



Anglo American Procurement Solutions Site

Forward eAuction Terms and
Conditions

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Forward eAuction Terms and Conditions

1. Definitions and interpretation

1.1 Definitions

In these eAuction Terms and Conditions:

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>

Acceptance means acceptance of the eAuction by the Participating Buyer in accordance with clause 3.4.

Anglo American means the entity conducting the eAuction that is named in the eAuction Parameters.

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

Applicable Currency means the currency specified in the eAuction Parameters.

Authorised Bidder means a person appointed by the Participating Buyer to represent it in the eAuction in accordance with clause 2.2.

Bid means a bid made in an eAuction.

Bid Rankings means the ranking of Bids against other Bids in the eAuction as determined by Anglo American in accordance with clause 13.3.

Bid Validity Period means the period specified in the eAuction Parameters after the eAuction Close Time and then until notice is given by the Participating Buyer that a Bid has been withdrawn.

Bidding Rules means the details so named and made available on the eAuction Event Site.

Charges means any charges applicable in respect of the purchase of the eAuction Items such as statutory levies, transportation charges, taxes, duties, tariffs or any other charge applicable at the Close Time.

Close Time means:

- (a) for an eAuction which is not a Staggered eAuction, the Initial Close Time as extended in accordance with clause 10.2, or as changed in accordance with clauses 10.3, 10.4 or 10.6;
- (b) for a Staggered eAuction, the Lot Closing Time of the last Lot in the Staggered eAuction.

eAuction means an electronic auction conducted on Anglo American's eSourcing Site in relation to the eAuction Items, which is specified to be a forward English auction in the eAuction Parameters, being an auction in which Participating Buyers compete to bid the highest price for the eAuction Items.

eAuction Event Site means the part of Anglo American's eSourcing Site through which a particular eAuction is conducted.

eAuction Items means the goods and services specified in the Offer Structure, and more fully described in the Sale Details.

eAuction Parameters means the details for a particular eAuction, including the Bidding Rules, made available to Participating Buyers on the eAuction Event Site.

eAuction Period means the period of time commencing at the Open Time and finishing at the Close Time.

eAuction Terms and Conditions means these Forward eAuction Terms and Conditions

Extending Bid means a Bid that meets the criteria specified in the eAuction Parameters, which will cause:

- (a) the Close Time, or,
- (b) in a Staggered Lots eAuction, a Lot Closing Time,

to be extended in accordance with clause 10.2.

Extension Time means the period specified in the eAuction Parameters.

Grace Period means the period specified in the eAuction Parameters.

Incremental Close Time means the time increment between Lot Closing Times in a Staggered eAuction, as specified in the eAuction Parameters.

Initial Close Time means the close time displayed on the eAuction Event Site at the start of the eAuction.

Initial Lot Closing Time means, for each Lot in a Staggered eAuction,

- (a) for the first scheduled Lot, the Initial Close Time; and
- (b) for subsequent Lots, the Lot Closing Time for the previous scheduled Lot plus the Incremental Close Time.

Invitation Email means the email sent by Anglo American to the Authorised Bidder to access Anglo American's eSourcing Site for the purpose of the eAuction.

Leading Bid means a Bid which is the determined by Anglo American to be the leading Bid in accordance with clause 13.3.

Lot means a group of eAuction Items in a Staggered eAuction.

Lot Closing Time means, for each Lot in a Staggered eAuction, the Initial Lot Closing Time extended in accordance with clause 10.2, or as changed in accordance with clauses 10.3, 10.4 or 10.6

Lot Opening Time means, for each Lot in a Staggered eAuction:

- (a) for the first scheduled Lot, the Open Time; and
- (b) for each subsequent Lot, the Lot Closing Time of the previous scheduled Lot.

Minimum Bid Change means the minimum amount by which successive Bids must increase, as specified in the eAuction Parameters.

Non-Disclosure Agreement means a non-disclosure agreement executed by the Participating Buyer in relation to the eAuction Event.

Offer Structure means the details, information and form of submissions required to be entered and lodged on Anglo American's eSourcing Site by the Participating Buyer for the purposes of the eAuction, and includes details of eAuction Items and quantities for which Participating Buyers may bid.

Open Time means the time and date that the eAuction will commence, specified in the eAuction Parameters, as amended in accordance with these eAuction Terms and Conditions.

Partial Quantity Bidding means a facility in which a Participating Buyer may choose to bid on a variable part of the quantity for an eAuction Item.

Participating Buyer means a buyer who has elected to participate in an eAuction.

Parties means Anglo American and the Participating Buyer.

Proxy Bidding means a facility in which a Participating Buyer may choose to have a bid placed automatically on its behalf to beat a Leading Bid by the Minimum Bid Change, provided the Leading Bid is not higher than the Participating Buyer's specified ceiling price (if any).

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

Reserve Price means the price (if any) set by Anglo American as the lowest price at which an eAuction Item is to be sold.

Sale Details means the document describing the details of the eAuction Items.

Sale Terms means the contractual terms and conditions that apply to the sale of the eAuction Items made available on the eAuction Event Site.

Seller Contact means the contact details set out in the eAuction Parameters.

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

Staggered eAuction means an auction in which the Staggered Lots facility is in operation.

Staggered Lots means an eAuction facility in which the opening and closing times of Lots are staggered at specified intervals.

Surrogate Bids has the meaning given in clause 10.9(c).

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.

Visibility Format means the information displayed to Participating Buyers in the course of the eAuction regarding Bids and Bid Rankings, as specified in the eAuction Parameters.

1.2 Interpretation

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

- (a) headings are for ease of reference only and do not affect the meaning of the eAuction 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 eAuction Terms and Conditions and a reference to these eAuction Terms and Conditions includes any annexure, exhibit or schedule;
 - (ii) a document or agreement (including these eAuction 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 eAuction 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;
- (i) a rule of construction does not apply to the disadvantage of a party bound by these eAuction Terms and Conditions because the party was responsible for the preparation of these eAuction Terms and Conditions or any part of them; and
- (j) capitalised terms used in these eAuction Terms and Conditions but not defined here have the meaning given in the Access Terms and Conditions.

2. Registration of participation and Authorised Bidders

2.1 Parties

These eAuction Terms and Conditions constitute a legally binding agreement between the Participating Buyer and Anglo American.

2.2 Registration of Authorised Bidders

A Participating Buyer must arrange through Anglo American's eSourcing Site for one or more of its Users (**Authorised Bidders**) to be invited to the eAuction by an Invitation Email by the Open Time.

2.3 Failure to register

Subject to clause 6.2(a), a Participating Buyer cannot participate in the eAuction if it fails to register an Authorised Bidder by the Open Time.

2.4 Agency

Authorised Bidders act as authorised agents for and on behalf of the Participating Buyer in submitting Bids and other conduct in the eAuction.

3. Anglo American's eSourcing Site access for Participating Buyers

3.1 Use of Anglo American's eSourcing Site

Subject to clause 10.9, the eAuction will be conducted using Anglo American's eSourcing Site.

3.2 Provision of Access

Authorised Bidders have access free of charge to Anglo American's eSourcing Site for the purpose of participating in the eAuction:

- (a) provided they comply with the terms of these eAuction Terms and Conditions at all times; and
- (b) with the consent of Anglo American which consent may be withdrawn in the absolute discretion of Anglo American at any time and without reason, explanation or prior notice.

3.3 Application of Access Terms and Conditions

The Participating Buyer acknowledges and agrees that the Access Terms and Conditions apply to access to Anglo American's eSourcing Site and participation in the eAuction by the Participating Buyer and its Authorised Bidders, and for the purposes of the Access Terms and Conditions:

- (a) the Participating Buyer is the "Participating Entity";
- (b) each of its Authorised Bidders is a "User"; and
- (c) the eAuction is an "eSourcing Event".

3.4 Acceptance of participation in eAuction

Before being able to participate in the eAuction the Participating Buyer must accept the eAuction by clicking on the 'Accept' function associated with the eAuction before the Open Time for the eAuction.

4. Acknowledgments and Warranties of Participating Buyers

4.1 Acknowledgment of Participating Buyers' responsibilities

By accepting Anglo American's invitation to participate in the eAuction, the Participating Buyer acknowledges that it:

- (a) has read, understood and will comply with these eAuction Terms and Conditions;
- (b) agrees to be bound by these eAuction Terms and Conditions;
- (c) has familiarised itself and will be deemed to have satisfied itself of all matters relating to, and all requirements of, the eAuction including the eAuction Parameters and the Sale Details;
- (d) has examined all information relevant to the risks, contingencies and other circumstances affecting the eAuction and the Sale Details;
- (e) has had an opportunity to clarify any questions or issues in relation to the Sale Terms.

4.2 Costs of participation

Each Participating Buyer shall bear its own costs and expenses related to its participation in the eAuction.

5. Training

The Participating Buyer must ensure that any Authorised Bidder is fully conversant with Anglo American's eSourcing Site, these eAuction Terms and Conditions and the conduct of the eAuction generally.

6. Anglo American rights in relation to eAuction

6.1 Anglo American not bound

Anglo American is not bound to:

- (a) take any action as a result of:
 - (i) issuing any invitation to participate in the eAuction; or
 - (ii) any communication between Anglo American and any other party (including a Participating Buyer) in relation to the eAuction;
- (b) accept the highest or any Bid;
- (c) give explanations or reasons for accepting or rejecting any Bid; or
- (d) communicate with a Participating Buyer other than in the manner contemplated by these eAuction Terms and Conditions.

6.2 Anglo American's rights

Anglo American reserves the right in its absolute discretion to:

- (a) allow parties to enter the eAuction at any stage, including parties who did not receive an invitation to participate in the eAuction or register an Authorised Bidder by the Open Time;
- (b) shortlist and/or negotiate with any or all Participating Buyers after the eAuction;
- (c) award a contract for sale of the eAuction Items to any Participating Buyer or any other person;
- (d) not award any contract for sale of the eAuction Items;
- (e) when making any decision to award a contract, take into account the response to an eAuction and any other commercial considerations Anglo American deems appropriate;
- (f) reject all Bids with or without notice or reasons;
- (g) award a contract for sale of the eAuction items only in a particular region or at a particular location;
- (h) abandon the eAuction or proceed in such manner as Anglo American may elect;
- (i) refuse to consider or to accept (as the case may be) the Leading Bid;
- (j) negotiate with any person in relation to sale of eAuction Items whether or not that person is a Participating Buyer; and
- (k) not enter into any further discussions or negotiations with a Participating Buyer after the end of the eAuction.

7. Limitation of liability

7.1 Operation

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

7.2 Exclusion of representations

The Participating Buyer submits Bids and makes offers in accordance with these eAuction Terms and Conditions on the basis that the Participating Buyer acknowledges that:

- (a) neither Anglo American nor any of its employees, contractors or agents have made, and the Participating Buyer has not relied on, any statement, representation, guarantee, warranty or condition in relation to the eAuction Items or the eAuction;
- (b) Anglo American is not in the business of, nor does it have expertise in, the sale of the eAuction Items;
- (c) the eAuction Items are being sold on an 'as is where is' basis;
- (d) it has relied on its own enquiries with respect to the eAuction Items; and
- (e) the Participating Buyer does not rely on:
 - (i) any representation, letter, document or arrangement whether oral or in writing; or
 - (ii) any other conduct,as adding to or amending these eAuction Terms and Conditions.

7.3 Exclusion of liability

- (a) Neither Anglo American nor any of its employees accepts any responsibility to the Participating Buyer or third parties, under the law of contract, tort or otherwise, for any loss or damage whatsoever which may arise out of or in connection with the eAuction process adopted by or on behalf of Anglo American, or arising from any information provided by Anglo American or any of its employees.
- (b) Anglo American accepts no responsibility for any interpretation which may be placed upon the information provided to the Participating Buyer.

7.4 Costs, expenses, claims and losses

Anglo American is not liable for:

- (a) any costs or expenses incurred by the Participating Buyer in preparing and lodging Bids and making offers in accordance with these eAuction Terms and Conditions; or
- (b) any claims, losses, costs or expenses incurred by a Participating Buyer in evaluating or acting upon these eAuction Terms and Conditions, submitting Bids (including Surrogate Bids) or making offers in accordance with these eAuction Terms and Conditions or otherwise acting in reliance on these eAuction Terms and Conditions.

7.5 Circumstances beyond Anglo American's reasonable control

Anglo American is not responsible for or otherwise liable for any delay in, or failure of, performance to the extent that any delay or failure is due to circumstances beyond Anglo American's reasonable control including, without limitation, strikes, lockouts and other

industrial disputes, breakdown of systems or network access, flood, fire, explosion or accident.

8. eAuction configuration

8.1 Configuration by Anglo American

Anglo American will determine the eAuction Parameters, which will be made available on the eAuction Event Site.

8.2 Participating Buyer's acknowledgment

Each Participating Buyer acknowledges that:

- (a) it is its responsibility, and the responsibility of its Authorised Bidders, to familiarise themselves with the eAuction Event Site, including all eAuction Parameters; and
- (b) acceptance of the invitation to participate in the eAuction and participation by its Authorised Bidders in the eAuction constitutes unconditional agreement by the Participating Buyer to be bound by the eAuction Parameters determined by Anglo American under clause 8.1.

9. Offer Structure

9.1 Notification of Offer Structure

The Offer Structure will be made available on the eAuction Event Site prior to the eAuction Open Time.

9.2 Amendments to Offer Structure

Anglo American reserves the right to, in its absolute discretion, amend, vary or modify the Offer Structure at any time, including during the eAuction Period.

9.3 Notification of amendments

If Anglo American amends, varies or modifies the Offer Structure in accordance with clause 9.2, Anglo American will notify each Participating Buyer by making the amendment on Anglo American's eSourcing Site, and communicating through the Site Messaging Facility or by any other method Anglo American determines.

9.4 Acceptance of amendments to Offer Structure

The Participating Buyer's continued use of the eAuction Event Site will represent its unconditional acceptance of the amendments, variations or modifications in their entirety.

10. Duration and Structure of eAuction

10.1 Timing

The eAuction will, subject to the terms of these Auction Terms and Conditions:

- (a) commence at the eAuction Open Time; and
- (b) continue until the eAuction Close Time.

10.2 Extension of Closing Times

- (a) For an eAuction other than a Staggered Lots Auction, if an Extending Bid is received within the Grace Period, the Close Time will be extended by the Extension Time.
- (b) For a Staggered Lots eAuction, if an Extending Bid is received on an eAuction Item in a Lot, within the Grace Period prior to the Lot Closing Time for that Lot, the Lot Closing Time for that Lot will be extended by the Extension Time.

10.3 Pause in eAuction

Anglo American may pause and recommence the eAuction at any time by notice to the Participating Buyer through the Site Messaging Facility or by any other method determined by Anglo American.

10.4 Changes to eAuction Period

Anglo American may change the eAuction Period, any Lot Opening Time or Lot Closing Time or the eAuction Close Time at any time and such changes will be communicated to the Participating Buyer through the Site Messaging Facility or by any other method determined by Anglo American.

10.5 Termination of participation

Anglo American may, in its sole discretion, terminate or suspend a Participating Buyer's right to Bid at any stage.

10.6 Closure, suspension or rescheduling of eAuction

Notwithstanding any other clause of these eAuction Terms and Conditions:

- (a) Anglo American may at any time close, suspend, extend or reschedule the eAuction; and
- (b) any pause, suspension or early closure of the eAuction or a termination of Bidding rights under these eAuction Terms and Conditions, will not relieve the Participating Buyer of any obligations in respect of completed Bids submitted prior to the pause, suspension or early closure and any such Bids will remain open for acceptance.

10.7 Failure to commence

If the eAuction cannot take place at the eAuction Open Time due to a Technical Difficulty or any other reason, Anglo American shall inform the Authorised Bidders by posting a notice on Anglo American's eSourcing Site, through the Site Messaging Facility, by telephone or by any other method Anglo American determines.

10.8 Break in access

If at any time after the start of the eAuction, a Technical Difficulty prevents an Authorised Bidder participating in the eAuction, the affected Authorised Bidder must notify Anglo American immediately by telephone to the Seller Contact.

10.9 Action by Anglo American after break in access

On receiving notice under clause 10.8, Anglo American may in its absolute discretion:

- (a) notify the Participating Buyers, through the Site Messaging Facility or by any other method determined by Anglo American, that the eAuction has been paused pursuant to clause 10.3 to allow for resolution of the Technical Difficulty;
- (b) cancel the eAuction and notify the Participating Buyers, through the Site Messaging Facility or by any other method determined by Anglo American, of an alternative time for a new eAuction in which case all Bids submitted up to the time of cancellation will remain effective and open for acceptance; or
- (c) continue the eAuction by manual means which may include, but is not limited to, the affected Participating Buyer(s) submitting Bids by fax for Anglo American to enter into Anglo American's eSourcing Site on the affected Participating Buyer's behalf (**Surrogate Bids**).

11. Submission of Bids

11.1 Submission of Bids

- (a) Bids must be submitted through Anglo American's eSourcing Site, in the form and with the details required by these eAuction Terms and Conditions, the eAuction Parameters and the Offer Structure, by the eAuction Close Time.
- (b) In a Staggered Lots eAuction, bidding for each eAuction Item in a Lot will be open between the Lot Opening Time and the Lot Closing Time for that Lot.

11.2 Minimum Bid Change

Successive Bids by the Participating Buyer must differ by at least the Minimum Bid Change.

11.3 Reserves

- (a) The eAuction Parameters may specify a Reserve Price or specify that a Reserve Price has been set, without disclosing the price.
- (b) Without limiting any other clause in these eAuction Terms and Conditions, Anglo American may, in its absolute discretion:
 - (i) accept a Bid that is below the Reserve Price; or
 - (ii) refuse to accept a Bid, even if it is the only Bid above the Reserve Price.

11.4 Bid Currency

Bids must be placed in the Applicable Currency, or such other currencies as may be permitted by the eAuction Parameters.

11.5 Bid Mechanisms

Depending on the eAuction Parameters a number of Bid facilities may be available to Participating Buyers, including:

- (a) simple Bids;
- (b) Proxy Bidding; and
- (c) Partial Quantity Bidding.

It is the responsibility of the Participating Buyer and each Authorised Bidder to familiarise themselves with these Bid facilities.

11.6 Surrogate Bids

Anglo American will use reasonable care when entering any Surrogate Bids into Anglo American's eSourcing Site, provided that Anglo American is not liable for any errors in relation to the entering of any Surrogate Bids.

11.7 Validity of Bids

Each of the Participating Buyers agrees to keep any Bid valid for the Bid Validity Period.

11.8 Acknowledgment of terms of sale

Each of the Participating Buyers acknowledges and agrees that:

- (a) it has carefully considered the Sale Details and the Sale Terms (collectively, the '**Information**');
- (b) any failure on its part to understand or consider any part of the Information, will not relieve it of any obligation in relation to Bids submitted or goods or services subsequently sold; and

- (c) Anglo American will not be liable in respect of any Information Anglo American has provided which is inaccurate or incomplete.

11.9 Taxes, duties, tariffs, etc

All Bids must be submitted exclusive or inclusive of Charges, as specified in the Offer Structure.

11.10 No collusion

- (a) All Bids submitted must be bona fide Bids and must not be fixed or adjusted in collusion (or otherwise in accordance with any arrangement or agreement) with any third party (including but not limited to the other Participating Buyers).
- (b) If Anglo American becomes aware of any form of collusive activity by the Participating Buyers, Anglo American may:
 - (i) terminate the Participating Buyer's right to participate in the eAuction;
 - (ii) if the Participating Buyer's Bid has been accepted by Anglo American terminate any contracts that were entered into with the Participating Buyer on the basis of the Participating Buyer's Bid; and/or
 - (iii) subsequently bar the Participating Buyer from tendering for further contracts for any such period as determined by Anglo American.

12. Retraction of Bids

12.1 Notification by Participating Buyer

If the Participating Buyer becomes aware that it has submitted a Bid in error (**Bid in Error**), the Participating Buyer:

- (a) must notify Anglo American immediately of the error by telephone or email to the Seller Contact; and
- (b) may request retraction of the Bid if it advises the reason for that request.

12.2 Consideration by Anglo American

Anglo American may in its discretion agree to accept retraction of the Bid, and reserves the right to refuse any Bid retraction request.

12.3 Action on acceptance of Bid retraction

If Anglo American accepts the Bid retraction request, Anglo American will:

- (a) pause the eAuction and advise all Participating Buyers by telephone or via the Site Messaging Facility;
- (b) retract the Bid in Error and all other Bids placed after the Bid in Error; and
- (c) then resume the eAuction.

12.4 Anglo American's rights to terminate

If the Participating Buyer repeatedly submits Bids in Error, Anglo American reserves the right to terminate the Participating Buyer's right to participate in the eAuction.

12.5 Additional rights for Anglo American

Notwithstanding clauses 12.2 and 12.3, Anglo American may, in its absolute discretion, proceed in any other way including as contemplated under clause 10.3, 10.5 or 10.6 or refuse to retract any Bids made by the Participating Buyer.

13. Visibility Formats and Rankings of Participating Buyers

13.1 Visibility Formats

Anglo American will determine which of a variety of Visibility Formats will be used in an eAuction to determine the information each Participating Buyer will see, relating to the Bids placed by Participating Buyers and the Bid Rankings.

13.2 Change in Visibility Format

Anglo American may, in its absolute discretion, change the Visibility Format available to the Participating Buyer at any time (including during the eAuction Period).

13.3 Bid Rankings

- (a) Bid Rankings will be determined by Anglo American and in doing so Anglo American may take into account, in its absolute discretion, both price and non-price based factors (**Ranking Criteria**).
- (b) Without limiting clause 13.3(a), Anglo American may determine Bid Rankings taking into account:
 - (i) the price that Participating Buyers have bid for specific eAuction Items; and
 - (ii) transformation rules determined by Anglo American for the purpose of quantitatively transforming Bids from a Participating Buyer based on non-price factors specific to a Participating Buyer.
- (c) Anglo American may, in its absolute discretion, change the Ranking Criteria at any time, including during an eAuction.
- (d) Display of Bid Rankings during or at the completion of the eAuction (including display of any Leading Bid) does not constitute a representation by Anglo American or any of its Affiliates that the displayed Bid Rankings are the rankings that Anglo American will have regard to in selection of the successful Participating Buyer (if any).
- (e) Anglo American is not obliged to act in accordance with or have regard to the Bid Rankings in determining the selection of the successful Participating Buyer (if any).

13.4 Tied Bids

Tied Leading Bids will be allowed if so specified in the eAuction Parameters. These will be shown on Anglo American's eSourcing Site with an equal (=) sign next to the rank.

13.5 Submission of responses

Subject to clause 6, the last response submitted by a Participating Buyer prior to the eAuction Close Time will be the response considered by Anglo American in the evaluation and award process.

14. Acceptance of Bids and offers

14.1 Bids and offers are binding on Participating Buyer

- (a) The Participating Buyer agrees that by the placing of Bids in accordance with the eAuction Terms and Conditions, the Participating Buyer is making an offer to Anglo American capable of immediate acceptance. The Participating Buyer represents, undertakes and warrants that it has the authority and financial capacity to enter into the Sale Terms and associated transactions relating to the eAuction Items subsequent to the eAuction.

- (b) Subject to clause 12, once submitted, Bids cannot be withdrawn, and each Bid constitutes a binding, irrevocable offer by the Participating Buyer:
 - (i) open for the Bid Validity Period,
 - (ii) to perform obligations under the Sale Terms; and
 - (iii) to otherwise purchase the relevant goods and services at the prices specified.

14.2 Notification of acceptance

A Bid is not and will not be deemed to be accepted by Anglo American unless and until Anglo American notifies the Participating Buyer in writing that the Bid has been accepted.

15. Variation of eAuction Terms and Conditions

15.1 Variation in Anglo American's discretion

Anglo American, in its absolute discretion, may vary, amend or change these eAuction Terms and Conditions (**Rule Change**) at any time prior to or during the eAuction, including by changing the eAuction Parameters.

15.2 Effect of change

Anglo American will notify Participating Buyers of any Rule Change by:

- (a) posting the amendment on Anglo American's eSourcing Site; or
- (b) by any other method Anglo American determines.

15.3 Acceptance of Change

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

16. Confidentiality

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

- (a) all aspects of the eAuction (including a Participating Buyer's participation in the eAuction, these eAuction Terms and Conditions and the contents of any Bid); and
- (b) any information made available to Participating Buyers in relation to the eAuction, Anglo American's eSourcing Site or otherwise,

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

- (c) copied or used; or
- (d) supplied to any third party (other than a person registered or nominated for registration, as an Authorised Bidder of the Participating Buyer)

without the prior written consent of Anglo American.

17. Notifications and communications

Except as otherwise provided for in these eAuction Terms and Conditions, notifications and communications in respect of the eAuction shall be

- (a) through the Site Messaging Facility and shall be deemed to be effective immediately on sending; or

- (b) in the event that Anglo American's eSourcing Site is unavailable, shall be by email to the email address:
 - (i) in the case of Anglo American, the email address of the Seller Contact or such other address as notified by Anglo American to the Participating Buyer; and
 - (ii) in the case of a Participating Buyer to the email address registered for the Buyer Application Manager through Anglo American's eSourcing Siteand shall be deemed effective immediately unless the sender's server indicates a malfunction or error in transmission or the recipient immediately notifies the sender of an incomplete transmission.

18. Inconsistency

Anglo American:

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

19. Dispute Resolution

19.1 Precondition

Unless otherwise expressly stipulated in these eAuction 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 eAuction Terms and Conditions (**Dispute**) unless it has complied with this clause 19.

19.2 No Relief from Obligations

Despite the existence of a Dispute each Party must continue to perform its obligations under these eAuction Terms and Conditions pending the determination of a Dispute under this clause 19.

19.3 Notice of Dispute

- (a) A Party claiming that a Dispute has arisen under these eAuction 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.

19.4 Arbitration

If the Parties are unable to resolve the Dispute within 30 Business Days following the receipt of a Notice of Dispute under clause 19.3(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 19.4 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 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.

20. Governing law and Jurisdiction

These eAuction 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).