



Anglo American Procurement Solutions Site

Access Terms and Conditions

Anglo American Services (UK) Ltd

Anglo American Procurement Solutions Site

Access Terms and Conditions

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Access Terms and Conditions

1. Definitions and interpretation

1.1 Definitions

The following definitions apply in these Access Terms and Conditions unless the context requires otherwise.

Access Terms and Conditions means these site access terms and conditions.

Anglo American means Anglo American Services (UK) Ltd.

Anglo American Affiliate means a member of the Anglo American Group.

Anglo American Group means:

- (a) Anglo American plc;
- (b) all direct or indirect Subsidiaries of Anglo American plc; and
- (c) all bodies corporate, trusts or incorporated joint ventures, or participants in any unincorporated joint ventures or other business associations, in which any person or persons referred to in paragraphs (a), (b) or (c) above has (or together have) directly or indirectly a shareholding or participation interest of at least 40%.

Anglo American's eSourcing Site means the Anglo American Procurement Solutions Site located at <https://procurementsolutions.angloamerican.co.uk>.

Application Manager means an individual nominated as such by the Participating Entity to Anglo American and issued with a username and Password by Anglo American.

Business Day means:

- (a) for receiving a notice under clause 13, a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the recipient is located; and
- (b) for all other purposes, a day that is not a Saturday, Sunday, bank holiday or public holiday in the Relevant Jurisdiction.

Buyer means the body corporate, entity, firm, partnership, joint venture or other organisation on whose behalf a User accesses Anglo American's eSourcing Site for the purposes of participating in a forward eAuction.

Emptoris means Emptoris Inc, a Delaware Corporation with its principal place of business at 200 Wheeler Road, Burlington, MA, USA.

eAuction means a reverse or forward eAuction conducted through Anglo American's eSourcing Site.

eAuction Terms and Conditions means:

- (a) in relation to a reverse eAuction, the eAuction Terms and Conditions applicable to a reverse eAuction; and
- (b) in relation to a forward eAuction, the eAuction Terms and Conditions applicable to a forward eAuction,

each of which is located at

<http://www.angloamerican.com/suppliers/tools-for-suppliers/terms-and-conditions>.

eSourcing Event means an RFI, RFP, RFQ or eAuction conducted through Anglo American's eSourcing Site.

Event Terms and Conditions means the Event Terms and Conditions applicable to an RFI, RFP or RFQ that are located at

<http://www.angloamerican.com/suppliers/tools-for-suppliers/terms-and-conditions/>

Harmful Code means viruses, Trojan horses, worms, time bombs, cancel bots, spywares or other computer programming routines that may damage, modify, delete, detrimentally interfere with, surreptitiously intercept, access without authority or expropriate any system, data or personal information.

Intellectual Property Rights means all intellectual property rights, including:

- (a) patents, copyright, rights in circuit layouts, registered designs, trade marks and the right to keep information confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a).

Losses includes damages, costs, charges, expenses, penalties, interest, fines and any other losses (including legal costs) arising as a result of claims, demands, actions, proceedings or suits by any person.

Non-Disclosure Agreement means a non-disclosure agreement executed by the Participating Entity, in favour of Anglo American.

Participating Entity means the Buyer or the Supplier (as the case may be).

Parties means Anglo American and the Participating Entity.

Password means a password issued to a User for the purpose of accessing Anglo American's eSourcing Site.

Relevant Jurisdiction means England and Wales.

RFI means a request for information.

RFP means a request for proposal.

RFQ means a request for quote.

Subsidiary has the meaning given in section 1159 of the *Companies Act 2006* (UK).

Supplier means the body corporate, entity, firm, partnership, joint venture or other organisation on whose behalf a User accesses Anglo American's eSourcing Site for the purposes of participating in an eSourcing Event other than a forward eAuction.

System means the computer, telecommunications and other equipment associated with Anglo American's eSourcing Site.

Technical Co-ordination Contact means the email address notified by Anglo American to the Participating Entity from time to time.

Technical Difficulties includes interruptions to the availability of or access to Anglo American's eSourcing Site or System for any reason, and any faults or interruptions in the internet or any equipment used to access Anglo American's eSourcing Site or System, regardless of the origin or nature or extent thereof.

User means the Application Manager and any other individual:

- (a) nominated by the Participating Entity to Anglo American; and
- (b) issued with a username and Password by the Application Manager through Anglo American's eSourcing Site.

1.2 Interpretation

In these Access Terms and Conditions, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of these Access Terms and Conditions;
- (b) the singular includes the plural and vice versa;
- (c) words importing a gender include other genders;
- (d) the words 'include' and 'including' are to be construed without limitation;
- (e) other grammatical forms of defined words or expressions have the corresponding meaning;
- (f) rights and obligations of natural persons apply equally to partnerships, bodies corporate, unincorporated associations and authorities;
- (g) a reference to:
 - (i) a clause, party, annexure, exhibit or schedule is a reference to a clause, party, annexure, exhibit or schedule to these Access Terms and Conditions and a reference to these Access Terms and Conditions includes any annexure, exhibit or schedule;
 - (ii) a document or agreement (including these Access Terms and Conditions) includes a reference to that document or agreement as novated, altered or replaced from time to time;
 - (iii) a party includes its executors, administrators, successors and permitted assigns;
 - (iv) a day means a period of 24 consecutive hours from midnight;
 - (v) a week means seven consecutive days commencing and ending at midnight on Sunday; and
 - (vi) a month means a calendar month;
- (h) a waiver of any provision or right under these Access Terms and Conditions:
 - (i) must be in writing signed by the party entitled to the benefit of that provision or right; and
 - (ii) is effective only to the extent set out in the written waiver; and
- (i) a rule of construction does not apply to the disadvantage of a party bound by these Access Terms and Conditions because the party was responsible for the preparation of these Access Terms and Conditions or any part of them.

2. Participating Entity and Users

2.1 Parties

The Access Terms and Conditions constitute a legally binding agreement between the Participating Entity and Anglo American.

2.2 eSourcing Events

Without limiting any provision of these Access Terms and Conditions, the Participating Entity agrees that by participating in an eSourcing Event it agrees to be bound by the eAuction Terms and Conditions or the Event Terms and Conditions (as the case may be).

2.3 Users

The Participating Entity:

- (a) acknowledges that access to Anglo American's eSourcing Site is granted by Anglo American in reliance on the Participating Entity's representation that its Users are authorised to access Anglo American's eSourcing Site on behalf of the Participating Entity; and
- (b) warrants that:
 - (i) Users are authorised to access Anglo American's eSourcing Site on behalf of the Participating Entity;
 - (ii) the Participating Entity is bound by and responsible for each User's acts and omissions;
 - (iii) in using Anglo American's eSourcing Site, the Users will at all times be acting within the scope of their authority;
 - (iv) it will only grant access to Anglo American's eSourcing Site to its Users; and
 - (v) its Users are fully qualified, skilled and experienced for the purposes of participating in the eSourcing Events in which they participate.

2.4 Compliance with Access Terms and Conditions

The Participating Entity shall ensure its Users comply with these Access Terms and Conditions.

2.5 Change of Users

The Participating Entity must promptly notify Anglo American of any changes to the authority of any User.

3. Grant of Licence

3.1 Licence to access Anglo American's eSourcing Site

Anglo American grants to the Participating Entity and its Users a non-exclusive non-transferrable licence to access and utilise Anglo American's eSourcing Site on the terms set out in these Access Terms and Conditions.

3.2 Suspension of access and termination of license for breach

Anglo American may immediately:

- (a) deny or suspend access to Anglo American's eSourcing Site by the Participating Entity or any of the Participating Entity's Users; or
 - (b) terminate the licence granted to the Participating Entity or any or all of the Participating Entity's Users to access and utilise Anglo American's eSourcing Site
- if the Participating Entity or one of its Users breaches these Access Terms and Conditions.

3.3 Termination of licence for convenience

The licence to access and utilise Anglo American's eSourcing Site may be terminated immediately in the absolute discretion of Anglo American at any time and without reason, explanation or prior notice.

4. Security and access

4.1 Security of Passwords

The Participating Entity:

- (a) acknowledges that Passwords are confidential, and personal to the Users to whom they are issued;
- (b) must take, and procure that its Users take, all reasonable steps to:
 - (i) keep their Passwords confidential and secure;
 - (ii) ensure their Passwords are not used by any other person; and
 - (iii) prevent any person who is not a User from accessing Anglo American's eSourcing Site;
- (c) must send an email to the Technical Co-ordination Contact if the security of a Password issued to one of its Users is, or may have been, compromised; and
- (d) must not disable or attempt to disable any protection software associated with Anglo American's eSourcing Site.

4.2 Validity of Passwords

Each Password will continue in force until it is terminated by Anglo American, changed by the User or has expired automatically after the period specified by Anglo American, if any.

4.3 Replacement of usernames and Passwords

Anglo American may provide replacement usernames and Passwords at any time as it thinks fit.

5. Participating Entity's obligations in accessing Anglo American's eSourcing Site

5.1 Information submitted

The Participating Entity warrants that all information submitted during the course of any eSourcing Event:

- (a) is accurate, sufficient and complete;
- (b) does not infringe the rights of any other party;

- (c) does not contain any Harmful Code; and
- (d) does not link to any other websites.

5.2 Purpose of access

The Participating Entity:

- (a) must only access Anglo American's eSourcing Site for the sole purpose of participating in eSourcing Events for which it is authorised by Anglo American to participate;
- (b) acknowledges that access will be in accordance with these Access Terms and Conditions, the eAuction Terms and Conditions or Event Terms and Conditions (as applicable) and any other guidelines, standards or procedures provided by Anglo American to the Participating Entity for the purposes of any eSourcing Event; and
- (c) must, without limiting the provisions of any Non-Disclosure Agreement, only use any confidential information it becomes aware of as a result of participation in an eSourcing Event for the purpose of participating in that eSourcing Event.

5.3 Access to Anglo American's eSourcing Site

The Participating Entity shall not, and shall procure that its Users do not:

- (a) install, introduce or knowingly use illegal or unauthorised software or hardware in connection with access to Anglo American's eSourcing Site;
- (b) manipulate any information supplied in Anglo American's eSourcing Site in a manner that would lead to inaccurate or misleading information being displayed;
- (c) use any software, routine or device to interfere or attempt to interfere electronically or manually with the operation or functionality of the System;
- (d) use Anglo American's eSourcing Site or System in a manner that infringes or may infringe the rights of a third party;
- (e) access or attempt to access any part of Anglo American's eSourcing Site or System to which access would be denied to the Participating Entity and its Users by the normal operation of Anglo American's eSourcing Site or System; and
- (f) upload onto Anglo American's eSourcing Site or System any software, file, information, data or other content:
 - (i) which is harmful, obscene, defamatory or otherwise illegal;
 - (ii) which infringes any Anglo American or third party Intellectual Property Rights;
 - (iii) which adversely affects the performance or availability of Anglo American's eSourcing Site or System or any other resources or systems of the Anglo American Group;
 - (iv) which is false, fraudulent or misleading or materially misrepresents any facts;
 - (v) which would result in a breach of any obligation of confidentiality; or
 - (vi) in the case of personal data, without having obtained the informed consent of the person to whom such data relates.

5.4 Grant of licence

Subject to any obligations of confidentiality under the Non-Disclosure Agreement, the Participating Entity grants Anglo American a non-exclusive, world-wide, perpetual, irrevocable transferable and royalty free licence to use and have used any information submitted to Anglo American in the course of any eSourcing Event for any purpose.

6. Notifications

6.1 Breach of Access Terms and Conditions

The Participating Entity must notify Anglo American as soon as it becomes aware of any breach of these Access Terms and Conditions, the eAuction Terms and Conditions or the Event Terms and Conditions (as applicable) or any other guidelines, standards or procedures provided in writing by Anglo American to the Participating Entity for the purposes of Anglo American's eSourcing Site or participation in an eSourcing Event.

6.2 Security issues

The Participating Entity must notify Anglo American immediately of any:

- (a) known or suspected security incidents; or
- (b) violations or suspected violations of the Participating Entity's information technology systems which may impact upon Anglo American's eSourcing Site.

7. Intellectual property rights

The Participating Entity acknowledges and agrees that:

- (a) all Intellectual Property Rights in Anglo American's eSourcing Site and the System are owned by, or are under a licence to, Anglo American or an Anglo American Affiliate;
- (b) it and its Users will have no Intellectual Property Rights in Anglo American's eSourcing Site or the System or any rights to reproduce, adapt or modify them, save for the rights of access and use expressly provided under these Access Terms and Conditions;
- (c) it will not copy, use or mask any logo or trade mark of Anglo American which appears on Anglo American's eSourcing Site without the prior written consent of Anglo American which may be withheld in the absolute discretion of Anglo American; and
- (d) all material, documents, notices or other information issued through Anglo American's eSourcing Site is the property of Anglo American or Emptoris, as the case may be, and must only be used for the purpose of the associated eSourcing Event.

8. Personal data collection

8.1 Protection of personal data

The Participating Entity acknowledges that Anglo American may:

- (a) collect and maintain personal data in relation to and from Users (for example their name, job title and contact details and information concerning their access to, and use of, Anglo American's eSourcing Site and the System) (**Personal Data**); and

- (b) transfer Personal Data to any country in which Anglo American or any Anglo American Affiliate does business;
- (c) have Personal Data processed in accordance with applicable data protection law, by Anglo American, Anglo American Affiliates or third parties acting on behalf of Anglo American or Anglo American Affiliates.

8.2 Use of personal data in other jurisdictions

The Participating Entity acknowledges that the locations where Personal Data is maintained may not afford the same level of protection to Personal Data that would apply in the Participating Entity's specific jurisdiction.

8.3 Consent from Users

The Participating Entity must procure that each User consents to collection, transfer and processing of their Personal Data.

8.4 Changes to Personal Data

The Participating Entity must ensure that each User notifies the Participating Entity of any changes to the User's Personal Data and the Participating Entity undertakes that the Participating Entity will, where relevant, notify Anglo American of the same without delay.

9. Collection of other data

9.1 Use of collection devices

The Participating Entity acknowledges that, in addition to its rights under clause 8, Anglo American may collect and maintain general data regarding each User's individual, and the Participating Entity's, access to and use of Anglo American's eSourcing Site and the System (**Usage Data**) (including by means of "cookies" and similar devices) and the Participating Entity consents and agrees to procure that its Users consent to the use of such devices.

9.2 Use of Usage Data

Usage Data will be used for:

- (a) administering access controls, providing assistance for use of Anglo American's eSourcing Site and the System and maintaining a record of communications effected through Anglo American's eSourcing Site and the System;
- (b) monitoring usage and performance of Anglo American's eSourcing Site and the System; and
- (c) if necessary in Anglo American's opinion, improving the usefulness of Anglo American's eSourcing Site or the System to Anglo American's suppliers and buyers generally and to the Participating Entity in particular, including by offering additional systems and services to the Participating Entity.

9.3 Transfer and processing of Usage Data

The Participating Entity acknowledges that:

- (a) Usage Data may be transferred to any country in which Anglo American or Anglo American Affiliates do business;
- (b) Usage Data may be processed in accordance with applicable data protection law by Anglo American, Anglo American Affiliates or third parties acting on behalf of

Anglo American or Anglo American Affiliates including outsourcing service providers anywhere in the world; and

- (c) the locations where Usage Data is maintained may not afford the same level of protection to data that would apply in the Participating Entity's specific jurisdiction.

10. Limitation of liability

10.1 Exclusion of implied warranties

To the extent permitted by law, Anglo American excludes all implied warranties or conditions in respect of Anglo American's eSourcing Site and any eSourcing Event.

10.2 No warranty

Anglo American does not in any way warrant or guarantee:

- (a) the availability of Anglo American's eSourcing Site or access to it, either before, during or after any eSourcing Event;
- (b) that Anglo American's eSourcing Site will operate continuously or without interruptions;
- (c) that Anglo American's eSourcing Site is or will be free from Harmful Code, faults or Technical Difficulties; or
- (d) the accuracy, currency or completeness of any information provided on Anglo American's eSourcing Site or in connection with any eSourcing Event.

10.3 Third party connections

The Participating Entity acknowledges and agrees that:

- (a) when using the internet or other communication media provided by third parties to connect to Anglo American's eSourcing Site or the System, the Participating Entity will be using media and a physical network not controlled, maintained or provided by Anglo American; and
- (b) the internet and any third party websites accessed from Anglo American's eSourcing Site or the System by hypertext link are beyond Anglo American's control and are not in any way endorsed, warranted or supported by Anglo American; and
- (c) it assumes all risk and liability of its such use of the internet and any third party websites as described in paragraphs (a) and (b).

10.4 Other Participating Entity information

Anglo American shall have no liability to the Participating Entity in respect of any information that is uploaded to Anglo American's eSourcing Site or the System by any other supplier to or buyer from Anglo American.

10.5 Release by Participating Entity

The Participating Entity releases Anglo American, its employees, agents and contractors (including Emptoris) from all claims (whether under the law of tort, contract or otherwise) arising from or in connection with:

- (a) any Technical Difficulty affecting access to Anglo American's eSourcing Site or System including any Technical Difficulty affecting any eSourcing Event, whether occurring before, during or after the eSourcing Event;

- (b) any information provided by Anglo American through Anglo American's eSourcing Site including as part of any eSourcing Event (including due to incompleteness, errors, discrepancies or any other inadequacy);
- (c) Anglo American making any decisions and exercising any discretions conferred on it by these Access Terms and Conditions, the eAuction Terms and Conditions, the Event Terms and Conditions or any other document applicable to any eSourcing Event;
- (d) any costs, expenses or liabilities incurred by the Participating Entity in accessing or using Anglo American's eSourcing Site or participating in any eSourcing Event.

10.6 Exclusion of economic and consequential loss

Anglo American is not liable to the Participating Entity for any loss of production, use or business, loss of actual or anticipated profits, loss of income, revenue or anticipated savings, loss of contracts (present or future), loss of data or loss of goodwill or reputation or for any special, indirect or consequential loss arising out of or in connection with the Participating Entity's use of Anglo American's eSourcing Site or participation in any eSourcing Event.

10.7 Exclusion of EC Directive provisions

The parties agree that regulations 9(1), 9(2) and 11(1) of the *Electronic Commerce (EC Directive) Regulations 2002* shall not apply in relation to Anglo American's eSourcing Site or participation in any eSourcing Event.

11. Changes to Anglo American's eSourcing Site or System

11.1 Changes to functionality

The functionality of each element of Anglo American's eSourcing Site and System may be added to, amended or withdrawn and new elements introduced by Anglo American in its complete discretion from time to time (each a **Change**).

11.2 Notice of Changes

Prior to any Change, Anglo American may, in its absolute discretion, notify the Participating Entity of such Change.

11.3 Discontinued Access

The Participating Entity will not be entitled to continue to access any element of Anglo American's eSourcing Site or System which has been withdrawn by Anglo American as a result of a Change.

11.4 Acceptance of Changes

The Participating Entity's continued accessing and use of Anglo American's eSourcing Site and the System after notification of a Change shall constitute the Participating Entity's agreement to the Change.

12. Amendment to Access Terms and Conditions

12.1 Variation in Anglo American's discretion

Anglo American, in its absolute discretion, may vary, amend or change these Access Terms and Conditions, (**Amendment to Access Terms and Conditions**) at any time.

12.2 Effect of change

Anglo American will notify Participating Entities of any Amendment to Access Terms and Conditions by:

- (a) posting the amended Access Terms and Conditions on Anglo American's eSourcing Site; or
- (b) by any other method Anglo American determines,

and the Participating Entity's continued accessing and use of Anglo American's eSourcing Site by the Participating Entity after notification of an Amendment to Access Terms and Conditions shall constitute the Participating Entity's agreement to the Amendment to Access Terms and Conditions.

13. Notices

13.1 Service of notices

A notice, demand, consent, approval or communication under these Access Terms and Conditions (**Notice**) must be sent by email to the email address:

- (a) in the case of Anglo American, the email address of the company secretary of Anglo American as notified by Anglo American from time to time; and
- (b) in the case of a Participating Entity to the email address registered for the Application Manager through Anglo American's eSourcing Site.

13.2 Effective on receipt

Provided the sender uses the recipient's correct address for the service of Notices as determined under clause 13.1, a Notice given under clause 13.1 is deemed to have been received:

- (a) if sent on a Business Day, on dispatch of the email by the sender; or
- (b) if sent on a day other than a Business Day, on the next Business Day,

unless the sender's server indicates a malfunction or error in transmission or the recipient immediately notifies the sender of an incomplete transmission.

14. Confidentiality

Without limiting the obligations of a Participating Entity under a Non-Disclosure Agreement:

- (a) all aspects of an eSourcing Event (including a Participating Entity's participation in the eSourcing Event, and the terms of these Access Terms and Conditions); and
- (b) any information made available to Participating Entities in relation to an eSourcing Event, Anglo American's eSourcing Site or otherwise,

are strictly confidential and, except for the purpose of participating in the eSourcing Event in accordance with the eAuction Terms and Conditions or the Event Terms and Conditions (as the case may be) must not be, without the prior written consent of Anglo American:

- (c) copied or used; or
- (d) supplied to any third party.

15. Dispute Resolution

15.1 Precondition

Unless otherwise expressly stipulated in these Access Terms and Conditions, a Party must not commence court proceedings (except proceedings seeking urgent interim relief) in respect of any dispute under, or in connection with, these Access Terms and Conditions (**Dispute**) unless it has complied with this clause 15.

15.2 No Relief from Obligations

Despite the existence of a Dispute each Party must continue to perform its obligations under these Access Terms and Conditions pending the determination of a Dispute under this clause 15.

15.3 Notice of Dispute

- (a) A Party claiming that a Dispute has arisen under these Access Terms and Conditions must give a notice describing the nature of the Dispute (**'Notice of Dispute'**) to the other Party as soon as practicable after the Dispute arose.
- (b) Nominated representatives of each Party must meet and negotiate in good faith (but having regard to their respective Party's commercial interests) to discuss and attempt to resolve the Dispute.
- (c) If the Nominated Representatives are unable to resolve the Dispute within 20 Business Days after receipt of the Notice of Dispute, senior members of management of the Parties must meet and negotiate in good faith (but having regard to the respective party's commercial interests) to discuss and attempt to resolve the Dispute.

15.4 Arbitration

If the Parties are unable to resolve the Dispute within 30 Business Days following the receipt of a Notice of Dispute under clause 15.3(a), the Dispute must be submitted to the International Court of Arbitration of the International Chamber of Commerce, and shall be finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce, which rules are deemed to be incorporated by reference in this clause 15.4 subject to:

- (a) any amendments agreed by the Parties; and
- (b) the following rules which shall take precedence over the Rules of Arbitration of the International Chamber of Commerce:
 - (i) there must be one arbitrator (who shall be appointed by the President of the International Chamber of Commerce or their nominee, and who shall be independent of the Parties);
 - (ii) the language of the arbitration must be English; and
 - (iii) the place of arbitration must be London, England.

The decision of the arbitrator shall be final and binding on the Parties.

16. General

16.1 Nature of the Access Terms and Conditions

Unless otherwise expressly stated, nothing contained in these Access Terms and Conditions constitutes or creates:

- (a) a contract, including a collateral contract, or any contractual term between Anglo American and any other party (including a Participating Entity), for the supply or purchase of goods, services or works to or from Anglo American; or
- (b) any representation by or on behalf of Anglo American.

16.2 Governing law and Jurisdiction

These Access Terms and Conditions are governed by and must be construed and enforced in accordance with the laws of the Relevant Jurisdiction and the parties unconditionally submit to the non-exclusive jurisdiction of the courts of the Relevant Jurisdiction (and courts of appeal from them).