



Terms and Conditions - Procurement

Messrs.  
DRUMMOND LTD.  
MATERIALS DEPARTMENT

Tel (5)4320555      fax: (5) 4320564

RE: IRREVOCABLE STATEMENT OF RECEIPT, UNDERSTANDING AND CONSENT TO THE TERMS AND CONDITIONS OF DRUMMOND LTD., TRANSPORT SERVICES LLC, AMERICAN PORT COMPANY INC. AND DRUMMOND COAL MINING LLC.

The undersigned ....., bearer with id card No. ...., acting on its own behalf/in representation of ....., duly authorized for these effects as stated in: [ ] the good standing certificate; [ ] proxy; and in the capacity of vendor or contractor of DRUMMOND LTD., TRANSPORT SERVICES LLC, AMERICAN PORT COMPANY INC. or DRUMMOND COAL MINING LLC, hereby expressly and irrevocably declare to have received and read, and expressly accept the following terms and conditions (hereinafter the "Terms and Conditions"):

**DRUMMOND LTD.**  
**TERMS AND CONDITIONS**

**1. Application Field:** These Terms and Conditions shall apply to all Sales, Acquisitions, Service Supply and further transactions undertaken between the Vendor and Drummond Ltd., Transport Services LLC, American Port Company or Drummond Coal Mining LLC (hereinafter, jointly, "DLTD") as well as all the corresponding purchase orders or master orders issued by DLTD. In the event there is an accepted commercial offer among the parties, a contract or any legal document that regulates particular relationships among the parties, all of them shall be preferably applied over these Terms and Conditions in the aspects that are contradictory, and in the remaining aspects they shall be supplementary and shall be construed in a harmonic way.

**2. Purchase Order or Master Order:** DLTD shall issue one or several purchase orders or master orders that will indicate the amounts and quality of the goods or services to be procured, as well as the specifications, delivery terms and conditions, etc. The Vendor binds itself to supply only those goods or services stated in a purchase order and according to the indicated conditions.

**3. Raw materials and spare parts:** The Vendor commits itself to use new, suitable and proper materials or spare parts for the purpose they are intended, as the case may be,

free from patent or latent defects, in perfect operating conditions and complying with the technical specifications, drawings and descriptions established by DLTD or standard in the market.

4. **Packaging:** The Vendor, shall pack, transport and deliver each good in a suitable package, which offers protection and complies with the technical and regulatory demands for each type of product.

5. **Title of ownership and possession:** The Vendor fully guarantees that it has legitimate right of ownership and possession on the goods and products it delivers and therefore it has the right to sell them. It also guarantees to be transferring them free from all taxes and that there is no tax pending over them, division, limitation of domain, seizure or confiscation or legal claims and that according to the law there shall be indemnification in favor of DLTD.

6. **Transference and risk:** The property of each good or product shall be assigned once it is delivered and received according to DLTD. The place or delivery shall be DLTD premises unless other site or delivery modality is specified in a purchase order or master order. The risk for the destruction or loss of the goods shall be fully assumed by the Vendor until the time it is received by DLTD.

7. **Guarantee of good operation:**

(a) Every good or material delivered to DLTD shall have a good functioning guarantee for the term specified in each case, or if it is not specified, for the term customary in the market for the type of merchandise, and when not specified, for one (1) year.

(b) The duration of the guarantee shall be counted as of the time of installation of the goods or the date of the minutes of receipt of the services.

(c) The Vendor commits itself, during the life of the guarantee, to repair or replace at its own expense and full satisfaction of DLTD as soon as it receives notice from DLTD and within the terms pointed out in the notification, the goods and products having operating defects. Nevertheless DLTD shall keep the right to claim the consequential damage or loss profits caused by such defects.

(d) In the event the Vendor does not replace or repair the goods or defective products at its own cost, within the term established by DLTD, it may do so at the Vendor's cost and it may deduct its cost from the amount due or owed to the Vendor for any concept or may collect it through legal means.

8. **Changes:** Any change in an order shall only be valid if it is done through an order change, issued by an authorized representative of DLTD.

9. **Substances or special or hazardous materials:** The Vendor shall comply with the standards regarding packaging, handling, transportation, labeling, safety precautions, expiry dates and other risks that are applied to goods or materials it supplies, and shall deliver to DLTD a copy of the Material Safety Data Sheet (MSDS) and report in advance the details of all of the above to DLTD as well as at the time of delivery.

10. **Inspection:** DLTD reserves the right to inspect and evaluate the premises of the Vendor before and after issuing a purchase order or a master order. Such inspection shall not waive

the Vendor from its responsibility regarding the suitability, quality and good operation of the goods and products supplied and DLTD shall keep the faculty of rejection according to section 15.

11. **Risks:** The Vendor assumes on its own account all the loss or destruction risks of the goods or articles until the time of delivery to DLTD and any other provision of the Vendor on the contrary shall not be valid. Therefore, the Vendor is free to cover such risks with an insurance at its own expense, without prejudice of what is agreed by the parties in that respect.

12. **Invoicing and Payments:** The Vendor shall invoice to DLTD the value of the goods or services supplied, once those are received or finalized satisfactorily (unless the purchase order specifies a different way of payment), by means of invoices that comply with all the legal requirements. Payments shall be made by means of electronic transfer to the bank account provided by the Vendor or at DLTD headquarters in Cienaga, thirty (30) days after the invoice is submitted.

**Paragraph: Negotiation or endorsement of invoices:**

i. The Contractor hereby recognizes that DLTD and its affiliates are branches of North American companies subject to the Secretary of Treasury's regulations and other agencies of the United States and that before making a payment to a third party they must carry out internal verification processes to assure that it is not recorded in the list of persons or entities that have been blocked and that there are no restrictions to carry out business or transactions with it.

ii. In the event the Contractor is interested in negotiating or endorsing in favor of these parties any invoice whose payer is DLTD and as long as there is a rule which allows it, it shall be bound to give notice to DLTD regarding its intention, at least fifteen (15) days in advance so that DLTD will be able to carry out the above mentioned verifications or offer alternatives for such transfer or endorsement.

iii. In any case, the Contractor recognizes that in some cases DLTD could reasonably be impeded to make payments to third parties it has not authorized in advance and in that event the parties recognize that there is a force majeure and shall jointly evaluate the solutions for the case.

13. **Taxes:** The Vendor shall list separately in its invoices all the charges and applicable taxes including the VAT. Where a document generates Stamp Tax, this shall be borne by the Vendor. DLTD may pay directly the total stamp tax and deduct its value from the payments due for any concept to the Vendor.

14. **Works at DLTD's premises:** Whenever the Vendor needs to enter or carry out works inside Drummond's Port, Pribbenow Mine or any other DLTD facilities, it shall comply with the safety, industrial safety, occupational health and environmental policies indicated by DLTD, including the provisions about uniforms, identification, use of safety implements, specifications about driving and vehicles, routes, authorized discharge points, security courses and inductions etc. In particular, it binds itself to comply with the provisions of the current "Control and Follow up of Contractors Procedures" manual, included in the chapter about fines for infractions to industrial safety and environmental measures.

15. **Rejections:** DLTD reserves the right to reject any good, merchandise or work when in its opinion it has quality defects, (1) within the next thirty (30) calendar days following their

receipt, or (ii) without time limit if the good or material has been stored in its original package and at the time of its installation a defect is detected, provided it is not ascribable to DLTD, likewise orders delivered incomplete and orders which delivery deadline has expired shall be rejected.

16. **Cancellation of orders or purchase orders:** DLTD may cancel any order or purchase order, partially or totally, within the next two (2) days after its delivery to the Vendor without arising payment compensation by DLTD; the master orders may be cancelled at any time. In both cases DLTD shall pay the Vendor the goods and services effectively delivered before the cancellation of the order.

17. **Cancellation due to non compliance:** In the event the Vendor does not comply any of its obligations, DLTD may cancel or terminate at any time every order or purchase order, partially or totally, in full right and without the need of legal statement, by written notice, sent to the Vendor. Once it has received notice of cancellation and unless instructed otherwise, the Vendor shall:

(a) Stop the delivery or work corresponding to the part of the order or purchase order or master order which was cancelled or terminated.

(b) Return to DLTD or whoever it designates any raw material, material, equipment, part or component which DLTD had delivered to it for the supply of the goods or services and the Vendor may not claim right to retain to which it hereby expressly waives.

(c) In the event DLTD has provided an advanced payment, it has to be returned immediately to DLTD, otherwise deliver to DLTD any work, raw material, material, equipment, parts or components acquired by the Vendor with that advanced payment; it is understood that a pledge is posted in favor of DLTD to guarantee the payment of the advanced payment that has not been amortized.

(d) Return to DLTD the following day after having received the notice, all payments or amounts which it had received as payments for the purchase of goods or services not yet delivered or supplied.

18. **Fine for Delays:** In the event the Contractor does not carry out a full delivery of goods or services in the date foreseen, DLTD may charge a fine for every day of delay, equivalent to 0.5% of the value of the good, product or service which delivery is delayed, up to a maximum of 15% of the value of the good, product or service, which will not extinguish the Vendor's liability to comply with its obligations and without prejudice of the faculties DLTD has to cancel or terminate the order, purchase order or master order or to demand the compensation for damages.

DLTD may collect the fines through total or partial offset of any amount owed by the Vendor, without the need of judicial intervention, or else judicially in the event such balances were insufficient.

When DLTD terminates the master order and/or the purchase order it may withhold the amounts owed to the Vendor to ensure the payment of the damages which have been caused and collect from those amounts the sums due for fines or other concept owed by the Vendor.

19. **Compliance with the law:** The Vendor shall comply with all the laws, standards, regulations and other provisions applicable to the execution of its liabilities and shall obtain and maintain in force all permits and authorizations demanded by the law to execute its activities. Therefore, it shall defend or compensate DLTD for any claim, action or pleading arising from the non compliance with the applicable standards by the Vendor. DLTD may at any time and every time it

deems it convenient, request the documents which accredit the legal trading of the articles supplied, such as import licenses, customs manifest, commercial invoices, etc.

Likewise the Vendor binds itself to defend, keep harmless and indemnify DLTD for any claim, action or pleading for violation of brand rights, patents and other intellectual property, by virtue of the use by DLTD of the goods, products or services supplied by the Vendor.

20. **Assignment:** The Vendor shall not assign or be substituted by a third party in its liabilities under the purchase order or master order, without the previous written approval of DLTD. DLTD may assign totally or partly the liabilities or rights under a purchase order or master order.

21. **Subcontracting:** The Vendor shall be accountable before DLTD for the materials and parts supplied or for the work executed by any of its suppliers, as well as for all their acts or omissions and those of the persons directly or indirectly hired by them, in the same way it is accountable before DLTD for the acts or omissions of its employees.

22. **Independence of the Parties:** The Vendor shall act as an independent entity and not as a DLTD representative or agent. Consequently, it will have no difficulty to do any statement, representation or commitment of any kind in the name or on behalf of DLTD, except with previous written authorization of DLTD. The Vendor shall be the sole and exclusive responsible for the compliance with its liabilities, including the labor liabilities with its employees, suppliers, contractors and remaining third parties.

23. **Conflicts of Interest:** The Vendor shall previously state in writing before DLTD any family or affinity relationship existing or arising at the time it quotes or while there is any purchase order or master order pending for execution, between its directors or associates and any employee of DLTD, including parents, children, grand parents, grand children, brothers, sisters, nephews, nieces, uncles, aunts, first cousins, spouses, step children or brothers and sisters in law relationships.

24. **Confidentiality:** The Vendor commits itself to keep the due reserve, not to publish or divulge to third parties or use any technical or commercial data received from DLTD or any information it has access to, as well as any information regarding installations, personnel, operations, methods, systems and procedure of DLTD for operations, different from those used in the execution of its liabilities with DLTD. Likewise, the Vendor shall use the necessary means for its employees to keep the corresponding confidentiality regarding such information.

25. **Duration:** These Terms and Conditions shall be in force for a non defined term and shall only be revoked with the mutual agreement of both parties.

Sincerely yours,

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Legal Representative  
Name:  
Id Card:  
Date: