



Anglo American Procurement Solutions Site

Event Terms and Conditions

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Event Terms and Conditions

1. Defined terms

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

Access Terms and Conditions means the Access Terms and Conditions linked to, and governing access to, Anglo American's eSourcing Site that are located at <http://www.angloamerican.com/suppliers/tools-for-suppliers/terms-and-conditions>

Alternative Response means a Response relating to the performance of the Work on a substantially different basis to that required by the Event Materials.

Anglo American means the entity conducting the Request Event that is named in the Event Particulars.

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

Anglo American's Operating Site means the site where Anglo American conducts mining or other operations, at or in connection with which, the Work is to be performed.

Closing Time means the date and time specified in the Event Materials.

Conforming Response means a Response that complies with all the requirements of the Event Materials and, at a minimum, includes:

- (a) the completion of all Event Questionnaires by the Supplier;
- (b) the uploading by the Supplier of all information, materials and documents required by the Event Materials; and
- (c) no material departures from the Event Materials.

Event Materials means:

- (a) the Invitation Email;
- (b) these Event Terms and Conditions;
- (c) the Event Particulars;
- (d) the Event Questionnaires;
- (e) the item and bid fields in the Request Event (if any);
- (f) any addenda issued by Anglo American; and
- (g) any other details, documents or information provided, accessible or visible on Anglo American's eSourcing Site in connection with the Request Event.

Event Particulars means the details made available to Suppliers under the heading 'Basic Information' on Anglo American's eSourcing Site, in connection with the Request Event.

Event Questionnaires means the questionnaires at Anglo American's eSourcing Site relating to the Request Event.

FCP Legislation means:

- (a) any laws or international conventions relating to anti-corruption including:
 - (i) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997;
 - (ii) the United Nations Convention against Corruption 2003;
 - (iii) the Foreign Corrupt Practices Act of 1977 of the United States of America (as amended by the Foreign Corrupt Practices Act Amendments of 1988 and 1998);
 - (iv) the UK Public Bodies Corrupt Practices Act 1889;
 - (v) the UK Prevention of Corruption Act 1906;
 - (vi) the UK Prevention of Corruption Act 1916 and the English common law of bribery;
 - (vii) the UK Anti-Terrorism, Crime and Security Act 2001; and
- (b) those laws and international conventions of the Relevant Jurisdiction that have a similar intention to the laws specified in paragraph (a).

Invitation Email means the email from Anglo American sent to the Supplier to invite the Supplier to access Anglo American's eSourcing Site for the purpose of the Request Event.

Nominated Representative is the person so named in the Event Materials.

Non-Conforming Response means any Response that is not a Conforming Response and includes an Alternative Response.

Non-Disclosure Agreement means any non-disclosure agreement signed by a Supplier as a pre-condition to participation in the Request Event.

Relevant Jurisdiction means the jurisdiction in which Anglo American is incorporated.

Request Event means the request for information, proposals or quotes made by Anglo American in the Invitation Email, in relation to the supply of the work, goods or services described generally in the Invitation Email.

Response means any offer or information relating to the performance of the Work submitted by a Supplier in accordance with these Event Terms and Conditions.

Site Messaging Facility means the facility made available through Anglo American's eSourcing Site through which Anglo American and Suppliers may send electronic messages.

Supplier means a person or entity that has accepted the invitation to participate in the Request Event by clicking the 'Accept' function for the Request Event at Anglo American's eSourcing Site.

Work means the supply of the work, goods and services contemplated by the Event Materials including:

- (a) all obligations, duties and responsibilities of the Supplier:
 - (i) contemplated by the Event Materials;

- (ii) that would be required by a formal contract signed by the Supplier and Anglo American as a result of the Request Event; or
 - (iii) that an experienced and competent supplier would expect to perform in connection with the supply of work, goods and services in the nature of the work, goods and services described in the Event Materials; and
- (b) any work that can be reasonably inferred as necessary or appropriate to complete the supply of the work, goods and services described in the Event Materials, in accordance with the requirements specified in the Event Materials.

2. Interpretation

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

- (a) headings are for ease of reference only and do not affect the meaning of the Event 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 Event Terms and Conditions and a reference to these Event Terms and Conditions includes any annexure, exhibit or schedule;
 - (ii) a document or agreement (including these Event 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 the Event 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 Event Terms and Conditions because the party was responsible for the preparation of these Event Terms and Conditions or any part of them.

3. Status of response

3.1 Conditions binding on Suppliers

These Event Terms and Conditions govern the rights and obligations of the parties in relation to a Response and are binding on all Suppliers participating, reviewing or interacting with the Request Event, whether through Anglo American's eSourcing Site or otherwise.

3.2 No binding contract

Nothing in the Event Materials, or the submission of a Response, or any conduct or statement otherwise related to the Request Event, constitutes or creates a contract (whether express or implied) between Anglo American and a Supplier relating to the Work.

4. Supplier to inform itself

4.1 No warranty

Anglo American has endeavoured to ensure that any information given to the Supplier in connection with the Request Event (including the Event Materials) is accurate but gives no warranty, representation or guarantee as to the accuracy, sufficiency, completeness or otherwise in relation to that information and disclaims all responsibility for that information.

4.2 Information not included in contract

The information provided by Anglo American (or any other person on Anglo American's behalf) to the Supplier in connection with the Request Event is provided for the convenience of the Supplier and does not form part of any contract resulting from the Request Event unless otherwise specifically agreed.

4.3 Supplier's obligations

Each Supplier must, and is deemed to have:

- (a) examined the Event Materials, Anglo American's Operating Site and any other information made available in writing by Anglo American, or any other person on Anglo American's behalf to the Supplier for the purpose of the Request Event;
- (b) without limiting paragraph (a) above, familiarised itself with:
 - (i) the '*Sustainable Development in the Anglo American Supply Chain*' policy provided on Anglo American's eSourcing Site in connection with the Request Event;
 - (ii) the '*Anglo American Good Citizenship: Our Business Principles*' published at <http://www.angloamerican.com/suppliers/our-expectations>;
- (c) examined all information relevant to the risks, contingencies and other circumstances having an effect on the performance of the Work or this Request Event and which is obtainable by the making of reasonable enquiries;

- (d) ascertained the availability of materials for the performance of the Work and made due allowance in its Response for obtaining all materials required to perform the Work within the period required by the Event Materials; and
- (e) satisfied itself as to the correctness and sufficiency of its Response and that any pricing included in its Response covers all costs of all matters and things necessary for the performance of the Work.

4.4 Anglo American policies

In submitting a Response, Suppliers confirm their ability to comply with Anglo American policies included in the Event Materials including those policies listed in clause 4.3.

4.5 Safety and health

Suppliers undertake to comply with any requirements or policies relating to personal health and safety applying at Anglo American's Operating Site communicated by Anglo American, before or during any visit to Anglo American's Operating Site for the purposes of the Request Event or during any other access to Anglo American's Operating Site.

4.6 Environmental conditions

Without limiting clause 5.2, the Supplier must and is deemed to have ascertained:

- (a) the expected environmental conditions which may have bearing on the performance of the Work; and
- (b) the effects or costs associated with any legislation or government requirements related to, regulating or governing the environmental impacts or consequences of the Work.

5. Access to Request Event

5.1 Acknowledgement of invitation

The Supplier acknowledges that:

- (a) within the period specified in the Event Particulars from the date of the Invitation Email, the Supplier must notify Anglo American of its intention to submit a Response by clicking the 'Accept' function for the Request Event on Anglo American's eSourcing Site; and
- (b) without limiting any provision of these Event Terms and Conditions, on clicking that 'Accept' function, the Supplier will be acknowledging that:
 - (i) the Supplier has read and understood and is legally bound by these Event Terms and Conditions;
 - (ii) a binding contract relating to the subject matter of this Request Event will not exist between Anglo American and the Supplier unless and until a formal agreement is signed by both parties;
 - (iii) the Event Materials constitute an invitation to submit a Response and that subject to the terms of any applicable Non-Disclosure Agreement, the parties have no legally binding obligations in relation to the Request Event;
 - (iv) the Supplier intends to submit a Response in accordance with the Event Materials;
 - (v) lodgement of a Response before the Closing Time and in accordance with the Event Materials is entirely the responsibility of the Supplier; and

- (vi) each party bears its own costs in relation to the Request Event.

5.2 Application of Access Terms and Conditions

The Supplier acknowledges and agrees that the Access Terms and Conditions apply to access to Anglo American's eSourcing Site and participation in the Request Event by the Supplier, and for the purposes of the Access Terms and Conditions, the Request Event is an 'eSourcing Event'.

6. Contents and submission of Response

6.1 Form of response

A Response must be submitted:

- (a) in the language specified in the Event Particulars;
- (b) with prices specified in the currencies nominated in the Event Materials;
- (c) only through Anglo American's eSourcing Site unless Anglo American directs otherwise because Anglo American's eSourcing Site is unavailable;
- (d) by:
 - (i) completing the Event Questionnaires and item and bid fields (if any) provided on Anglo American's eSourcing Site;
 - (ii) uploading all information, materials and documents required by the Event Materials; and
 - (iii) clicking the 'Submit' function for the Request Event at Anglo American's eSourcing Site; and
- (e) in accordance with the preceding paragraphs of this clause 6.1, by the Closing Time.

6.2 Size of attachments

The Supplier acknowledges that:

- (a) there is a size limit of 5MB per attachment applying to any single document uploaded to Anglo American's eSourcing Site as part of a Response; and
- (b) there is no volume limit on the number of documents that can be uploaded to Anglo American's eSourcing Site as part of a Response.

6.3 Late responses

A Response submitted after the Closing Time may be rejected or excluded from consideration by Anglo American in its absolute discretion.

6.4 Closure, suspension or rescheduling of Request Event

Notwithstanding any other clause of these Event Terms and Conditions:

- (a) Anglo American may at any time close, suspend, extend or reschedule the Request Event; and
- (b) any pause, suspension or early closure of the Request Event, will not relieve the Supplier of any obligations in respect of completed Responses submitted prior to the pause, suspension or early closure and any such Responses will remain open for acceptance under clause 9.

6.5 Record keeping

Before final submission of a Response (including a Non-Conforming Response), the Supplier must print hard copies of all answers, information, documents and other materials comprised in the Response.

7. Request for clarification and information

7.1 Communication with Anglo American

The Supplier acknowledges that:

- (a) subject to paragraphs (b) and (c), all communications with Anglo American relating to the Request Event must be in writing and submitted through the Site Messaging Facility;
- (b) if Anglo American's eSourcing Site is unavailable, all communications with Anglo American must be made via email to the Nominated Representative;
- (c) communications in respect of any Technical Difficulties (as defined in the Access Terms and Conditions) in accessing Anglo American's eSourcing Site should be made to the Technical Co-ordination Contact (as defined in the Access Terms and Conditions); and
- (d) the Supplier must not communicate with any person representing Anglo American, in relation to the Request Event, other than in accordance with this clause 7.1, unless directed in writing to do so by the Nominated Representative.

7.2 Addenda

Anglo American may respond to inquiries received from a Supplier in the form of an addendum that will be provided to all Suppliers on Anglo American's eSourcing Site and notified through the Site Messaging Facility or by email.

7.3 Application of Event Terms and Conditions

The Event Terms and Conditions apply to addenda unless stated otherwise in an addendum.

7.4 Supplier's assumptions

When submitting a Response, if the Supplier has any doubt as to the meaning of any part of the Event Materials after submitting an inquiry under clause 7.1, a statement of the interpretation on which the Response is based must be included in the Response.

7.5 Information provided by Anglo American

To the extent permitted by law, Anglo American will not be bound by any advice or information furnished by any person in respect of the Request Event other than written advice or information provided by the Nominated Representative.

8. Revision of Event Materials

8.1 Revision of Event Materials

Without limiting clause 6.4, Anglo American may amend the Event Materials or extend the Closing Time at any time before the Closing Time by a revision issued (in the form of an addendum to all Suppliers) by the Nominated Representative.

8.2 Acceptance of revision

The Supplier's continued accessing and use of Anglo American's eSourcing Site after issue of an addendum shall constitute the Supplier's agreement to the amendments made in the addendum.

9. Validity of Response

9.1 Anglo American's right to end Request Event

Without limiting clause 6.4, Anglo American reserves the right to cancel or suspend the Request Event at any time prior to the Closing Time and no charges, costs or expenses are payable to any Supplier by Anglo American if a Request Event is cancelled or suspended.

9.2 Validity period for a Request for Information

Where the Invitation Email specifies that the Request Event is a 'Request for Information', the terms in the Response are fixed and valid for the period specified in the Event Particulars from the Closing Time and then until notice is given by the Supplier that the terms have been withdrawn.

9.3 Validity period for a Request for Proposal or Quote

Where the Invitation Email specifies that the Request Event is a 'Request for Proposal' or a 'Request for Quote', the Response constitutes an irrevocable offer that is open for acceptance by Anglo American for the period specified in the Event Particulars from the Closing Time and then until notice is given by the Supplier that the offer has been withdrawn.

9.4 Anglo American may request clarification

Within a validity period referred to in clause 9.2 or clause 9.3, Anglo American may request elaboration on, or clarification of, any Response or information supplied to Anglo American provided that such requests will not extend the validity period for the Response unless extensions are specifically requested in writing by Anglo American.

9.5 Amendment of Response by Supplier

Information submitted to Anglo American's eSourcing Site before the Closing Time may be withdrawn, amended or supplemented at any time, before the Closing Time directly through Anglo American's eSourcing Site.

10. Alternative and Non-Conforming Responses

10.1 Submission of Alternative Responses

A Supplier may submit an Alternative Response only if the Supplier also submits a Conforming Response.

10.2 Explanation of Alternative Response

An Alternative Response must be clearly marked as 'Alternative Response' and include an explanation of all non-compliances with the Event Materials and the effect of the non-compliances on the price offered by the Supplier in its Conforming Response.

10.3 Anglo American's right

Anglo American may in its sole and absolute discretion determine if a Response is a Conforming Response or not.

10.4 Evaluation of Non-Conforming Responses

Anglo American may, in its sole and absolute discretion, decline to evaluate:

- (a) any Response that it has determined to be a Non-Conforming Response; and
- (b) any Non-Conforming Response that contains insufficient detail to enable Anglo American to properly evaluate the Response.

11. Anglo American's rights in relation to Responses

11.1 Anglo American not bound

Anglo American is not bound to:

- (a) accept the lowest priced or any Response;
- (b) give explanations or reasons for accepting or rejecting any Response; or
- (c) grant an interview to or negotiate with any Supplier.

11.2 Anglo American's rights

Anglo American reserves the right to:

- (a) shortlist and/or negotiate with any or all Suppliers;
- (b) award a contract to perform the Work to any Supplier;
- (c) award more than one contract to perform parts of the Work to more than one Supplier;
- (d) reject all Responses with or without notice or reasons;
- (e) accept only part of any Response;
- (f) award a contract to perform the Work only in a particular region or at a particular site owned, operated, controlled or managed by Anglo American; and
- (g) if no Response is accepted, abandon the Request Event or proceed in such manner as Anglo American may elect.

11.3 Notification of acceptance

A Response is not and will not be deemed to be accepted unless and until Anglo American notifies the Supplier in writing that the Response has been accepted.

11.4 Formal agreement

A binding contract will not exist between Anglo American and the successful Supplier unless and until a formal agreement is signed by both parties, notwithstanding the issue of a letter of acceptance.

12. Costs of Response

The Supplier must bear all costs directly or indirectly associated with the preparation of any Response or any discussions, negotiations or inquiries in relation to a Response or any work undertaken by a Supplier after its Response is submitted.

13. Documents submitted

A Response, including all supporting documents and information is the property of Anglo American. Suppliers retain ownership of intellectual property in their Responses but

Anglo American is granted the rights to use and copy the Responses as necessary for the purposes of the Response process, including the proper evaluation of Responses.

14. Ethics and policies

14.1 Communication with other Suppliers

Suppliers must not communicate (verbally or otherwise) or have any arrangement or arrive at any understanding with any other Supplier or with any employee of any association of which any of the Suppliers is a member, about the Work.

14.2 Restrictions on Suppliers

Without limiting clause 14.1, Suppliers must not:

- (a) engage in any discussions or correspondence with any person named in clause 14.1 concerning the rates and sums they propose to include in their Response;
- (b) engage in any collusive activity with any other Supplier;
- (c) engage in any conduct, or have any arrangement or arrive at any understanding with, any other Supplier, which in any way could have the effect of reducing the competitiveness of the Request Event;
- (d) offer or receive gifts, entertainment, payments, loans or other favours for the purpose of being placed on a short list of suppliers or to obtain a contract or favourable treatment under a contract; or
- (e) undertake any act or make any forbearance which would constitute a violation of FCP Legislation.

15. Disclosure of information

15.1 Confidentiality of Event Materials

Without limiting the obligations of the Supplier under any applicable Non-Disclosure Agreement:

- (a) all aspects of the Request Event (including a Supplier's participation in the Request Event, these Event Terms and Conditions and the contents of any Response); and
- (b) the Event Materials and any other information made available to the Supplier in relation to the Request Event, Anglo American's eSourcing Site or otherwise,

are strictly confidential and, except for the purpose of participating in the Request Event must not be:

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

without the prior written consent of Anglo American.

15.2 Destruction of Event Materials

On receiving notice that its Response has not been accepted or, if a Supplier is not submitting a Response, the Supplier must destroy all Event Materials held in relation to the Request Event (including documents printed from Anglo American's eSourcing Site).

16. Exclusion of claims against Anglo American

16.1 Operation

The limitations and exclusions in this clause operate in addition to those in the Access Terms and Conditions.

16.2 Limit on Anglo American's obligations

The Supplier acknowledges and agrees that Anglo American's only obligations to the Supplier are those expressly set out in the Event Materials and any applicable Non-Disclosure Agreement and all conditions, warranties or other obligations which would otherwise apply (by implication of law or otherwise) are excluded to the maximum extent permitted by law.

16.3 Release of Anglo American

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

- (a) the Event Materials or any information provided by or on behalf of Anglo American (including due to incompleteness, errors, discrepancies or any other inadequacy);
- (b) Anglo American making any decisions and exercising any discretions conferred on it by the Response Conditions;
- (c) any of the matters and things relevant to the Work in respect of which the Supplier must satisfy itself under the Response Conditions;
- (d) any costs, expenses or liabilities incurred by the Supplier in obtaining the Event Materials (or any other related documents) from Anglo American by email or through Anglo American's eSourcing Site; and
- (e) any costs, expenses or other liabilities incurred by the Supplier in preparing any Response (including a Non-Conforming Response or an Alternative Response), or otherwise in connection with the Request Event (whether or not a Response is lodged or accepted by Anglo American) including any costs incurred by the Supplier in:
 - (i) providing any further information or carrying out any further work at the request of Anglo American;
 - (ii) attending any Site visit or question and answer session relating to the Request Event; and
 - (iii) preparing and presenting a presentation requested by Anglo American in relation to the Request Event.

17. Governing Law

These Event 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).

18. Inconsistency

Anglo American:

- (a) may resolve, in its absolute discretion, any conflict between the Event Terms and Conditions, the Access Terms and Conditions or any information made available to Suppliers in relation to the Request Event, Anglo American's eSourcing Site or otherwise; and
- (b) must notify Suppliers on the resolution of the conflict.

19. Dispute resolution

19.1 Precondition

A party must not commence court proceedings (except proceedings seeking urgent interim relief) in respect of any dispute relating to a Response, the Event Materials or the Request Event (**Dispute**) unless it has complied with this clause 19.

19.2 Notice of Dispute

A Party claiming that a Dispute has arisen under this agreement must give a notice to the describing the nature of the Dispute (**'Notice of Dispute'**) to the other Party as soon as practicable after the Dispute arose.

19.3 Reference to representatives

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.

19.4 No resolution

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.

19.5 Arbitration

If the Parties are unable to resolve the Dispute within 30 Business Days following the receipt of a Notice of Dispute under clause 19.2, 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 19.5 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 the official language of the Relevant Jurisdiction, provided that if:
 - (A) there is more than one official language in the Relevant Jurisdiction; and
 - (B) one of the official languages is English,then the language of the arbitration will be English; and

(iii) the place of arbitration must be the Relevant Jurisdiction.

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