

SERVICE ORDER TERMS AND CONDITIONS

1. DEFINITIONS

“Agreement” means these Service Order Terms and Conditions together with the Service Order.

“Company” means the Phelps Dodge-related entity identified as such on the Service Order.

“Contractor” means the party identified as such on the Service Order.

“Service Order” means the written order issued by Company, and attached to or provided with these Service Order Terms and Conditions, for specific Services to be performed by Contractor.

2. SERVICES

Contractor agrees to furnish all supervision, labor, parts, materials, transportation and warranties necessary to perform the services described in the Service Order (the “Services”). Contractor may not subcontract any of the Services. Company’s contact, for purposes of Contractor’s performance of the Services, is identified in the Service Order.

3. CONTRACTOR’S RESPONSIBILITIES

3.1 Standards. Contractor will perform the Services in a thorough and workmanlike manner and to the satisfaction of Company.

3.2 Invoicing. Contractor will submit invoices for the amounts and at the times set forth in the Service Order. Company will not be obligated to make any payments for any additional or different services that have not been approved, in advance, in writing.

3.3 Materials. All workmanship, parts, materials, equipment and machinery furnished by Contractor in connection with the Services must be of good quality. All parts, materials, equipment and machinery furnished by Contractor in connection with the performance of the Services must be new, and each must function in the manner for which it was intended for one year following satisfactory completion of the Services. Contractor will repair, or remove and replace, at Contractor’s own expense and at Company’s convenience, all workmanship, parts, materials, equipment or machinery that prove to be defective at any time within one year following satisfactory completion of the Services.

3.4 Liability for Losses; Indemnity. Contractor will be liable for and defend, protect, indemnify and hold harmless Company, its directors, officers, employees and agents, and each of them, for, from and against any and all liabilities, claims, demands, damages, losses, fines, penalties, causes of action, suits or costs, of any kind or description, including, but not limited to, judgments, liens, expenses (including, but not limited to, court costs, attorneys’ fees, costs of investigation, removal and remediation and governmental oversight costs) and amounts agreed upon in settlement, caused by, arising out of, resulting from, attributable to or in any way incidental to the performance of the Services, this Agreement, or both (“Losses”), except to the extent that any Loss is caused by or results from the negligent acts or willful misconduct of Company, its officers, employees or agents.

3.5 Damaged, Destroyed or Removed Property. Contractor will, at its sole cost and expense, repair, restore or replace any real or personal property belonging to Company, Phelps Dodge Corporation or any other person or entity that Contractor, its employees or agents may damage, destroy or remove while performing, in order to perform or resulting from performance of the Services.

3.6 Loss Prevention; Safety and Security; Environmental Policy. Contractor will take all precautions necessary for the prevention of accidents, fire, theft, vandalism, injury or other damage on or to any property owned by, leased to or otherwise under the direct or indirect control of Phelps Dodge Corporation or Company (“Company Property”). When and to the extent that Contractor or any of its employees or agents is on Company Property,

Contractor will comply, and will cause each of its employees and agents to comply, with Company's safety rules and regulations, security requirements and Environmental Policy.

3.7 Insurance.

(a) Contractor will procure and maintain, from an insurer acceptable to Company, the insurance coverage described in this Section 3.7, as such coverage requirements may be modified by any additional or different coverage set forth in the Service Order. Such insurance is to be primary with respect to any other similar insurance available to Company, regardless of the provisions of such insurance, and is to name Company and Phelps Dodge Corporation as additional insureds; provided, however, that any insured coverage, including, but not limited to, any additional insured coverage, will not include coverage to the extent that it constitutes a prohibited indemnity agreement under applicable law. All policies on which Company and Phelps Dodge Corporation are additional insureds must include waivers of subrogation by the insurers in favor of Company and Phelps Dodge Corporation. Prior to commencement of the Services, Contractor will furnish to Company certificates and additional insured endorsements evidencing the specified insurance. If requested by Company, Contractor will furnish to Company certified copies of the insurance policies themselves. Such certificates must provide that at least 30 days' prior written notice of any policy cancellation or material change be given to Company. All insurance must be obtained from insurance carriers with an A.M. Best's rating of at least "A-X" and that are otherwise acceptable to Company. Any Losses, whether or not covered by the insurance described in this Section 3.7 or within the deductible of such insurance, will be the responsibility of Contractor to the extent that such Losses are covered by the provisions of Section 3.4 or any other provision of this Agreement.

(b) Contractor will procure and maintain: (i) Workers' Compensation insurance, including coverage for occupational disease, in the benefit amounts required by applicable law; (ii) Employer's Liability insurance, with a limit of liability not less than \$500,000 per accident; (iii) Commercial General Liability insurance with a combined single limit of liability not less than \$500,000 per occurrence; (iv) Automobile Liability insurance covering all owned, leased, non-owned and hired licensed vehicles used by or on behalf of Contractor in connection with the Services, with combined bodily injury and property damage liability limits of not less than \$500,000 per accident; and (v) any other insurance required by law.

3.8 Warranties. Contractor represents, warrants and agrees that all Services performed by Contractor will be conducted and completed in conformity with all requirements of this Agreement and in a manner that complies with all applicable laws, regulations, ordinances and codes.

3.9 Unforeseen Conditions. Contractor will immediately notify Company if Contractor becomes aware of any unforeseen circumstances that may adversely affect the quality of the Services or the safety of the performance of the Services.

3.10 Claims and Liens. If (i) any laborers', materialmen's or mechanics' lien or other claim is filed for or on account of the Services (each, a "Lien"), and (ii) Contractor neither causes such Lien to be released and discharged, nor files a bond in lieu of such Lien, within 10 days after the filing of such Lien, Company or Phelps Dodge Corporation, as applicable, will have the right (but not the obligation) to pay all sums necessary to obtain the release of such Lien and, at its option, (a) deduct all amounts so paid from amounts due to Contractor under this Agreement, or (b) require immediate cash reimbursement from Contractor.

3.11 Reporting. Contractor will provide to Company written reports, no later than the 7th day of each calendar month during the term of this Agreement, specifying (i) the number of man-hours worked by Contractor's employees in connection with the Services during the preceding calendar month, and (ii) the number of reportable incidents of Contractor's employees during the preceding calendar month in connection with the Services under the Occupational Safety and Health Act of 1970 or the Federal Mine Safety and Health Act of 1977, as applicable. Each report will be in a form provided or otherwise approved by Company.

3.12 Time of the Essence. **TIME IS OF THE ESSENCE WITH REGARD TO CONTRACTOR'S PERFORMANCE UNDER THIS AGREEMENT.** Contractor will begin performing the Services in accordance with the

Service Order and proceed diligently to complete the Services within the term of this Agreement. Contractor (i) acknowledges and agrees that the term of this Agreement is adequate for performance of the Services, and (ii) understands that Contractor's failure to complete the Services within the term of this Agreement will occasion loss and damage to Company.

4. TAXES

Contractor will timely pay to the appropriate governmental authority (i) all contributions, taxes and premiums payable under applicable federal, state and local laws that are measured by or related to the payment of persons engaged in the performance of the Services, and (ii) all applicable federal, state and local taxes (including, but not limited to, sales, use, gross receipts, excise, transaction privilege, ad valorem and personal property taxes), duties, tariffs, assessments, fees and other charges upon or with respect to tangible personal property furnished by or to any party, the Services performed or any other payments by Company to Contractor under this Agreement.

5. COMPANY'S RESPONSIBILITIES

5.1 Work; Materials, Equipment and Machinery. Company will perform work and/or furnish materials, equipment and machinery only if and to the extent set forth in the Service Order.

5.2 Payment. Company will review and approve invoices submitted by Contractor and will make payment upon satisfactory completion of the Services, as set forth in the Service Order.

6. DEFECTIVE OR DEFICIENT SERVICES

If the performance of the Services is defective or deficient or Contractor otherwise fails to perform the Services in accordance with this Agreement (each such occurrence, a "Defect"), Contractor will, at its expense and within 48 hours' notice from Company, correct any Defect and, to the extent incurred by Company, pay or reimburse Company for all labor and the actual delivered cost of all materials, equipment, and machinery required to correct the Defect. Any payments otherwise due to Contractor will be suspended until Contractor corrects the Defect to Company's satisfaction. If Contractor fails to correct any Defect within 48 hours after receipt of written notice from Company, Company may, without prejudice to any other remedies Company may have, (i) order Contractor to stop performing any or all of the Services, and/or (ii) perform or reperform the Services, or engage a third party to do the same, with all costs incurred by Company in connection with the performance or reperformance of Services to be deducted from amounts otherwise payable to Contractor. If amounts then or thereafter payable to Contractor are insufficient to cover such costs, Contractor will pay the difference to Company. If the Services are defective or deficient to the extent that it is not technically or economically feasible to correct such Defect, Contractor will be liable to Company for all losses, damages, costs and expenses arising directly or indirectly from such Defect.

7. CONFIDENTIAL INFORMATION

Contractor will not, and will cause its employees, agents and all other persons performing labor or supplying materials in connection with the Services not to, disclose or make use of any confidential information obtained by Contractor in connection with this Agreement including, but not limited to, any information concerning Company or Phelps Dodge Corporation, their respective businesses and operations or trade secrets disclosed to or acquired by Contractor, its employees, agents and such other persons, while performing the Services.

8. TERM; TERMINATION

8.1 Term. The term of this Agreement is set forth in the Service Order.

8.2 Termination. Company will have the right, immediately upon notice to Contractor, to terminate this Agreement regardless of whether Contractor is in default. If Contractor is not in breach of any of its obligations under this Agreement, Company will pay to Contractor the amount due to Contractor through the date specified in such notice, provided that (i) Contractor submits to Company properly approved statements within 30 days after the effective date of termination, and (ii) Contractor immediately removes its property from Company Property. Contractor waives any

and all claims for compensation or charges (including any claim for lost profits), beyond that to which it may be entitled under this Section 8.2, as a result of any termination. Contractor agrees that its sole remedy in connection with any termination will be to receive compensation in accordance with this Section 8.2.

9. MISCELLANEOUS

9.1 Binding Agreement; No Third-Party Beneficiaries; No Assignment. This Agreement will be binding upon and enforceable only by the parties, their respective successors and permitted assigns. The parties specifically acknowledge that this Agreement is not intended to create any rights in or for any third party (except that if Company is an entity other than Phelps Dodge Corporation, Phelps Dodge Corporation is an intended third-party beneficiary of this Agreement). Contractor may not assign or transfer any interest in or obligation under this Agreement without the prior written consent of Company.

9.2 No Varying Acceptance. CONTRACTOR'S ACCEPTANCE OF THIS AGREEMENT IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. NO QUOTATION, ACKNOWLEDGEMENT OR OTHER DOCUMENT FROM CONTRACTOR MAY ADD TO OR VARY ANY TERM OR CONDITION OF THIS AGREEMENT. ANY SUCH MODIFICATION WILL BE OF NO EFFECT UNLESS EXPRESSLY AGREED TO IN WRITING BY COMPANY. PERFORMANCE BY CONTRACTOR OF ALL OR ANY PART OF THE SERVICES WILL CONSTITUTE CONTRACTOR'S ACCEPTANCE OF ALL THE TERMS OF THIS AGREEMENT, NOTWITHSTANDING THE TERMS OF ANY QUOTATION, ACKNOWLEDGEMENT OR OTHER DOCUMENT OF CONTRACTOR TO THE CONTRARY. CONTRACTOR MAY ACCEPT THIS AGREEMENT BY DELIVERING TO COMPANY A WRITTEN, SIGNED ACCEPTANCE, BUT IF SUCH WRITING CONTAINS ADDITIONAL TERMS OR TERMS THAT VARY FROM THE TERMS OF THIS AGREEMENT, SUCH ADDITIONAL OR VARIED TERMS WILL BE DEEMED REJECTED. IF THIS AGREEMENT IS CONSTRUED TO BE AN ACCEPTANCE BY COMPANY OF AN OFFER BY CONTRACTOR, COMPANY EXPRESSLY LIMITS SUCH ACCEPTANCE TO THE EXPLICIT TERMS OF THIS AGREEMENT AND REJECTS ANY ADDITIONAL OR VARIED TERMS SET FORTH IN CONTRACTOR'S OFFER. Nothing in this Agreement will indicate that this Agreement is an acceptance; rather, it will be construed to be an offer to the extent possible. Company hereby objects to any attempt by Contractor to add to or vary any term of this Agreement and expressly rejects all such modifications unless agreed to in writing by Company.

9.3 Qualification and Independence of Contractor. In performing and carrying out the Services, Contractor agrees that Contractor is an independent contractor and not an agent or employee of Phelps Dodge Corporation or Company. Company will have no direction or control as to the method or means of performance of the Services. Contractor has represented itself as an expert with respect to the performance and completion of the Services, and Company is relying upon the expertise of Contractor in performing, completing and accomplishing the results intended by the Services, even though Company may inspect the Services or provide materials or services in connection with the Services including, but not limited to, specifications, drawings or plans. Any such inspection by Company under this Agreement will not be construed as providing direction, control or supervision of the Services or providing the methods or means of performing the Services.

9.4 Integration. This Agreement constitutes the entire agreement between the parties relating to their subject matter, and there are no agreements or understandings between the parties, express or implied, except as may be explicitly set forth in this Agreement.

9.5 Governing Law. The laws of the State of Arizona will govern the enforcement and interpretation of this Agreement. Contractor agrees that, at Company's election, all actions and proceedings arising from or related to this Agreement will be litigated in local, state or federal courts located within the City of Phoenix, Arizona. Contractor consents and submits to the personal jurisdiction and venue of any local, state or federal court located within the City of Phoenix, Arizona.

9.6 Amendments. This Agreement may not be modified or amended except by a writing signed by both parties.

9.7 No Discrimination. Company is an Equal Employment Opportunity/Affirmative Action employer subject to Executive Order 11246. Contractor agrees not to discriminate on the basis of race, color, sex, national origin, religion, age, disability, Veteran status or any other basis covered by applicable law.

9.8 **Survival.** The provisions of Sections 3.2, 3.3, 3.4, 3.5, 3.7, 3.8, 3.10, 4, 6, 7, 8.2, 9.1, 9.5 and 9.8 will survive the termination of this Agreement and Contractor's completion of the Services.