may, upon 7 days' prior written notice:
- (a) require the Contractor to deliver the Work / Goods or any part thereof in uncompleted state, and all raw materials and parts connected therewith, to enable Morila to complete the Work or the supply of Goods. The Contractor shall be liable to reimburse Morila for all reasonable costs and expenses incurred in the completion of the Work obtaining any unsupplied Goods. In addition the Contract Price shall be reduced commensurate with the relevant unfulfilled obligations such reduction to be agreed between the parties and, in the event of a dispute in regard to such reduction, shall be determined by Morila acting reasonably; and/or
  - (b) use the Contractor's cranes and other plant and equipment on the Contractor's premises, free of charge, to take delivery of the goods and raw material and where the Contractor has cranes and other plant and equipment at the Site use that equipment as is reasonable in order to complete any outstanding Work; and/or
  - (c) terminate the Contract and in which case Morila shall not be under any obligation to make further payments of the Contract Price and/or compensation and may reclaim from the Contractor any payments made on account.
- 4.8 In addition to the remedies detailed in paragraph 4.7 in the event that the Contractor fails to achieve Acceptance by the specified date the Contractor shall indemnify and hold harmless Morila in respect of any losses suffered by Firefinch or Morila or any group or related companies to Morila or Firefinch as a result of the relevant failure (including, without limitation, the costs of procuring alternative performance and all costs arising from any delays and additional costs payable to other contractors and suppliers).

## **5. DEFECTS**

- 5.1 The Contractor shall as soon as reasonably practicable repair or replace any snagging item and/or part of the Work which is outstanding or defective or which becomes defective during the period of twelve (12) months from date of Acceptance by Morila, or within twenty four (24) months from the date of delivery, whichever occurs first, but only where such defects occur under proper usage and are due to faulty performance (other than a performance specified by Morila for which the Contractor has expressly disclaimed responsibility in writing), the Contractor's erroneous instructions as to use or erroneous use of data, or inadequate or faulty materials or workmanship, or any other breach of the Contract and/or any other breach of the Contractor's warranties, express or implied.
- 5.2 The Contractor shall as soon as reasonably practicable repair or replace any snagging item and/or part of the Goods which becomes defective provided the Contractor is notified of the concealed defect by Morila within twelve (12) months from the date on which the concealed defect was found by Morila or ought to have been found, but only where such defect occurs under proper usage and are due to faulty design (other than a design made, furnished or specified by Morila for which the Contractor has expressly disclaimed responsibility in writing), the Contractor's erroneous instructions as to use or inadequate or faulty materials or workmanship, or any other breach of the Contract and/or any other breach of the Contractor's warranties, express or implied.
- 5.3 Where the Contractor repairs or replaces any defect they may be subject to such further Performance Tests as Morila may specify. Repairs and replacements shall themselves be subject to an 'evergreen' period of twelve (12) months from the date of re-installation or passing of Performance Tests (if any), whichever is appropriate in the opinion of Morila after repair or replacement.

- 5.4 In the event that the Contractor cannot rectify the relevant defect within a reasonable time specified by Morila to effect repair or replacement in accordance with paragraphs 5.1, 5.2 and 5.3, Morila may carry out the repair or replacement and shall be entitled to reimbursement by the Contractor for its costs. Such action shall not relieve the Contractor of its continuing obligations under this Contract.
- 5.5 When the last of the period referred to in paragraph 5.1 or the period referred to in paragraph 5.2 has expired or, if later, the last 'evergreen' period pursuant to paragraph 5.3 has expired, and the Contractor has rectified all defects and outstanding snagging items and has otherwise satisfied all its obligations under this paragraph 5, then Morila shall issue a Contractor Certificate of Completion.

## **6. DISCREPANCIES**

- 6.1 If there is an ambiguity or discrepancy between or within those documents forming the Contract (including the Purchase Order), the Contractor shall immediately notify Morila. If the Contractor fails to inform Morila of an ambiguity or discrepancy, he shall not later have the right to rely on the presence of such ambiguity or discrepancy as a defense to any claim brought by Morila in relation to the Contract.
- 6.2 Following being informed by the Contractor of an ambiguity or discrepancy, Morila shall decide how the ambiguity or discrepancy shall be dealt with and shall notify the Contractor accordingly.

## **7. TERMS OF PAYMENT**

- 7.1 In consideration of the proper performance of the Work (if any) and the proper supply of the Goods in each case as stated in the Purchase Order and in these conditions the Contractor shall be paid the Contract Price by Morila. Save as provided for under paragraph 17 (*Variations*) or as otherwise stated in the Purchase Order the Contract Price should be considered a fixed lump sum price.
- 7.2 The Contract Price shall include all fees, duties, VAT and all other applicable taxes, imports, withholdings or other impositions of any kind which may arise out of or relate to the delivery of the Work / Goods.
- 7.3 Unless otherwise stated in the Purchase Order, payment of the Contract Price will be made on or before the 25<sup>th</sup> day of each month if the Contractor's invoice is received by Morila on or before the 25<sup>th</sup> day of the preceding month. The Contractor shall only be permitted to submit such an invoice for the Work done and/or Goods supplied following issue of the Notice of Acceptance in accordance with paragraph 4 (*Acceptance*) save where interim payments are specified in the Purchase Order in which case invoices may be submitted at such earlier time specified in the Purchase Order.
- 7.4 All invoices must be accompanied by signed delivery notes and relevant release certificates, due substantiation of the amounts claimed and shall also comply with any other formalities reasonably required by Morila or applicable law.
- 7.5 Unless otherwise stated in the Purchase Order, the Retention Percentage shall be deducted from each Contractor's invoice until completion of the Work or supply of Goods, at which point:
- (a) The amount equal to 50% of the amount retained shall be released to the Contractor, subject to any deductions or adjustments due under this Contract to Morila; and
  - (b) The remaining 50% of the amount retained shall continue to be retained by Morila until the expiry of 24 months following the completion of the Work or supply of Goods.
- 7.6 Morila shall have the right to deduct or set off from the amount due to the Contractor any amounts due from the Contractor to Morila or any group or associated company of Morila or Firefinch together with as much of the Contract Price as it deems fit to deduct or set off in respect of any liability for damages arising out of the non-fulfilment of the Contractor's obligations under the Purchase Order.

## **8. OBLIGATIONS OF THE CONTRACTOR**

- 8.1 The Contractor shall be deemed to have satisfied itself as to all the terms and conditions and circumstances affecting the Contract Price and no additional allowance will afterwards be made in respect of the Contract Price, except as otherwise expressly provided herein
- 8.2 The Contractor is deemed to have understood the nature and extent of the Work and/or Goods required to be supplied and to have visited the Site and shall make no claim founded on its failure to do so. Morila shall, on request by the Contractor, grant such access as may be reasonable for this purpose.

- 8.3 Unless otherwise specified, the Contractor shall provide all equipment, tools, material, labour, crantage, haulage and other things necessary to complete the Work or supply the Goods.
- 8.4 The Contractor shall complete the Work and/or supply any Goods in accordance with all obligation, that apply (both in the country of origin of the Goods, the country where any Work is to be carried out or Goods are to be delivered and the country of the Site) and with the instructions and programme as set out in the Purchase Order.
- 8.5 The Contractor undertakes to Morila that the Work carried out and Goods supplied shall strictly comply with the provisions of the Purchase Order and the Contract and, unless otherwise stated, all Goods supplied shall be new, of the best quality and description within the normal limits of industrial quality and to normally accepted standard specifications and shall be of the best merchantable quality and otherwise to the entire satisfaction of Morila. The Contractor shall ensure that any Goods supplied and/or Work constructed shall be entirely fit for the purposes for which they are intended.
- 8.6 The Contractor shall complete a quality control plan ("**Quality Control Plan**" or "**QCP**") as set out in the scope of work / specification forming part of the Contract. The QCP must be submitted to Morila in accordance with the documentation requirements of the Contract. A representative of Morila will review adherence to the Quality Control Plan on a regular basis. The Contractor shall maintain records capable of demonstrating such adherence, in accordance with the documentation requirements of the Contract.
- 8.7 The Contractor shall comply with the provisions of ISO/SABS 9000 at the relative level stipulated in this Purchase Order.
- 8.8 The Contractor shall, at its own expense, protect from deterioration any item of Work/Goods or part thereof that is capable of deterioration during transportation or storage or installation.
- 8.9 Unless otherwise specified in the Purchase Order the Contractor shall be entirely responsible for transport costs to the Site or other place of delivery specified in the Purchase Order and shall ensure that all Goods are properly packed for transport and inspected for export by a relevant inspection organization such as Veritas or equivalent. The Goods shall be at the Contractor's risk until properly delivered at the Site or other place specified for delivery.
- 8.10 Without prejudice to the fitness for purpose requirement in paragraph 8.5 where the Contractor is responsible for the design of the Work or the Goods the Contractor shall ensure that the design is prepared to the standards expected of an expert designer experienced in designing Work and/or Goods for use in circumstances similar to that required by the Contract.

## **9. CONTRACTOR'S INTELLECTUAL PROPERTY**

- 9.1 As between the parties, the Contractor shall retain the copyright and other intellectual property rights in the documents produced by the Contractor in respect of the Works or the supply of the Goods and other design documents made by (or on behalf of) the Contractor (the "**Contractor's Documents**"). The Contractor shall be deemed (by signing the Contract) to give to Morila an irrevocable, perpetual, non-terminable transferable non-exclusive worldwide royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:
- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Work / Goods and shall not be affected by any termination of the Contract (howsoever arising);
  - (b) entitle any person in proper possession of the relevant part of the Work or Goods to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Work and/or Goods; and
  - (c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract, including replacements of any computers supplied by the Contractor.
- 9.2 The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) Morila other than to its professional advisers or other than for those purposes permitted under this paragraph 9.
- 9.3 The Contractor shall be liable for and shall indemnify (and keep indemnified) and hold the Morila harmless against and from all damages, losses and expenses (including reasonable legal fees and expenses) resulting from any infringement of any existing or future copyright, design rights or intellectual property

rights, patent, registered design, unregistered design rights, trade mark, trade name or other intellectual property right of any third party caused by or arising out of the supply of any Goods and/or the use of the Contractor's Documents in carrying out of the Work / supply of the Goods, the exercise of the licence granted in this paragraph 9 or the failure to procure such a licence.

## **10. MORILA'S INTELLECTUAL PROPERTY**

10.1 Any specifications, plans, drawings, process information, patterns or designs supplied by Morila to Contractor in connection with the Contract shall remain the property of Morila, and any information derived therefrom, or otherwise communicated to the Contractor in connection with the Contract, shall be held by the Contractor as secret and confidential and shall not, without the consent in writing of Morila, be published or disclosed to any third party, or made use of by the Contractor except for the purpose of carrying out the Work or supply of the Goods.

10.2 Any specifications, plans, drawings, process information, pattern or designs supplied by Morila to the Contractor must be returned to Morila on expiry or termination of the Contract. Likewise any specifications, plans, drawings, process information or designs developed by Contractor in terms of this Purchase Order shall not be disclosed to or used for other work or other parties without the prior consent of Morila.

## **11. FORCE MAJEURE**

11.1 If either Morila or the Contractor is prevented or hindered from carrying out its obligations under this Contract by circumstances beyond its control which occurrence or consequences could not be reasonably predicted (other than by normal weather conditions or conditions caused by normal weather conditions), including but not limited to any form of Government intervention, general strikes and lockouts which affect the performance of the obligations under this Contract, for a continuous period exceeding seven (7) days, then the performance of such obligations shall be suspended for such time as the circumstances aforesaid continue and the party affected shall not be liable for any delay occasioned thereby. If such delays extend for an unreasonable time, the unaffected party may terminate the Contract and no liability shall attach to either party. Morila shall pay the Contractor such sum as may be equitable in respect of Work performed / Goods supplied prior to termination.

## **12. PROGRESS AND INSPECTION**

12.1 Morila's representatives shall have the right to progress and inspect the Work / Goods at all reasonable times and to reject any part thereof that does not comply with the terms of this Contract. Any inspection, checking, approval and acceptance given on behalf of Morila shall not relieve the Contractor from any obligation under this Contract.

12.2 Issue by Morila of an Acceptance Certificate or any other documents signifying acceptance of the Work / Goods in respect of quality, workmanship and/or completeness shall not relieve the Contractor of its obligations under this Contract, should it be found at a later date that the relevant Work / Goods are not in accordance with this Contract.

## **13. RESPONSIBILITY FOR INFORMATION**

13.1 The Contractor shall be responsible for any errors or omissions in any drawings, calculations, packing details or other particulars supplied by it whether such information has been approved by Morila or not, provided that such errors or omissions are not due to inaccurate information furnished in writing by Morila.

## **14. FREE ISSUE MATERIALS**

14.1 Where Morila issues materials 'free of charge' to the Contractor, such materials shall be and remain the property of Morila and shall be clearly marked as such. The Contractor shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and like to fair wear and tear. The Contractor shall use such materials solely in connection with this Contract. Any surplus materials shall be disposed of at Morila's discretion. Waste of such materials arising from bad workmanship or negligence of the Contractor shall be made good at the Contractor's expense. The Contractor shall be required to sign acceptance on delivery of all free issue materials and, unless stated in writing to the contrary by the Contractor, all such materials shall be deemed to have been delivered in good condition and the Contractor shall be deemed to have approved their suitability for the Work or supply of the Goods.

## **15. NOTIFICATION OF DELIVERY**

15.1 Where it has been specified in this Contract that delivery of any Plant, Goods or other items is to be

effected to any site, the Contractor shall be obliged to obtain Morila's approval prior to dispatch. The Contractor shall make all necessary arrangements for storage, protection and insurance of such Plant, Goods or other items and shall be responsible until Morila has taken delivery. Should the Contractor dispatch such Plant, Goods or other items without Morila's prior approval, the Contractor shall bear its own expenses and be liable for any expenses incurred by Morila as a result of the premature dispatch, up to the date on which Morila would otherwise have accepted the Work / Goods. Morila shall nevertheless have the right to reject the Plant, Goods or other items in the meantime.

- 15.2 If inspection at the Contractor's premises is stipulated in the Purchase Order, the Contractor shall not dispatch or invoice unless it is in receipt of a release note signed by a Morila representative, otherwise payment may be withheld. All Plant, Goods or other items must be delivered at the delivery point specified in the Purchase Order. If Plant, Goods or other items are incorrectly delivered, the Contractor will be held responsible for any additional expense incurred in delivering them to their correct destination. Copies of relevant signed release notes must be attached to all delivery notes.

## **16. ASSIGNMENT AND SUB-LETTING**

- 16.1 The Contractor shall not be entitled to assign the Contract nor delegate or sub-let the Work / Goods as a whole. The Contractor may delegate or sub-let any part of the Work / Goods with Morila's prior written consent. The restriction contained in this paragraph 16 shall not apply to subcontracts for materials, for minor elements of the Work / Goods or for any part of the Work / Goods for which the makers / suppliers or subcontractors are named in the Purchase Order. The Contractor shall be responsible for all the Work done, Goods supplied and Plant supplied by its subcontractors notwithstanding any such subcontracting.
- 16.2 When Morila has consented to the placing of subcontracts, unpriced copies of each subcontract shall be sent by the Contractor to Morila immediately when they are issued. Such consent by Morila shall not relieve the Contractor of any of its obligations under the Contract.
- 16.3 Morila shall be entitled to assign transfer or charge the benefit or any obligations under the Contract to any person without consent in his absolute discretion and the Contractor shall, on request, enter into such documents as are reasonably required to give effect to any such assignment transfer or charge.

## **17. VARIATIONS**

- 17.1 Morila shall have the right, by notice in writing, to direct the Contractor to add to or omit or otherwise vary the Work/Goods and the Contractor shall carry out such additions, omissions or variations and be bound by the same conditions, so far as applicable, as though such additions, omissions or variations were anticipated by the Contract.
- 17.2 Where the Contractor receives any such direction from Morila for which it would be reasonable to adjust the Contract Price, the Contractor shall, with all possible speed, advise Morila in writing as to the financial effect of any such proposed amendment, ascertained and determined at the same level of pricing as that contained in the Contractor's original tender or in the event no similar rates/prices were included the financial effect shall be a fair price.
- 17.3 Where the Contractor receives any such direction from Morila for which it would be reasonable to adjust the date stated in the Purchase Order (if any) to achieve the issue of the Notice of Acceptance then the Contractor shall, with all possible speed, advise Morila in writing as to the effect (if any) on the timescale for the issue of the Notice of Acceptance.
- 17.4 If, in the opinion of the Contractor, any such direction is likely to prevent the Contractor from fulfilling any of its other obligations under the Purchase Order then it shall so notify Morila and Morila shall decide with all possible speed whether or not same shall be carried out and shall confirm its instructions in writing and modify the said obligations to such an extent as may be justified. Until Morila so confirms its instructions in writing they shall be deemed not to have been given.
- 17.5 Failing agreement on any amended price timescale, or obligation under the Purchase Order the matter shall be determined by Morila acting reasonably. If the Contractor does not agree with Morila's determination, then the Contractor may at any time refer the issue for dispute resolution in accordance with paragraph 22 (*Law and Arbitration*).

## **18. CONFIDENTIALITY**

- 18.1 No photographs of any of Morila's equipment, installations or property shall be taken without Morila's prior written consent.



- 18.2 The Contractor shall keep confidential and shall not divulge to any third party (except subcontractors accepting a like obligation of confidentiality, and then only to the extent necessary for the performance of the subcontract) all information given by Morila in connection with this Contract or which becomes known to the Contractor through carrying out the Work or supplying the Goods.
- 18.3 The Contractor shall not mention Firefinch and Morila's name in connection with this Contract or disclose the existence of this Contract (including its terms) in any publicity material or other similar communication to third parties without Morila's prior written consent.
- 18.4 The Contractor shall not copy or reproduce any document containing information about Morila, Firefinch or the Work / Goods except as is necessary in fulfilling its obligations under these conditions.

## **19. INDEMNITY**

- 19.1 The Contractor shall indemnify Morila against any and all claims, losses, damages and costs which arise out of or in consequence of carrying out the Work or supply of the Goods including, without limitation, any claims as a result of the Contractor's breach of this Contract, for property damage or personal injury, whether such claims are made by Morila or by a third party against the Contractor or against Morila, and the Contractor shall indemnify Morila against all actions, demands, damages, costs, charges and expenses arising in connection therewith provided, however, that nothing in this paragraph 19 shall render the Contractor liable for any injury or damage resulting from any negligent act or omission of Morila, its servants or agents, or any other contractor employed by Morila.

## **20. CONTRACTOR'S DEFAULT OR INSOLVENCY**

- 20.1 Without prejudice to any rights which Morila may have under the applicable law in any of the following circumstances Morila may, by notice, terminate the Contractor's employment under this Contract:
- 20.2 If the Contractor fails to carry out promptly any of Morila's instructions, and fails within seven (7) days of notice in writing by Morila drawing attention to such failure, to take such steps as to reasonably satisfy Morila to address such failure;
- (a) If the Contractor commits a breach of this Contract, and fails within seven (7) days of notice in writing by Morila to take such steps as to reasonably satisfy Morila to remedy such breach;
  - (b) If the Contractor acts in a manner which Morila considers to be substantially prejudicial or harmful to Morila and/or Firefinch;
  - (c) Morila temporarily ceases or permanently ceases its operation (or any part of its operation);
  - (d) If the Contractor becomes insolvent or makes an arrangement with its creditors or has a receiver appointed or commences to be wound up (other than for the purpose of amalgamation or reconstruction); or
  - (e) If the Contractor is prohibited from performing the Contract, or Morila is prohibited from (or liable to penalties for) engaging the Contractor to perform the Contract, by applicable laws; or
  - (f) If the Contractor commits any breach of this Contract which is in the view of Morila not capable of remedy (including, without limitation, a breach of paragraph 25 (*Anti-Corruption and Anti-Bribery*)).
- 20.3 Without prejudice to any other of its rights, Morila may itself complete the Work or have it completed by a third party, and Morila shall not be liable to make any further payment to the Contractor until the Work has been completed in accordance with this Contract and shall be entitled to deduct from the Contract Price any additional cost or liability incurred by Morila. If the total cost or liability to Morila exceeds the sums paid and owing by Morila to the Contractor, the difference shall be recoverable by Morila from the Contractor as a debt.
- 20.4 On termination of this Contract, or on demand by Morila, return all documents and information supplied to the Contractor in respect of the Work / Goods including any documents and information created by the Contractor in connection with the Work / Goods.

## **21. LANGUAGE**

- 21.1 All communications, specifications, drawings or other documents shall be in the English language which is the language according to which this Contract is to be construed and interpreted.

## **22. LAW AND ARBITRATION**

- 22.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Western Australia.
- 22.2 The Contractor and Morila irrevocably agree to submit to the non-exclusive jurisdiction of the courts of Western Australia.

## **23. PASSING OF PROPERTY TO MORILA**

- 23.1 Ownership of property and clear title to all Work / Goods furnished by the Contractor shall pass to Morila upon the earlier of the following: (a) delivery to the Site of the relevant materials / Goods; or (b) delivery to the care of Morila at a place other than the Site (where Morila is to arrange for transport to Site); or (c) the date on which the Contractor is entitled to payment for the relevant Goods / Work. The Contractor shall on request enter into any such documents as Morila may reasonably require to give effect to this paragraph 23.1 (including, without limitation, waivers of lien or property).
- 23.2 Notwithstanding the transfer of ownership contemplated in paragraph 23.1 the care, custody, and control of the Work / Goods shall remain with the Contractor until the issue of the Notice of Acceptance.

## **24. PURCHASE ORDER NUMBER**

The purchase order number shown on the Purchase Order shall be shown on all invoices, communications, packing lists, containers and bills of lading.

## **25. ANTI-CORRUPTION, ANTI-BRIBERY, HUMAN RIGHTS AND HEALTH AND SAFETY**

- 25.1 Notwithstanding any other provision of the Contract the Contractor shall: (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption ("**Relevant Requirements**"); (b) not engage in any activity, practice or conduct which would constitute an offence under any anti-bribery and anti-corruption laws, statutes, regulations and codes which are applicable to the Contractor or Morila; (c) comply with Morila's ethics and anti-bribery policy as Morila or any relevant industry body may update them from time to time ("**Relevant Policies**"); (d) have and shall maintain in place throughout the term of this Contract its own policies and procedures to ensure compliance with the Relevant Requirements and the Relevant Policies and will enforce them where appropriate; (e) promptly report to Morila any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Contract; and (f) immediately notify Morila in writing if a public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor.
- 25.2 The Contractor warrants and represents that in relation to this Contract: (a) to the best of the Contractor's knowledge none of its subcontractors or employees have given or offered to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward (a) for doing or forbearing to do any action in relation to the Contract; or (b) for showing or forbearing to show favour or disfavour to any person in relation to the Contract; (c) it shall ensure that no monies paid to it by Morila under this Contract shall be used by the Contractor for bribery or similar illegal activity; (d) it does not employ, engage or otherwise use any child labour; (e) it does not use forced labour in any form (including prison, indentured, bonded or otherwise); (f) it shall provide a safe and healthy workplace, presenting no unusual hazards given the nature of the Work / Good to the Contractor's workforce and any housing provided by the Contractor shall be safe for habitation; (g) it shall not discriminate against any employees on any ground (including race, religion, disability or gender); (h) it shall not engage in or support the use of corporal punishment, mental, physical, sexual or verbal abuse and does not use cruel or abusive disciplinary practices in the workplace; (i) it shall pay each employee at least a minimum wage according to the applicable legislation or a fair representation of the prevailing industry wage (whichever is the higher) and provides each employee with all legally mandated benefits; (j) it shall comply with the laws on working hours and employment rights (if any) in all countries in which it operates (including the country in which the Site is located if relevant); and (k) it shall be respectful of its employees' right to join and form independent trade unions and freedom of association.
- 25.3 The Contractor shall comply with the United Nations Declaration of Human Rights and shall maintain ethical and human rights policies which implement the Voluntary Principles on Security and Human Rights. The policies shall incorporate an appropriate complaints procedure which caters for any breaches of those policies. Any breach of the Contractor's ethical and human rights policies shall be reported to Morila as soon as practicable.

- 25.4 The Contractor will ensure that (a) its employees and subcontractors undertake the Work Goods in accordance with the Contractor's ethical and human rights policies; and (b) its ethical and human rights policies and procedures are supported by a training package made available to all of the Contractor's employees and subcontractors who are at the Site.
- 25.5 Morila or its nominees shall be entitled to undertake an audit of the Contractor and the Contractor's employees and subcontractors to ensure compliance with the provisions of this paragraph 25 and the Contractor shall promptly provide such information as Morila (or its nominee) may require from time to time.
- 25.6 The Contractor agrees to comply with Morila's health and safety rules, and any additional rules made available to the Contractor from time to time together with all applicable statutory rules and regulations regarding these matters. The Contractor will be responsible for procuring that the Contractor's employees and subcontractors also comply with these rules and regulations.
- 25.7 The Contractor shall ensure that each of the Contractor's employees and subcontractors are medically fit to undertake their duties, and do not have any medical condition or latent medical condition which is likely to cause harm to those who operate at the Site or affect the ability of the Contractor to undertake the Work / supply of Goods. The Contractor shall provide such proof as Morila may require as to the medical fitness of any of the Contractor's Personnel. Morila may request any of the Contractor's employees and subcontractors to complete a medical questionnaire and if Morila considers necessary undertake (at Morila's cost) a medical examination by Morila's doctor. The Contractor shall immediately remove from the Site any of the Contractor's employees and subcontractors who Morila considers unfit to undertake his duties at the Site.
- 25.8 The Contractor shall notify Morila as soon as practicable of any health and safety hazards at the Site. The Contractor will draw these hazards to the attention of the Contractor's employees and subcontractors and will instruct those persons in connection with any necessary associated safety measures.
- 25.9 The Contractor shall ensure that any person associated with the Contractor who is performing services works or providing goods in connection with this Contract (including subcontractors) does equivalent to those imposed on the Contractor in this paragraph 25. The Contractor shall be responsible for the observance and performance by such persons of the Relevant Requirements and the Relevant Policies, and shall be directly liable to Morila for any breach by such persons of any of the Relevant Requirements and the Relevant Policies.
- 25.10 The rights and remedies of Morila provided in this or any other paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

## **26. HAZARDOUS MATERIALS**

- 26.1 The Contractor shall notify Morila in writing upon receipt of this Contract if any Work / Goods is subject to laws or regulations relating to hazardous or toxic substances, or when disposed of, to regulations governing hazardous wastes, or to any other environmental or safety and health regulations.
- 26.2 The Contractor shall furnish all appropriate instructions and certification for shipping, safety, handling, exposure and disposal.

## **27. INSURANCE**

- 27.1 Unless otherwise stated in the Purchase Order, the Contractor shall insure the Work / Goods in the name of Morila as a co-insured against normal construction risks (if relevant) and transit risks up to the issue of the Notice of Acceptance, the cost of which insurance shall be deemed to be included in the Contract Price. The terms of such transit and construction all risks insurance shall be in accordance with industry standard policies and to be approved by Morila acting reasonably.
- 27.2 The Contractor shall accept full and exclusive liability for the payment of any and all taxes and contributions; for unemployment insurance, old age retirement benefits and life pensions and annuities and the like, which may now or hereafter be imposed by any applicable Government, or any sub-division thereof, whether measured by wages, salaries or remuneration paid to persons employed by the Contractor in connection with the Work / Goods. The Contractor shall comply with all applicable laws on such subjects and all the rules and regulations promulgated and shall maintain suitable forms, books and records and indemnify and hold Morila free and harmless from the payment of any and all such taxes and contributions or penalties.
- 27.3 Without limiting the Contractor's obligations and responsibilities under this Contract, the Contractor shall

ensure that it procures all insurances required by law in respect of employer's liability and motor vehicle insurance.

27.4 Without limiting the Contractor's obligations and responsibilities under this Contract, the Contractor shall bring into effect the following insurances:

- (a) Employer's Common Law Liability – in the sum of not less than one million US Dollars (US\$1,000,000) (or equivalent) on any one occurrence covering legal liability for death of or injury to or illness of persons engaged in or upon the service of the Contractor under a contract of service or apprenticeship while employed in connection with the Work / Goods.
- (b) Plant All Risks – covering Contractor's construction equipment to its full replacement value against physical loss or damage to such Contractor's construction equipment for the full period it shall be on the Site.
- (c) Motor Liability – in the sum of not less than one million US Dollars (US\$1,000,000) (or equivalent) on any one occurrence covering legal liability for death of or injury to or illness of persons and loss or damage to property arising out of or in connection with vehicles used in connection with the Work / Goods.

27.5 Only if expressly stated in the Purchase Order, without limiting the Contractor's obligations and responsibilities under this Contract, either Firefinch or Morila shall bring into effect insurances in respect of Contract Works Insurance, Marine/Transit Insurance and Public Liability Insurance in the joint names of Firefinch, Morila, the Contractor and all subcontractors.

27.6 Details of any such insurance effected by either Firefinch or Morila may be inspected by the Contractor by arrangement with Morila.

27.7 The Contractor is deemed to understand and accept the terms of these insurances including, inter alia, the excess and the reduced cover provided during the period of guarantee.

27.8 All the policies relating to the insurances to be provided by the Contractor in terms of these conditions shall be in such form and be issued by such company or companies as may be acceptable to Morila.

27.9 The Contractor shall, before commencing on Site, furnish to Morila certificates of insurances from the assuring companies which shall evidence the existence of such policies and that the appropriate premiums have been paid. Should Morila so request, the Contractor shall also provide copies of the policies of insurance.

27.10 The Contractor shall give immediate notice in the event of any accident or damage likely to form the subject of a claim under any insurance effected by Firefinch or Morila and shall give all the information and assistance in respect thereof that the insurers may require.

27.11 The Contractor shall not negotiate, pay, settle, admit or repudiate any claim without the written consent of the insurers and shall permit the Insurers to take proceedings in the name of the Contractor to recover compensation or secure an indemnity from any third party in respect of the matters covered by the said insurance.

## **28. CONTRACTOR'S SUPERINTENDENCE**

28.1 The Contractor shall have a competent supervisor on the Site and any instructions given to such supervisor (written or verbal) shall be deemed to be given to the Contractor.

## **29. SITE REGULATIONS**

29.1 The Contractor shall make no delivery nor commence any work on Site before obtaining the consent of Morila.

29.2 The Work or supply of Goods shall be carried out with proper regard to safety and the Contractor shall observe and conform to all statutory enactments and regulations. The cost of supplying and/or doing all things required to comply with relevant laws shall be deemed to be included in the Contract Price.

## **30. SITE WORK BY CONTRACTOR**

- 30.1 If any work on Site is to be carried out by the Contractor, including the supervision of erection and/or commissioning, then the Contractor shall comply with the following:
- (a) Before delivery is made, arrange for the off-loading and adequate storage of Plant to be erected by it if so specified in the Purchase Order.
  - (b) Before employing hourly-paid men on the Site, agree with Morila the hours to be worked (including overtime). Such hours shall not be charged without Morila's written consent except in compliance with relevant national agreements.
  - (c) The Contractor shall not offer employment to any person employed by Morila or by other contractors employed by Morila during the term of the Contract (without Morila's consent).
  - (d) The Contractor will ensure that no Work is covered up until Morila has had a reasonable opportunity to inspect same.
  - (e) The access to and possession of the Site shall not be exclusive to the Contractor but only such as shall enable it to carry out the Work, concurrently with execution of work by other persons.
  - (f) Contractor shall keep site premises and vicinity thereof clean of debris and rubbish caused by the Work and, upon completion of the Work, shall leave the premises clean and ready for use. Upon request of Morila and at no extra cost to Morila, the Contractor shall promptly remove from the Site any person under the control of the Contractor who violates any of the aforesaid safety, health, plant laws, regulations, ordinances or rules or who may cause or threaten to cause a breach of peace, or who is otherwise objectionable to Morila.

**31. ENVIRONMENTAL CONSIDERATIONS**

- 31.1 The Contractor shall comply, and shall procure that its subcontractors will comply, with all aspects of Morila's environmental policies and relevant environmental and anti-pollution laws. The Contractor and its subcontractors shall be held responsible for any contraventions of the above acts and for any penalties or prosecutions arising from his contravention of any aspect of the above acts.

**32. NON-EXCLUSIVITY**

- 32.1 These conditions do not confer upon the Contractor any exclusivity in respect of the Works / Goods or any other works or services provided by the Contractor at the Site unless specifically stated in the Purchase Order.

**33. CONDITIONS FURNISHED ON WEBSITE**

- 33.1 Morila reserves the right to amend these conditions from to time in writing and following any such amendment, shall make available the amended conditions on the Firefinch website. The Contractor agrees that any such amended Conditions shall apply to this Contract in substitution and replacement of the then existing conditions as at the date on which the Contractor is furnished with a written copy of such amended conditions.