

**APPLICABLE PRICING SUPPLEMENT**

**Esorfranki Limited**

(the "Issuer")

*(Incorporated with limited liability in South Africa under registration number 1994/000732/06)*

**Issue of R17 500 000 Senior Secured Floating Rate Notes with a Stock Code EFC01**

**Under its R1 000 000 000 Domestic Medium Term Note Programme**

This document constitutes the Applicable Pricing Supplement relating to the issue of Notes described in this Applicable Pricing Supplement.

This Applicable Pricing Supplement must be read in conjunction with the Programme Memorandum issued by the Issuer dated 25 July 2012, as may be amended or supplemented from time to time. To the extent that there is any conflict or inconsistency between the contents of this Applicable Pricing Supplement and the Programme Memorandum, the provisions of this Applicable Pricing Supplement shall prevail.

Any capitalised terms not defined in this Applicable Pricing Supplement shall have the meanings ascribed to them in the Terms and Conditions. References in this Applicable Pricing Supplement to the Terms and Conditions are to the section of the Programme Memorandum headed "*Terms and Conditions of the Notes*". References to any Condition in this Applicable Pricing Supplement are to that Condition of the Terms and Conditions.

**The Group 1 Notes do not have a credit rating and are of a speculative nature. Prior to investing in Group 1 Notes prospective investors should seek independent professional advice.** See the sections of the Programme Memorandum titled "Description of the Group" and "Risk Factors" and all the Schedules to this Applicable Pricing Supplement, for some of the investment considerations to be taken into account by prospective investors in the Group 1 Notes.

The Issuer and each Subsidiary Guarantor certifies that to the best of its knowledge and belief there are no facts that have been omitted from the Programme Memorandum which would make any statement false or misleading and that all reasonable enquiries to ascertain such facts have been made and that the Programme Memorandum contains all information required by Applicable Law and, in relation to any Tranche of Notes listed on the Interest Rate Market of the JSE, the JSE Debt Listings Requirements. The Issuer and each Subsidiary Guarantor accepts full responsibility for the information contained in the Programme Memorandum, the Applicable Pricing Supplements and the annual financial report and any amendments to the annual financial report or any supplements from time to time, except as otherwise stated therein.

The JSE assumes no responsibility or liability of whatsoever nature for the contents of the Programme Memorandum or this Applicable Pricing Supplement or the annual financial statements or any other information incorporated by reference into the Programme Memorandum (as amended or restated from time to time), and the JSE makes no representation as to the accuracy or completeness of the Programme Memorandum or this Applicable Pricing Supplement, the annual financial statements or any other

information incorporated by reference into the Programme Memorandum (as amended or restated from time to time). The JSE expressly disclaims any liability for any loss arising from or in reliance upon the whole or any part of this Programme Memorandum or this Applicable Pricing Supplement or the annual financial report or any other information incorporated by reference into this Programme Memorandum (as amended or restated from time to time).

#### **DESCRIPTION OF THE NOTES**

1. Issuer	Esorfranki Limited
2. Status of the Notes	Senior Notes
3. Security	Secured. These Notes are Group 1 Notes. See Appendix "B" for a description of the security structure
4. Listed/Unlisted	Listed
5. Series number	1
6. Tranche number	1
7. Aggregate Principal Amount of this Tranche	R17 500 000
8. Interest/Payment Basis	Floating Rate
9. Issue Date and first settlement date	24 August 2012
10. Minimum Denomination per Note	R1 000 000
11. Specified Denomination (Principal Amount per Note)	R1 000 000
12. Issue Price(s)	100% of the Principal Amount of each Note
13. Applicable Business Day Convention, if different to that specified in the Terms and Conditions	Following Business Day
14. Interest Commencement Date(s)	24 August 2012
15. Step-Up Date	N/A
16. Final Redemption Date	24 August 2014
17. Specified Currency	ZAR

18. Additional Business Centre	N/A
19. Maturity Amount	100% of the Principal Amount of each Note
20. Set out the relevant description of any additional/amended Terms and Conditions relating to the Notes (including additional covenants, if any)	See Appendix "C" for additional/amended Terms and Conditions relating to the Notes.

#### **FIXED RATE NOTES**

21. Fixed Interest Rate	N/A
22. Interest Payment Date(s)	N/A
23. Interest Period(s)	N/A
24. Initial Broken Amount	N/A
25. Final Broken Amount	N/A
26. Step-Up Rate	N/A
27. Any other items relating to the particular method of calculating interest	N/A

#### **FLOATING RATE NOTES**

28. Interest Payment Date(s)	the last day of August, November, February and May of each year, or if such day is not a Business Day then in accordance with the Following Business Day convention
29. Interest Period(s)	From (and including) each Interest Payment Date to (but excluding) the following Interest Payment Date, provided that the first Interest Period shall be from (and including) the Interest Commencement Date to (but excluding) 30 November 2012 and the last Interest Period shall be from (and including) 31 May 2014 to (but excluding) the Final Redemption Date
30. Manner in which the Interest Rate is to be	Screen Rate Determination

determined	
31. Margin/Spread for the Interest Rate	3.75% per annum to be added to the relevant Reference Rate
32. Margin/Spread for the Step-Up Rate	N/A
33. If Screen Determination	
(a) Reference Rate (including relevant period by reference to which the Interest Rate is to be calculated)	An interpolated rate between 3 month JIBAR and 6 month JIBAR for the first Interest Period, 3 month JIBAR for each Interest Period thereafter and an interpolated rate between 1 month JIBAR and 3 month JIBAR for the last Interest Period
(b) Rate Determination Date(s)	The first day of each Interest Period, namely the last day of August, November, February and May of each year, or if such day is not a Business Day then in accordance with the Following Business day convention
(c) Relevant Screen page and Reference Code	SAFEY Page (or the SAFEX nominated successor screen for JIBAR) under the caption "SFX 3M YIELD
34. If Interest Rate to be calculated otherwise than by reference to Screen Rate Determination, insert basis for determining Interest Rate/Margin/Fall back provisions	N/A
35. Any other terms relating to the particular method of calculating interest	N/A
<b>ZERO COUPON NOTES</b>	
36. (a) Implied Yield	N/A
(b) Reference Price	N/A
(c) Equivalent Discount Rate	N/A
(d) Spread to Reference Rate	N/A
(e) Maturity Date	N/A
(f) Day Count	N/A

- (g) Any other formula or basis for determining N/A  
amount payable

#### **INDEXED NOTES**

37. (a) Type of Indexed Notes N/A
- (b) Index/Formula by reference to which N/A  
Interest Amount/Final Redemption  
Amount is to be determined
- (c) Manner in which the Interest N/A  
Amount/Final Redemption Amount is to  
be determined
- (d) Interest Period N/A
- (e) Interest Payment Date(s) N/A
- (f) If different from the Calculation Agent, N/A  
agent responsible for calculating amount  
of principal and interest
- (g) Provisions where calculation by reference N/A  
to Index and/or Formula is impossible or  
impracticable

#### **OTHER NOTES**

38. If the Notes are not Fixed Rate Notes or N/A  
Floating Rate Notes, or if the Notes are a  
combination of the above and some other  
Note, set out the relevant description of any  
additional Terms and Conditions relating to  
such Notes

#### **PROVISIONS REGARDING REDEMPTION/ MATURITY**

39. Redemption at the option of the Issuer in Yes  
terms of Condition 8.4: if yes:

(a) Optional Redemption Date(s)	Any Interest Payment Date after 31 August 2013 (ie 1.0 year no call period)
(c) Optional Redemption Amount(s) and method, if any, of calculation of such amount(s)	The Principal Amount of the Note being redeemed, multiplied by the following percentages in each of the following periods (in each period, both dates inclusive):  1 September 2013 to 28 February 2014 (ie year 1.0 - 1.5) – 102%; 1 March 2014 to 24 August 2014 (ie year 1.5 - 2.0) – 101%; ·
(d) Minimum period of notice	30 days
(e) If redeemable in part:	
Minimum Redemption Amount(s)	N/A
Higher Redemption Amount(s)	N/A
(f) Other terms applicable on Redemption	N/A
40. Redemption at the option of the holders of the Senior Notes (Put Option) in terms of Condition 8.5: if yes	No
(a) Optional Redemption Date(s) (Put)	N/A
(b) Optional Redemption Amount(s) (Put) and method, if any, of calculation of such amount(s)	N/A
(c) Minimum period of notice	N/A
(d) If redeemable in part:	N/A
Minimum Redemption Amount(s)	N/A
Higher Redemption Amount(s)	N/A
(e) Other terms applicable on Redemption	N/A
41. Redemption at the option of the holders of the	

Notes upon the occurrence of a Put Event in terms of Condition 8.6:

- (a) Delisting of the Notes of this Yes  
Tranche/the ordinary shares of the  
Issuer from the JSE
  - (b) Change of Control Yes
  - (c) Issuer disposing of the whole or Yes  
the greater part of its undertaking  
or assets
42. Early Redemption Amount(s) payable on Yes  
redemption for Taxation reasons in terms of  
Condition 8.3 or Optional Redemption  
following a Put Event in terms of Condition  
8.6 or early redemption following an Event of  
Default in terms of Condition 12 : if yes
- Early Redemption Amount and method, if i) In the case of Redemption for Taxation reasons  
any, of calculation of such amount in terms of Condition 8.3 - Early Redemption  
Amount calculated as per Condition 8.7.
- ii) In the case of early redemption following an  
Event of Default in terms of Condition 12 - Early  
Redemption Amount calculated as per  
Condition 8.7
- iii) In the case of Optional Redemption following a  
Put Event in terms of Condition 8.6 - Early  
Redemption Amount shall be calculated as set out  
below:
- For the Interest Payment Dates from the Issue  
Date to 31 August 2013 (both dates inclusive) (ie  
year 0 - 1.0): the Principal Amount of the Note  
being redeemed, plus the Present Value of the  
Margin (as defined below).
- For the Interest Payment Dates from 1 September  
2013 to 31 August 2014 (both dates inclusive) (ie  
year 1.0 - 2.0): the Principal Amount of the Note  
being redeemed multiplied by 101%.
- For the purposes of this Condition 8.6:

Present Value of Margin = Sum (Margin x Discount Factor)

Where

Margin = the Margin element (as referred to in paragraph 31) of each interest payment from the Put Date to the Final Redemption Date

Discount Factor =  $1/((1+i)^t)$

Where

$i$  = the nominal annual compound annual rate from a South African Bank's swap curve relating to the period from the Put Date to each relevant Interest Payment Date

$t$  = (future Interest Payment Date - Put Date)/ 365

Put Date = the date on which the Notes are to be redeemed following exercise by a Noteholder of its right of redemption following a Put Event in terms of Condition 8.6

## GENERAL

43. Additional selling restrictions	N/A
44. International Securities Numbering (ISIN)	ZAG000097841
45. Stock Code	EFC01
46. Financial Exchange	JSE
47. Dealer(s)	Absa Capital
48. If syndicated, names of Lead Manager(s)	N/A
49. Method of distribution	Private placement
50. Rating assigned to this Tranche of Notes (if any)	N/A
51. Rating Agency, if any	N/A

52. Governing Law	South Africa
53. Last Day to Register	by 17h00 on the Business Day preceding the Books Closed Period
54. Books Closed Period	the 10 days prior to each Interest Payment Date and Redemption Date
55. Calculation Agent	Absa Capital
56. Specified Office of the Calculation Agent	15 Alice Lane, Sandton, 2196
57. Transfer Agent	Absa Capital
58. Specified Office of the Transfer Agent	15 Alice Lane, Sandton, 2196
59. Debt Sponsor	Absa Capital
60. Issuer's Settlement Agent	Absa Investor Services, a division of Absa Bank Limited
61. Specified Office of the Issuer's Settlement Agent	15 Alice Lane, Sandton, 2196
62. Stabilisation Manager, if any	N/A
63. Programme Amount	R1 000 000 000
64. Aggregate Outstanding Principal Amount of Notes in issue on the Issue Date of this Tranche	R0, excluding this Tranche of Notes and any other Tranche(s) of Group to be issued on the Issue Date
65. Aggregate Outstanding Principal Amount of Notes in issue in respect of the Series on the Issue Date of this Tranche	R0, excluding this Tranche of Notes and any other Tranche(s) of Notes to be issued in respect of the Series on the Issue Date
66. Aggregate Outstanding Principal Amount of Group 1 Notes in issue on the Issue Date of this Tranche	R0, excluding this Tranche of Notes and any other Tranche(s) of Group to be issued on the Issue Date
67. Additional Events of Default	See Appendix "C"
68. Trustee	Maitland Trust Limited
69. Specified Office of the Trustee	32 Fricker Raod, Illovo Boulevard, Sandton, 2196
70. Other provisions	N/A

DISCLOSURE REQUIREMENTS IN TERMS OF PARAGRAPH 3 (5) OF THE COMMERCIAL PAPER REGULATIONS – SEE APPENDIX "A"

SECURITY STRUCTURE - SEE APPENDIX "B"

ADDITIONAL/AMENDED TERMS AND CONDITIONS RELATING TO THE NOTES – SEE APPENDIX "C"

This Pricing Supplement amends, restates and replaces the pricing supplement dated 1 August 2012 in respect of the Notes of this Tranche with effect from the date of signature of this pricing supplement.

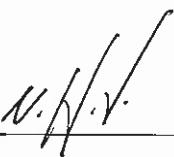
Application is hereby made to list this Tranche of the Notes, as from 24 August 2012, pursuant to the Esorfranki Limited Domestic Medium Term Note Programme. The Programme was registered with the JSE on 26 July 2012.

ESORFRANKI LIMITED

By: 

Director, duly authorised

Date: 22 August 2012

By: 

Director, duly authorised

Date: 22 August 2012

## APPENDIX "A"

### Disclosure Requirements in terms of paragraph 3(5) of the Commercial Paper Regulations

At the date of this Applicable Pricing Supplement:

#### Paragraph 3(5)(a)

The ultimate borrower is the Issuer.

#### Paragraph 3(5)(b)

The Issuer is a going concern and can in all circumstances be reasonably expected to meet its commitments under the Notes.

#### Paragraph 3(5)(c)

The auditor of the Issuer is KPMG Inc.

#### Paragraph 3(5)(d)

As at the date of this issue:

- (a) the Issuer has not issued any Notes; and
- (b) it is not anticipated that the Issuer will issue additional Notes during the remainder of its current financial year, in addition to the Notes issued on the Issue Date of this Tranche of Notes.

#### Paragraph 3(5)(e)

Prospective investors in the Notes are to consider this Applicable Pricing Supplement, the Programme Memorandum and the documentation incorporated therein by reference in order to ascertain the nature of the financial and commercial risks of an investment in the Notes. In addition, prospective investors in the Notes are to consider the latest audited financial statements of the Issuer which are incorporated into the Programme Memorandum by reference and which may be requested from the Issuer.

#### Paragraph 3(5)(f)

There has been no material adverse change in the Issuer's financial position since the date of its last audited financial statements.

#### Paragraph 3(5)(g)

The Notes issued will be listed, as stated in the Applicable Pricing Supplement.

#### Paragraph 3(5)(h)

The funds to be raised through the issue of the Notes are to be used by the Issuer to refinance existing debt and incur capital expenditure.

Paragraph 3(5)(i)

The Notes are secured.

Paragraph 3(5)(i)

KPMG Inc, the auditors of the Issuer, have confirmed that nothing has come to their attention to indicate that this issue of Notes issued under the Programme will not comply in all respects with the relevant provisions of the Commercial Paper Regulations (Government Notice 2172 in Government Gazette No, 16167 of 14 December 1994) published under Paragraph (cc) of the definition of the "business of a bank" in terms of Section 1 of the Banks Act, 1990).

ESORFRANKI LIMITED

By: John

Director, duly authorised

Date: 22 AUGUST 2012

By: V.J.V.

Director, duly authorised

Date: 22 August 2012

## APPENDIX "B"

### SECURITY STRUCTURE

The Group 1 Notes share in the same Security.

### SECURITY SPV GUARANTEE

The Security SPV will bind itself under a Security SPV Guarantee to the Trustee for the benefit of the Group 1 Noteholders, for the obligations of the Issuer to Group 1 Noteholders. Pursuant to such Security SPV Guarantee, the Security SPV will undertake in favour of the Trustee to pay it the full amount then owing to each Group 1 Noteholder by the Issuer on written demand from the Trustee on behalf of the Group 1 Noteholders. Following an Event of Default under the Group 1 Notes, the Trustee (on behalf of the Group 1 Noteholders), may declare the amounts outstanding under the Group 1 Note to be immediately due and payable. If there is a failure by the Issuer to pay the amount due to a Group 1 Noteholder upon delivery of such an acceleration notice, a decision may be made by the Group 1 Noteholders in terms of the Conditions, requiring the Trustee to make a demand under the Security SPV Guarantee. The liability of the Security SPV pursuant to the Security SPV Guarantee will, however, be limited in the aggregate to the net amount recovered by the Security SPV from the Issuer arising out of the Indemnity and, if necessary, the Security Documents referred to below.

### ISSUER INDEMNITY

The Issuer will give an Indemnity to the Security SPV in respect of claims that may be made against the Security SPV arising out of the Security SPV Guarantee. The Issuer shall not be entitled to refuse to make payment under the Indemnity to the Security SPV by reason of the fact that the Security SPV has not paid the claims of the Group 1 Noteholders under the Security SPV Guarantee nor shall the Issuer be entitled to refuse to make payment by reason of the fact that the liability of the Security SPV in respect of any such Security SPV Guarantee is limited in the manner set out in the Security SPV Guarantee.

### SECURITY DOCUMENTS

In accordance with the Security Documents, the Issuer cedes in security its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, as security for the obligations of the Issuer to the Security SPV under the Indemnity.

In accordance with the Security Documents, Esorfranki Construction (Pty) Ltd (incorporated in South Africa) binds itself under a guarantee to the Security SPV for the obligations of the Issuer to the Security SPV under the Indemnity. As security for its obligations to the Security SPV under the guarantee, Esorfranki Construction (Pty) Ltd (i) grants a special notarial bond over plant and equipment to the Security SPV, and (ii) cedes in security its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, all on the terms and as described in such Security Documents. Esorfranki Construction (Pty) Ltd has granted an irrevocable and unconditional power of attorney in favour of the Security SPV to register such special notarial bond with effect from the Issue Date.

In accordance with the Security Documents, Esorfranki Plant (Pty) Ltd (incorporated in South Africa) binds itself under a guarantee to the Security SPV for the obligations of the Issuer to the Security SPV under the Indemnity. As security for its obligations to the Security SPV under the guarantee, Esorfranki Plant (Pty) Ltd (i) grants a special notarial bond over plant and equipment to the Security SPV, and (ii) cedes in security its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, all on the terms and as described in such Security Documents. Esorfranki Plant (Pty) Ltd has granted an irrevocable and unconditional power of attorney in favour of the Security SPV to register such special notarial bond with effect from the Issue Date.

In accordance with the Security Documents, each of Esorfranki Property Developments (Pty) Ltd (incorporated in South Africa), Frankipile Mauritius International Limited (incorporated in Mauritius), Frankipile International Projects Ltd (incorporated in Mauritius) and Frankipile Botswana (Pty) Ltd (incorporated in Botswana), binds itself under a guarantee to the Security SPV for the obligations of the Issuer to the Security SPV under the Indemnity. As security for its obligations to the Security SPV under the guarantee, each such company cedes in security its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, all on the terms and as described in such Security Documents. In terms of the laws of Botswana, the Botswanan Pledge and the Botswanan Security Cession comprise contractual obligations of Frankipile Botswana (Pty) Ltd to the Security SPV. A registered deed of hypothecation granted to a third party would have priority over such contractual security by Frankipile Botswana (Pty) Ltd.

The Issuer will procure that future Subsidiaries incorporated in South Africa that contribute greater than 5% individually to the aggregated EBIDTA or tangible operating assets of the Group become Subsidiary Guarantors and that the Issuer and all Subsidiary Guarantors account for at least 85% of the aggregated EBIDTA or tangible operating assets of the Group.

The obligations of the Subsidiary Guarantors under the Subsidiary Guarantee are joint and several.

## THE SECURITY SPV

### Introduction

The Security SPV was incorporated and registered in South Africa on 29 March 2012, under registration number 2012/061270/07, as a private company with limited liability. The issued share capital of the Security SPV comprises 100 ordinary share of R1,00 par value, held by the Tizabuzz Security SPV Owner Trust, IT Number 2126/2012. The Security SPV has no subsidiaries. The current trustees of the Tizabuzz Security SPV Owner Trust are Maitland Trust Limited. The Security SPV has adopted a new memorandum of incorporation, including ring-fencing provisions, which has been filed with the Companies and Intellectual Property Commission. The issue of a new registration certificate is pending. Until the new registration certificate is issued, all references in the Transaction Documents to Tizabuzz (RF) Proprietary Limited shall be construed as a reference to Tizabuzz Proprietary Limited.

### Directors

The director of the Security SPV is David Towers.

David is a director and trustee on numerous investment vehicles, including securitisation vehicles, structured finance special purpose vehicles and exchange traded funds. David has extensive experience in debt capital markets and structured finance having worked for several major local and international banks and institutions in corporate banking and structured finance roles as well as spending a period as an independent consultant focusing on the debt capital markets. Prior to joining Maitland in 2011 he worked at Moody's Investors Service where he was responsible for assessing various asset-backed structured finance transactions. Prior to that he was Legal Counsel to the Bond Exchange of South Africa. David has B. Com, LLB and LLM degrees from the University of the Witwatersrand.

### Registered office

The registered office of the Security SPV is situated at 1<sup>st</sup> Floor, 32 Fricker Road, Illovo, 2196.

### Auditors

The current auditors of the Security SPV are BDO South Africa Inc.

### Activities

The activities of the Security SPV are to enter into, amend and perform the obligations and exercise the Security SPV's rights under the Security SPV Guarantee, the Indemnity and the Security Documents.

## APPENDIX "C"

### ADDITIONAL/AMENDED TERMS AND CONDITIONS RELATING TO THE NOTES OF THE SERIES

#### EVENTS OF DEFAULT

Condition 12.1 of the Terms and Conditions set out in the Programme Memorandum is amended in relation to the Notes of this Tranche by the insertion of the following new Condition 12.1.12:

*"Condition 12.1.12 Special Notarial Bonds*

Each of Esorfranki Construction (Proprietary) Limited and Esorfranki Plant (Proprietary) Limited fail to lodge a special notarial bond over specified plant and equipment, in form and substance approved by the Dealer on the Issue Date, within 20 Business Days of the Issue Date."

Condition 12.2 (Steps following an Event of Default relating to the Senior Notes) of the Terms and Conditions set out in the Programme Memorandum is amended in relation to the Notes of this Tranche by the deletion of Condition 12.2 and the replacement thereof of the following Condition 12.2:

12.

**12.2 Condition 12.2 Steps following an Event of Default relating to the Group 1 Notes**

12.2.1 If an Event of Default occurs in relation to the Notes of the Series:

12.2.1.1 the Calculation Agent and/or the Issuer will forthwith inform the Trustee thereof; and

12.2.1.2 the Trustee will, as soon as such Event of Default comes to its notice (whether as a result of having been informed by the Calculation Agent and/or the Issuer thereof pursuant to Condition 12.2.1.1 or otherwise), forthwith call a meeting of the Group 1 Noteholders.

12.2.2 The Trustee shall immediately upon becoming aware of the occurrence of an Event of Default set out in Condition 12.1.6 (*Insolvency Events*) and if any other Event of Default has occurred and is continuing at its discretion may, and if so directed by an Extraordinary Resolution of the Group 1 Noteholders shall, give written notice to the Issuer that the Group 1 Notes are, and they shall accordingly become immediately due and payable at their Early Redemption Amount together with accrued interest (if any) thereon to the date of payment.

## MEETINGS OF THE GROUP 1 NOTEHOLDERS

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 23:

### 23. Condition 23 - Meetings of the Group 1 Noteholders

Where a meeting of the Group 1 Noteholders is to be convened, in accordance with these Terms and Conditions, the trust deed of the Esorfranki Group 1 Note Trust or the Security SPV Guarantee, then the provisions of this Condition 23 shall apply.

#### 23.1 Convening of meetings

23.1.1 The Issuer or the Trustee may at any time convene a meeting of the Group 1 Noteholders (a "meeting").

23.1.2 The Issuer or the Trustee will convene a meeting of the Group 1 Noteholders upon the requisition in writing of Group 1 Noteholders holding not less than 20% of the aggregate Outstanding Principal Amount of the Group 1 Notes (a "requisition notice").

23.1.3 Whenever the Issuer wishes to convene a meeting, it will forthwith give notice in writing to the Group 1 Noteholders in the manner prescribed in Condition 16 and to the Trustee in accordance with the provisions of the Trust Deed of the place, day and hour of the meeting, the nature of the business to be transacted at the meeting and the resolutions to be proposed and considered at the meeting.

23.1.4 Whenever the Trustee wishes or is obliged to convene a meeting it will forthwith give notice in writing to the Group 1 Noteholders and the Issuer in the manner prescribed in Condition 16, of the place, day and hour of the meeting, the nature of the business to be transacted at the meeting and the resolutions to be proposed and considered at the meeting.

23.1.5 All meetings of the Group 1 Noteholders will be held in Johannesburg.

#### 23.2 Requisition

23.2.1 A requisition notice will state the nature of the business for which the meeting is to be held and the resolutions to be proposed and considered at the meeting and will be deposited at the Specified Office of the Issuer or the Trustee, as the case may be.

23.2.2 A requisition notice may consist of several documents in like form, each signed by one or more requisitionists.

#### 23.3 Convening of meetings by requisitionists

If the Issuer or the Trustee, as the case may be, does not convene a meeting to be held within 20 days of the deposit of a requisition notice, the requisitionists may themselves convene the meeting, but the meeting so convened will be held within 60 days from the date

of such deposit and will be convened as nearly as possible in the same manner as that in which meetings may be convened by the Issuer. Whenever the requisitionists are about to so convene any such meeting, requisitionists shall forthwith give notice of the meeting to the Issuer and the Trustee.

**23.4 Notice of meeting**

- 23.4.1 Unless the holders of at least 90% of the aggregate Outstanding Principal Amount of the Group 1 Notes, agree in writing to a shorter period, at least 15 days' written notice, specifying the place, day and time of the meeting, the nature of the business for which the meeting is to be held and the resolutions to be proposed and considered at the meeting, will be given to each Group 1 Noteholder, to the Issuer and to the Trustee.
- 23.4.2 The accidental omission to give such notice to any Group 1 Noteholder, to the Issuer or to the Trustee, as the case may be, or the non-receipt of any such notice, will not invalidate the proceedings at a meeting.

**23.5 Quorum**

- 23.5.1 A quorum at a meeting shall:
  - 23.5.1.1 for the purposes of considering an Ordinary Resolution, consist of Group 1 Noteholders present in person or by proxy and holding in the aggregate not less than one-third of the aggregate Outstanding Principal Amount of the Group 1 Notes;
  - 23.5.1.2 for the purposes of considering a resolution in respect of the dismissal of the Trustee and approval of the appointment of any new Trustee in accordance with the provisions of the Trust Deed or an Extraordinary Resolution, consist of Group 1 Noteholders present in person or by proxy and holding in the aggregate not less than a clear majority of the aggregate Outstanding Principal Amount of the Group 1 Notes.
- 23.5.2 No business will be transacted at a meeting of the Group 1 Noteholders unless a quorum is present at the time when the meeting proceeds to business.
- 23.5.3 If, within 15 minutes from the time appointed for the meeting, a quorum is not present, the meeting will, if it was convened on the requisition of the Group 1 Noteholders be dissolved. In every other case the meeting will stand adjourned to the same day in the third week thereafter, at the same time and place, or if that day is not a Business Day, the next succeeding Business Day. If at such adjourned meeting a quorum is not present the Group 1 Noteholders present, in person or by proxy, will constitute a quorum for the purpose of considering any resolution, including an Extraordinary Resolution.

**23.6 Chairman**

The chairman of the meeting shall be appointed by the Trustee. If the Trustee or the person appointed by the Trustee to preside as chairman of the meeting is not present within 10 minutes of the time appointed for the holding of the meeting, the Group 1 Noteholders then present will choose one of their own number to preside as chairman.

**23.7 Adjournment**

- 23.7.1 Subject to the provisions of this Condition 23, the chairman may, with the consent of, and will on the direction of, the meeting adjourn the meeting from time to time and from place to place.
- 23.7.2 No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 23.7.3 At least 14 days' written notice of the place, day and time of an adjourned meeting will be given by the Issuer or the Trustee, as the case may be, to the Issuer, the Trustee and each Group 1 Noteholder. In the case of a meeting adjourned in terms of Condition 23.6.3, the notice will state that the Group 1 Noteholders present in person or by proxy at the adjourned meeting will constitute a quorum.

**23.8 How questions are decided**

- 23.8.1 At a meeting, a resolution put to the vote will be decided on a poll.
- 23.8.2 In the case of an equality of votes, the chairman will not be entitled to a casting vote in addition to the vote, if any, to which he is entitled.

**23.9 Votes**

Voting shall only take place on a poll and not on a show of hands. On a poll every Group 1 Noteholder, present in person or by proxy, will be entitled to that proportion of the total votes which the aggregate Outstanding Principal Amount of the Group 1 Notes held by such Group 1 Noteholder bears to the aggregate Outstanding Principal Amount of all the Group 1 Notes. In relation to joint Group 1 Noteholders, the vote may be exercised only by that Group 1 Noteholder whose name appears first on the Register in the event that more than one of such Group 1 Noteholders is present, in person or by proxy, at the meeting. The Group 1 Noteholder in respect of Group 1 Notes held in the Central Securities Depository in uncertificated form shall vote at any such meeting on behalf of the holders of Beneficial Interests in such Group 1 Notes in accordance with the instructions to the Central Securities Depository's Nominee from the holders of Beneficial Interests conveyed through the Participants in accordance with the Applicable Procedures.

**23.10 Proxies and representatives**

- 23.10.1 Group 1 Noteholders, present either in person or by proxy, may vote on a poll. A Group 1 Noteholder, may by an instrument in writing (a "proxy form") signed by the Group 1

Noteholder (or his duly authorised agent) or, in the case of a juristic person, signed on its behalf by a duly authorised officer of the juristic person, appoint any person (a "proxy" or "proxies") to act on his or its behalf in connection with any meeting or proposed meeting.

- 23.10.2 A person appointed to act as proxy need not be a Group 1 Noteholder.
- 23.10.3 The proxy form will be deposited at the Specified Office of the Issuer or at the Specified Office of the Transfer Agent, as the case may be, not less than 24 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in such proxy proposes to vote.
- 23.10.4 No proxy form will be valid after the expiration of 6 months from the date named in it as the date of its execution.
- 23.10.5 Notwithstanding Condition 23.10.4, a proxy form will be valid for any adjourned meeting, unless the contrary is stated thereon.
- 23.10.6 A vote given in accordance with the terms of a proxy form will be valid notwithstanding the previous death or incapacity of the principal or revocation or amendment of the proxy form or of any of the instructions of the Group 1 Noteholder, pursuant to which the proxy form was executed or of the authority under which the proxy form was executed or the transfer of Group 1 Notes or in respect of which the proxy was given, provided that no intimation in writing of such death, incapacity, revocation or amendment shall have been received by the Issuer at its Specified Office or the Transfer Agent at its Specified Office, as the case may be, more than, and that the transfer has been given effect to less than, 12 hours before the commencement of the meeting or adjourned meeting at which the proxy is to be used.
- 23.10.7 Any Group 1 Noteholder which is a juristic person may authorise any person to act as its representative in connection with any meeting or proposed meeting of the Group 1 Noteholders, by resolution of the directors or other governing body of the juristic person. Any reference in the Terms and Conditions to a Group 1 Noteholder or any other member of the Group 1 Noteholders present in person, includes the duly authorised representative of a Group 1 Noteholder or any other member of the Group 1 Noteholders, as the case may be, which is a juristic person.

#### 23.11 Minutes

- 23.11.1 The Issuer will cause minutes of all resolutions and proceedings of meetings to be duly entered in the minute books of the Issuer.
- 23.11.2 Any such minutes as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings held or by the chairman of the next succeeding meeting, will be receivable in evidence without any further proof, and until the contrary is proved, a meeting the Group 1 Noteholders in respect of the proceedings of which minutes have been so made will be deemed to have been duly

held and convened and all resolutions passed thereat, or proceedings held, to have been duly passed and held.

**23.12 Written resolutions**

A resolution in writing submitted to the Group 1 Noteholders entitled to exercise voting rights in relation to the resolution, and signed by the requisite majority of the Group 1 Noteholders Noteholders, shall be as valid and effective as if it had been passed at a meeting duly convened and constituted and shall be deemed (unless a statement to the contrary is made in that resolution) to have been passed on the last day on which that resolution is signed by any one or more of the Group 1 Noteholders. That resolution may consist of two or more documents in the same form each of which is signed by one or more of the Group 1 Noteholders.

### THIRD PARTY RIGHTS AND OBLIGATIONS

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 24 (Third party rights and obligations):

#### 24. Condition 24 Third party rights and obligations

- 24.1 Each Group 1 Noteholder, upon its subscription for Group 1 Notes and the issue of Group 1 Notes to it, or upon the transfer of Group 1 Notes to it, as the case may be, shall be bound by those provisions of the Security SPV Guarantee which confer rights and/or impose obligations on the Group 1 Noteholders.
- 24.2 It is recorded that in terms of the Security SPV Guarantee, the Security SPV, upon signing the Security SPV Guarantee, is deemed to have given notice of the Terms and Conditions of the Group 1 Notes, and the Security SPV shall be bound by those provisions of the Terms and Conditions of the Group 1 Notes which confer rights and/or impose obligations on the Security SPV.

## COVENANTS

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 25 (Covenants):

### 25. Condition 25 Covenants

#### 25.1 Financial Indebtedness

25.1.1 There shall be no limitation on the incurrence of any Financial Indebtedness by the Issuer or any other Restricted Group Company:

25.1.1.1 if, immediately after the incurrence of such Financial Indebtedness, (i) the Leverage Ratio is less than 2.50 times; and (ii) the Fixed Charge Cover Ratio is at least 2.50 times, in each case calculated when the Issuer or any other Restricted Group Company wishes to incur additional Financial Indebtedness, after adjusting the relevant ratio giving the pro forma effect of such incurrence of additional Financial Indebtedness; and

25.1.1.2 the Issuer delivers a certificate (signed by 2 directors of the Issuer) to the Trustee at least 10 Business Days prior to the proposed date of incurrence of such Financial Indebtedness, (i) confirming compliance with the Financial Indebtedness Covenant and accompanied by the relevant calculations, and (ii) confirming that as at the date of such certificate there is no Event of Default or Potential Event of Default which is continuing, and immediately after the incurrence of such Financial Indebtedness, no Event of Default or Potential Event of Default will occur or be continuing as a result of the incurrence of the Financial Indebtedness.

25.1.2 If the provisions of Condition 25.1.1 are not satisfied, then the Issuer shall not, and shall procure that such other Restricted Group Company shall not, incur such additional Financial Indebtedness at that time. This restriction does not apply to the incurrence of any additional Financial Indebtedness:

25.1.2.1 under any GBF Agreement; provided that the aggregate outstandings, at any time, under the GBF Agreements do not exceed the lower of (i) R180 000 000 (of which R150 000 000 relates to performance bank guarantees in respect of the obligations of Group Companies under contracts with customers), and (ii) 40% of trade debtors of the Issuer and other Restricted Group Companies that are less than 90 days old;

25.1.2.2 under asset-backed facilities of vehicles, plant, equipment or computers concluded by Restricted Group Companies, provided that the aggregate outstandings under such asset-backed facilities by Restricted Group Companies does not exceed an aggregate amount of R170 000 000 from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;

- 25.1.2.3 to finance the purchase, construction or improvement of property and equipment at fair market value and of a type which is usual for a business of such nature, up to an aggregate amount of R20 000 000 from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;
- 25.1.2.4 under any Permitted Treasury Transactions;
- 25.1.2.5 in addition to that referred to in the other sub paragraphs of this Condition 25.1, which in aggregate does not exceed R20 000 000 from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;
- 25.1.2.6 to refinance any existing debt of the Issuer or any Restricted Group Company in whole or in part;
- 25.1.2.7 under guarantees granted by the Issuer or financial institutions in respect of the obligations of Group Companies under contracts with customers;
- 25.1.2.8 between the Issuer and any Restricted Group Company or between or among Restricted Group Companies; or
- 25.1.2.9 expressly permitted in writing by an Extraordinary Resolution of the Group 1 Noteholders.
- 25.1.3 The Leverage Ratio and Fixed Charge Cover Ratio will be calculated using the audited consolidated annual financial statements of the Issuer, if available, failing which the unaudited consolidated management accounts of the Issuer, for the relevant Measurement Period.

## 25.2 **Restricted Payments**

- 25.2.1 There shall be no limitation on the making of any Restricted Payment by the Issuer or any other Restricted Group Company if:
- 25.2.1.1 immediately after making such Restricted Payment, (i) the Leverage Ratio is less than 2.50 times; and (ii) the Fixed Charge Cover Ratio is at least 2.50 times, calculated when the Issuer or any other Restricted Group Company wishes to make a Restricted Payment; and
- 25.2.1.2 the aggregate amount of all Restricted Payments declared or made after the Issue Date of the Initial Notes by the Issuer and each other Restricted Group Company does not exceed 50% of Consolidated PAT plus 100% of the proceeds of share issuances, (or such higher percentage expressly permitted in writing by an Extraordinary Resolution of the Group 1 Noteholders), calculated on a cumulative basis during the period beginning on the first day of the month in which the Initial Notes are issued and ending on the last day of the month ending prior to the date of such proposed Restricted Payment; and

- 25.2.1.3 after the Restricted Payment is made, the Issuer or any other Restricted Group Company could incur at least R1.00 of additional Financial Indebtedness under the provisions of Condition 25.1.1 of the Financial Indebtedness Covenant; and
- 25.2.1.4 the Issuer delivers a certificate (signed by 2 directors of the Issuer) to the Trustee at least 10 Business Days prior to the proposed date of making the Restricted Payment, (i) confirming compliance with the Restricted Payment Covenant and accompanied by the relevant calculations, and (ii) confirming that as at the date of the certificate there is no Event of Default or Potential Event of Default which is continuing, and immediately after the date of making the Restricted Payment, no Event of Default or Potential Event of Default will occur or be continuing as a result of the date of making the Restricted Payment.
- 25.2.2 If the provisions of Condition 25.2.1 are not satisfied, then the Issuer shall not, and shall procure that such other Restricted Group Company shall not, make such Restricted Payment at that time. This restriction does not apply to:
- 25.2.2.1 the payment of any dividend within 60 days of its declaration if at such date of its declaration such payment would have been permitted by the provisions of this covenant;
- 25.2.2.2 Restricted Payments by the Issuer and Restricted Group Companies which in aggregate do not exceed R20 000 000 calculated from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;
- 25.2.2.3 a Restricted Payment by the Issuer or another Restricted Group Company to a Restricted Group Company; or
- 25.2.2.4 any Restricted Payment expressly permitted in writing by an Extraordinary Resolution of the Group 1 Noteholders.
- 25.2.3 The Fixed Charge Cover Ratio and Consolidated PAT will be calculated using the audited consolidated annual financial statements of the Issuer, if available, failing which the unaudited consolidated management accounts of the Issuer, for the relevant Measurement Period.
- 25.3 Limitation on Issuances and Sales of Shares of Restricted Subsidiaries**
- 25.3.1 The Issuer will not sell, pledge, alienate or otherwise dispose of any shares of a Restricted Subsidiary, and will not permit any Restricted Group Company (other than as permitted under the "Negative Pledge" covenant), directly or indirectly, to issue, sell, pledge, alienate or otherwise dispose, any shares of a Restricted Subsidiary (including options, warrants or other rights to purchase such shares). This restriction does not apply to:
- 25.3.1.1 any issuance or sale of shares of a Restricted Subsidiary to the Issuer or a wholly owned Restricted Subsidiary;

- 25.3.1.2 any issuance or sale of shares of a Restricted Subsidiary made in compliance with the "Disposal of Assets" covenant and if, immediately after giving effect to such issuance or sale, such Restricted Subsidiary would no longer constitute a Restricted Subsidiary and any remaining investment in such Person would have been permitted to have been made under the "Restricted Payments" covenant if made on the date of such issuance or sale;
- 25.3.1.3 any issuance or sale of shares of a Restricted Subsidiary made in compliance with the "Disposal of Assets" covenant and if immediately after giving effect to such issuance or sale such Restricted Subsidiary would continue to be a Restricted Subsidiary;
- 25.3.1.4 any issuance of shares of a Restricted Subsidiary, if after giving effect to such issuance, the Issuer directly or indirectly maintains at least the same percentage ownership of such Restricted Subsidiary as it owned immediately prior to such issuance;
- 25.3.1.5 shares issued by a Person prior to the time:
- 25.3.1.5.1 such Person becomes a Restricted Subsidiary,
- 25.3.1.5.2 such Person consolidates or merges with or into a Restricted Subsidiary, or
- 25.3.1.5.3 a Restricted Subsidiary consolidates or merges with or into such Person; but only if such shares were not issued or incurred by such Person in anticipation of it becoming a Restricted Subsidiary.

#### 25.4 **Transactions with Affiliates**

- 25.4.1 The Issuer shall not, and undertakes to procure that other Restricted Group Companies shall not, enter into any transaction or series of related transactions with, or for the benefit of, any Affiliate of the Issuer or any other Restricted Group Company unless such transaction or series of transactions is entered into in good faith and
- 25.4.1.1 such transaction or series of transactions is on terms that, taken as a whole, are not materially less favourable to the Issuer or such Restricted Group Company, as the case may be, than those that could have been obtained in comparable arm's-length transactions with third parties that are not Affiliates;
- 25.4.1.2 with respect to any transaction or series of related transactions involving aggregate payments or the transfer of assets or provision of services, in each case having a value greater than ZAR 5 000 000, the board of directors of the Issuer shall resolve with the participation of the majority of the Disinterested Directors (or in the event that there is only one Disinterested Director, by the resolution of such Disinterested Director), that such transaction or series of related transactions complies with Condition 25.4.1.1 above (and deliver a copy

of such resolution to the Trustee under cover of a certificate (signed by 2 directors of the Issuer); and

- 25.4.1.3 with respect to any transaction or series of related transactions involving aggregate payments or the transfer of assets or the provision of services, in each case having a value greater than ZAR 10 000 000, the Restricted Group Company shall obtain a written opinion of an accounting, appraisal or investment banking firm of national standing, stating that the transaction or series of transactions is fair to the such Restricted Group Company from a financial point of view (and deliver a copy of such opinion to the Trustee).
- 25.4.2 The restrictions in Condition 25.4.1 shall not apply to transactions between the Issuer and other Restricted Group Companies and shall not preclude loans to Unrestricted Group Companies made in accordance with Condition 25.11.

## 25.5 **Consolidations, Mergers and Acquisitions**

- 25.5.1 The Issuer will not, and will procure that each other Restricted Group Company will not, in a single transaction or a series of related transactions (i) acquire or subscribe for shares or other ownership interests in, or securities of, any Person, or (ii) acquire any business of any Person, or (iii) make any investment (whether debt or equity) in any Person, or (iv) enter into any amalgamation, unbundling, merger, consolidation or reconstruction with or into any other Person.
- 25.5.2 The restriction set out above will not apply (i) to any transaction or series of related transactions expressly permitted in writing by Extraordinary Resolution of the Group 1 Noteholders or (ii) if any payment in respect of such transaction or series of related transactions is made to another Restricted Group Company, or (iii) if :
- 25.5.2.1 immediately after giving effect to any such transaction or series of related transactions, in the case of any amalgamation, unbundling, merger, consolidation or reconstruction, either
- 25.5.2.1.1 the Issuer or the relevant Restricted Group Company, as the case may be, will be the continuing company; or
- 25.5.2.1.2 the Person (if other than the Issuer or the relevant Restricted Group Company, as the case may be) formed by or surviving any such amalgamation, unbundling, merger, consolidation or reconstruction (the "Surviving Entity") (i) will be a company duly incorporated and validly existing under the laws of South Africa, and (ii) will expressly assume the obligations of the Issuer or the relevant Restricted Group Company, as the case may be, under the Group 1 Notes and the Security Documents, in each case in form and substance satisfactory to the Trustee; and
- 25.5.2.1.3 each Restricted Group Company, unless it is the other party to the transactions described above, will confirm in writing that its guarantee will

continue to apply to the obligations of the Issuer, the relevant Restricted Group Company or the Surviving Entity, as the case may be, under the Group 1 Notes;

- 25.5.2.2 immediately after giving effect to such transaction or series of related transactions on a pro forma basis (and treating any obligation of the Issuer or any Restricted Group Company incurred in connection with or as a result of such transaction or series of related transactions as having been incurred by the Issuer or such Restricted Group Company at the time of such transaction) no Event of Default will have occurred and be continuing;
- 25.5.2.3 immediately after giving effect to such transaction or series of related transactions on a pro forma basis (on the assumption that the transaction or series of related transactions occurred on the first day of the Measurement Period prior to the consummation of such transaction or series of related transactions with the appropriate adjustments with respect to the transaction or series of related transactions being included in such pro forma calculation), the Issuer (or the Surviving Entity if the Issuer is not a continuing obligor under the Group 1 Notes) (i) could incur at least R1.00 of additional Financial Indebtedness under the provisions of the "Financial Indebtedness" covenant or (ii) would have a Fixed Charge Cover Ratio no less than it was immediately prior to giving effect to such transaction or series of related transactions;
- 25.5.2.4 immediately after giving effect to any such transaction or series of related transactions, the Consolidated Net Worth is equal to or greater than the Consolidated Net Worth prior to the proposed transaction based on the pro-forma consolidated balance sheet of the Issuer;
- 25.5.2.5 any payment in respect of such transaction or series of related transactions is made utilising funds which could otherwise be distributed as a Restricted Payment in terms of Condition 25.2 (Restricted Payments) at the end of the Measurement Period immediately preceding such transaction or series of related transactions;
- 25.5.2.6 the provisions of the "Negative Pledge" are complied with should any of the Issuer's or any Restricted Group Company's property or assets become subject to any Encumbrance immediately after giving effect to any such transaction or series of related transactions; and
- 25.5.2.7 the Issuer or the Surviving Entity will have delivered to the Trustee, in form and substance satisfactory to the Trustee, at least 10 Business Days prior to the proposed transaction, a certificate (signed by 2 directors of the Issuer) showing the computations to demonstrate compliance with Condition 25.5.2.2, 25.5.2.3, 25.5.2.4 and 25.5.2.5.

25.5.3 Nothing in this Condition 25.5 shall prevent a Restricted Subsidiary from consolidating with, merging into or transferring all or substantially all of its properties and assets to the Issuer or any other Restricted Subsidiary.

**25.6 Dividend Payments and other payments from Restricted Subsidiaries**

25.6.1 The Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create or otherwise cause or allow to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Restricted Subsidiary to:

25.6.1.1 pay dividends in cash or otherwise, or make any other distributions on or in respect of its share capital or any other interest or participation in, or measured by, its profits

25.6.1.2 pay any debt owed to the Issuer or any Restricted Group Company;

25.6.1.3 make loans or advances to the Issuer or any Restricted Group Company; or

25.6.1.4 transfer any of its properties or assets to the Issuer or Restricted Group Company.

25.6.2 The restrictions in Condition 25.6.1 shall not apply to encumbrances and restrictions imposed by the Terms and Conditions of the Group 1 Notes or the Security Documents or restrictions imposed by Applicable Law.

**25.7 Impairment of Security Interest**

25.7.1 The Issuer and each Restricted Group Company shall all times maintain in full force and effect (or where appropriate, promptly renew in a timely manner) all Encumbrances created pursuant to the Security Documents to which it is a party and from time to time execute, acknowledge and deliver or cause to be executed, acknowledged and delivered such further documents and/or instruments as may be reasonably requested by the Security SPV for perfecting or maintaining in full force and effect the Encumbrances granted under such Security Documents.

25.7.2 The Issuer will not, and the Issuer will not permit any Restricted Group Company to, take or omit to take any action that would, or would reasonably be expected to, have the result of impairing the Security provided under and pursuant to the Security Documents.

**25.8 Business Activities**

The Issuer will not, and will procure that Restricted Group Companies will not, enter into any new business type which the Issuer or other Restricted Group Companies do not have knowledge and experience in.

25.9 **Disposals of Assets**

- 25.9.1 Subject to the Security Documents and for so long as there is no Event of Default which is continuing, the Issuer and each other Restricted Group Company may, either in a single transaction or a series of transactions and whether related or not and whether voluntarily or involuntarily, dispose of all or any part of its assets, provided that:
- 25.9.1.1 the disposal is at a fair value (ie a value as could reasonably be expected to be obtained in an arm's length transaction. For a transaction or series of transaction exceeding R10, 000,000.00, a board resolution must confirm that the disposal is at fair value); and
- 25.9.1.2 the disposal proceeds, whether in cash or otherwise, must, subject to Condition 25.9.2, be applied, within 6 months of the relevant disposal, in repayment of the Group 1 Notes pursuant to the exercise by the Issuer of its right of Optional Redemption in terms of Condition 8.4, in repayment of the outstandings under any GBF Agreement, for capital expenditure or replacement capital expenditure or for the investment in any other asset comparable or superior as to type, value, quality and title, provided that if investment is made in a business from the disposal proceeds then such entity becomes a Restricted Group Company and Security is provided to the Security SPV.
- 25.9.2 If the disposal proceeds are not applied, within 6 months of the relevant disposal, for the purposes referred to in Condition 25.9.1.2, then the Issuer shall offer to redeem the Group 1 Notes, in an amount equal to so much of the disposal proceeds in respect of the relevant asset disposed of as exceeds R20 000 000, rounded down to the nearest R1 000 000 (the "**Excess Disposal Proceeds**"), in accordance with the remaining provisions of this Condition 25.9.
- 25.9.3 On or before the date of the expiry of the 6 month period referred to in Condition 25.9.2, the Issuer shall, by delivering a written notice (the "**Prepayment Offer Notice**") to each Group 1 Noteholder to that effect, offer to redeem the Group 1 Notes held by each such Group 1 Noteholder, on the date for redemption specified in the Prepayment Offer Notice (which shall not be later 10 Business Days after the expiry of the 6 month period referred to in Condition 25.9.2)(the "**Prepayment Offer Redemption Date**"), in an amount equal to its Pro Rata Share of the Excess Disposal Proceeds.
- 25.9.4 Each Group 1 Noteholder shall, within 10 Business Days of receipt of the Prepayment Offer Notice, notify the Issuer in writing whether it wishes to accept the offer, in whole or in part. If a Group 1 Noteholder fails to notify the Issuer of the acceptance of the offer in accordance with the provisions of this Condition 25.9.4, such Group 1 Noteholder shall be regarded as not having accepted the offer.
- 25.9.5 The Issuer shall, on the Prepayment Offer Redemption Date, redeem the Group 1 Notes of those Group 1 Noteholders who have accepted the offer in accordance with the provisions of Condition 25.9.4. Group 1 Notes redeemed pursuant to this

Condition 25.9.5 will be redeemed at their Early Redemption Amount referred to in Condition 8.7, together with accrued unpaid interest (if any) from (and including) the immediately preceding Interest Payment Date to (but excluding) the date of redemption.

- 25.9.6 The restrictions in Condition 25.9.1 do not apply to any disposal:
- 25.9.6.1 of trading stock made on arm's length terms in the ordinary course of trading;
  - 25.9.6.2 of any asset (not being a business or shares) on arm's length terms in exchange for any other asset comparable or superior as to type, value, quality and title;
  - 25.9.6.3 by the Issuer of the whole or the greater part of its undertaking or assets, which disposal may be made subject to compliance with the provisions of Conditions 8.6;
  - 25.9.6.4 of obsolete or redundant buildings and yards, vehicles, plant and equipment, for cash on arm's length terms; or
  - 25.9.6.5 constituted by a security interest which is permitted under Condition 11 (Negative Pledge).
- 25.9.7 Notwithstanding anything to the contrary contained in this Condition 25.9, if the Issuer exercises its right of Optional Redemption, in whole and not in part only, in terms of Condition 8.4:
- 25.9.7.1 the provisions of this Condition 25.9 shall not apply; and
  - 25.9.7.2 the Issuer and each Restricted Subsidiary, shall be entitled to dispose of all or substantially all of its assets whether in a single transaction or a series of related transactions, without any approval of the Group 1 Noteholders and any Security held in this regard shall be released upon the redemption in full of the Group 1 Notes and repayment in full of the other Group 1 Noteholders.
- 25.10 **Sale and Leaseback Transactions**
- 25.10.1 The Issuer shall not, and shall procure that no other Restricted Group Company shall, dispose of any of its assets to a third party on terms where any such asset is or may be required to be leased to or re-acquired or acquired by a Restricted Group Company, in circumstances where the transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset. This restriction does not apply to:
- 25.10.1.1 a transaction in terms of which the Restricted Group Company could have incurred the Financial Indebtedness in terms of the Financial Indebtedness Covenant in Condition 25.1 and the asset could have been given as security in terms of the Condition 11 (Negative Pledge);

- 25.10.1.2 the gross sale proceeds are at least equal to the fair market value of the asset, as determined by the directors acting in good faith; and
- 25.10.1.3 the disposal of the asset is permitted, and the proceeds of such disposal are applied, in accordance with Condition 25.10 (Disposals of Assets).
- 25.10.2 The restrictions in Condition 25.10.1 do not apply to any such disposal of assets by a Restricted Group Company to another Restricted Group Company.

**25.11 Loans to Unrestricted Group Companies**

Except as permitted in terms of Condition 25.5, the Issuer will not, and will not permit any other Restricted Group Company, to make any loans to any Person that is not a Restricted Group Company. This restriction will not apply to loans by a Restricted Group Company to Unrestricted Subsidiaries provided that the sum of all loans by Restricted Group Companies to Unrestricted Subsidiaries does not exceed 15% of the consolidated total assets (excluding intangible assets and deferred tax assets) of the Group.

**25.12 Treasury Transactions**

The Issuer and each Restricted Group Company shall not enter into any Treasury Transaction other than Permitted Treasury Transactions.

**25.13 Hedging**

The Issuer shall ensure that its board considers, on a quarterly basis, the hedging requirements of the Group.

**25.14 Information Undertakings**

- 25.14.1 The Issuer undertakes to deliver to the Trustee:
- 25.14.1.1 and to the JSE, its audited consolidated annual financial statements and reviewed unaudited interim consolidated financial results, within 90 days of each financial year end of the Issuer and within 60 days of each financial half year end of the Issuer, as the case may be, commencing with the half year ending on 31 August 2012;
- 25.14.1.2 within 90 days of each financial year end, a broker's letter detailing the insurance policies of the Group, together with a copy of the board resolution approving such insurance cover;
- 25.14.1.3 upon request by the Trustee, an up to date copy of the register of any Restricted Subsidiary;
- 25.14.1.4 promptly upon becoming aware of the same, details of any litigation, arbitration, mediation or similar proceedings either commenced, threatened or pending against it or any other Restricted Group Company which, if adversely

determined, would involve a liability in excess of R10 000 000 or its equivalent in any other currency.

- 25.14.2 The Issuer shall deliver to the Trustee, together with the financial statements delivered to the Trustee in terms of Condition 25.14.1.1, a certificate, signed by 2 directors of the Issuer, confirming compliance with the Covenants and with the provisions of Condition 26.3 and Condition 26.4 during the 6 months prior to the relevant financial year end or financial half year end, as the case may be.
- 25.14.3 Each compliance certificate delivered with the audited consolidated annual financial statements shall be accompanied by a certificate from the Issuer's auditors confirming the calculations and satisfaction of the provisions of Condition 26.3 and Condition 26.4 in the compliance certificates delivered by the Issuer to the Trustee during the previous year.
- 25.14.4 If there is a change in the IFRS accounting principles from that applicable at the Issue Date, then the Issuer may convene a meeting of the Group 1 Noteholders to approve, by Extraordinary Resolution, any changes required to the financial ratios referred to in the relevant Covenants so as to put the Issuer in the same position that it would have been in had a change in the IFRS accounting principles not occurred. Until such amendments are approved by Extraordinary Resolution of the Group 1 Noteholders, the Issuer will provide a description of any changes necessary for the financial statements delivered in terms of Condition 25.14.3 to reflect the IFRS accounting principles applicable at the Issue Date, and the financial ratios referred to in the relevant Covenants will be calculated on the basis of pro forma financial statements reflecting the IFRS accounting principles applicable at the Issue Date.

**25.15 Amendments to Transaction Documents and Security Documents**

The Issuer will not, and will not allow any Restricted Group Company, to agree to any amendment to, cancellation of, waiver in respect of, or discharge or release from, the Security Documents or Transaction Documents, without the prior authorisation of an Extraordinary Resolution of the Group 1 Noteholders.

## GUARANTEES

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 26 (Guarantees):

### 26. Condition 26 Guarantees

- 26.1 The Issuer has procured that the obligations of the Issuer to the Security SPV under the Indemnity are guaranteed by the Subsidiary Guarantors on the terms and conditions as contained in the Subsidiary Guarantee. Additional Subsidiary Guarantors may accede to the Subsidiary Guarantee from time to time. The Issuer shall notify the Noteholders in writing of such accession in accordance with Condition 16.
- 26.2 If a Subsidiary Guarantor ceases to be a Material Subsidiary, the Issuer is entitled to remove such Subsidiary as a Subsidiary Guarantor, provided that no amount is then due under the Subsidiary Guarantee and provided that the provisions of Condition 26.5 have been satisfied. The Issuer shall notify the Noteholders in writing of such cessation in accordance with Condition 16.
- 26.3 If, after the Issue Date, any member of the South African Group is a Material Subsidiary, the Issuer must promptly procure that that Material Subsidiary becomes a Subsidiary Guarantor.
- 26.4 If at any time after the Issue Date:
  - the aggregate contribution of the Issuer and all the Subsidiary Guarantors to the consolidated total assets (excluding intangible assets, deferred tax assets, investments in Subsidiaries of the Issuer and loans to Subsidiaries of the Issuer) of the Group or the consolidated EBITDA of the Group,
  - is less than
    - 85% of the consolidated total assets (excluding intangible assets, deferred tax assets, investments in Subsidiaries of the Issuer and loans to Subsidiaries of the Issuer) of the Group or the consolidated EBITDA of the Group (such shortfall being the **Financial Support Deficit**),
  - then the Issuer must procure, within 90 days of the end of each financial year end and financial half year end of the Issuer, that so many additional members of the South African Group become Subsidiary Guarantors as is necessary to ensure that there is no Financial Support Deficit.
- 26.5 The Issuer is not required to comply with Conditions 26.4 and 26.5 to the extent that it is unlawful for the relevant person to become a Subsidiary Guarantor or that person becoming a Subsidiary Guarantor would result in personal liability for its directors, officers or other management.

## ADDITIONAL DEFINITIONS IN RESPECT OF THE GROUP 1 NOTES

1. Terms and expressions set out below will have the meanings set out below in the Terms and Conditions of the Group 1 Notes of the Tranche referred to in this Applicable Pricing Supplement:
  - 1.1 **"Additional Notes"** means every Tranche of Notes issued in terms of the Programme in addition to the Initial Notes, which participate in the same Security as that granted in favour of the holders of the Initial Notes (and thus identified in the Applicable Pricing Supplement as Group 1 Notes) and are issued on the same Terms and Conditions as the Initial Notes, except for their respective Issue Dates, Interest Commencement Dates, Issue Price, Interest Rate, Interest Payment Dates, early redemption penalties or fees and Final Redemption Dates;
  - 1.2 **Affiliate** means, in relation to any Person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company or any Person that owns, directly or indirectly, 20% or more of such Person's ordinary share capital;
  - 1.3 **Botswanan Pledge** means the pledge by Frankipile International Projects Limited of its shares in Frankipile Botswana (Pty) Ltd to the Security SPV;
  - 1.4 **Botswanan Security Cession** means the cession in security by Frankipile Botswana (Pty) Ltd of its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries (if any) and its reversionary interest in its debtors book granted to the Security SPV, as security for its obligations to the Security SPV under the Subsidiary Guarantee;
  - 1.5 **Cash and Cash Equivalents** means cash on hand and on demand deposit, deposits held on call with financial institutions and other short-term highly liquid investments that are readily convertible to a known amount of cash and are subject to an insignificant risk of changes in value and bank overdrafts, in each case, which is freely available to the Group at that time and which is capable of being applied against Financial Indebtedness of the Group;
  - 1.6 **Consolidated EBIT** means, in relation to a Measurement Period, the aggregate of:
    - 1.6.1 the consolidated operating profits (excluding the results from discontinued operations) of the Group before Consolidated Net Finance Costs and tax for that Measurement Period;

adjusted by:

    - 1.6.1.1 excluding any items which represent gains or losses arising on:
      - 1.6.1.1.1 restructurings of the activities of an entity and reversals of any provisions for the costs of restructuring;
      - 1.6.1.1.2 disposals of non-current assets;
      - 1.6.1.1.3 the disposal of assets associated with discontinued operations;

- 1.6.1.1.4 movements of any provision;
- 1.6.1.2 excluding any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis) which is reported through the income statement;
- 1.6.1.3 excluding extraordinary gains or losses;
- 1.6.1.4 excluding non-cash items; and
- 1.6.1.5 excluding debt raising costs;
- 1.7 **Consolidated EBITDA** means, in relation to a Measurement Period, Consolidated EBIT for that Measurement Period after adding back any depreciation and amortisation and excluding any charge for impairment or any reversal of any previous charge made in the period;
- 1.8 **Consolidated Net Finance Costs** means, in relation to a Measurement Period, all Finance Costs (whether paid, payable or added to principal) incurred by the Group during that period calculated on a consolidated basis less Interest Receivable by the Group during that period calculated on a consolidated basis;
- 1.9 **Consolidated Net Worth** means at any time the aggregate of:
  - 1.9.1 the amount paid up or credited as paid up on the issued share capital of Restricted Group Companies; and
  - 1.9.2 the net amount standing to the credit (or debit) of the consolidated reserves of Restricted Group Companies;
- 1.10 **Consolidated PAT** means, in relation to a Measurement Period, the aggregate of:
  - 1.10.1 the consolidated operating profits (excluding the results from discontinued operations) of the Group after Consolidated Net Finance Costs and tax for that Measurement Period;

adjusted by:

  - 1.10.1.1 excluding any items which represent gains or losses, together with any related provisions for taxes on such gains or losses, arising on:
    - 1.10.1.1.1 restructurings of the activities of an entity and reversals of any provisions for the costs of restructuring;
    - 1.10.1.1.2 disposals of non-current assets;
    - 1.10.1.1.3 the disposal of assets associated with discontinued operations;
    - 1.10.1.1.4 reversals of any provision;

- 1.10.1.2 excluding any unrealised gains or losses, together with any related provisions for taxes on such gains or losses, on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis) which is reported through the income statement;
- 1.10.1.3 excluding any net after tax extraordinary gains or losses;
- 1.10.1.4 excluding non-cash items in relation to write-ups, write-downs or write-offs of assets of the Group, together with any related provisions for taxes on such non-cash items;
- 1.10.1.5 excluding debt and equity raising costs, together with any related provisions for taxes on such debt and equity raising costs; and
- 1.10.1.6 excluding any interest accrued on subordinated, unsecured loans, if any;
- 1.11 **Covenants** means the covenants referred to in Condition 25;
- 1.12 "**Disinterested Director**" means, with respect to any transaction or series of related transactions, a member of the Issuer's Board of Directors who does not have any material direct or indirect financial interest in or with respect to such transaction or series of related transactions or is not an Affiliate, or an officer, director or employee of any Person (other than the Issuer) who has any direct or indirect financial interest in or with respect to such transaction or series of related transactions;
- 1.13 **Distribution** means, in relation to the Issuer or a Restricted Group Company, to:
- 1.13.1 declare, make or pay any dividend, charge, fee or other distribution (whether in cash or in kind) on or in respect of its shares or share capital (or any class of its share capital);
- 1.13.2 repay or distribute any share premium account;
- 1.13.3 pay any management, advisory or other fee or royalty to or to the order of its shareholders;
- 1.13.4 pay any principal or interest in respect of amounts due (whether in respect of an inter-company loan, subordinated loan or otherwise) to or to the order of its shareholders; or
- 1.13.5 redeem, purchase or repay any of its shares or share capital (or any instrument convertible into shares or share capital) or resolve to do so;
- 1.14 **Extraordinary Resolution of the Group 1 Noteholders** means a resolution passed at a properly constituted meeting of the Group 1 Noteholders, by a majority consisting of not less than 66,67% of the votes cast at a poll by members of the Group 1 Noteholders, present in person or by proxy;
- 1.15 **Finance Costs** means, for any Measurement Period, the aggregate amount, without double counting, of the accrued interest, dividends on redeemable preference shares, commission,

fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Financial Indebtedness (excluding any such charges on any derivative transaction, protecting against or benefiting from fluctuations in any rate or price), but taking no account of any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis) which is reported through the income statement;

- 1.16 **Finance Documents** means collectively and individually any of:
- 1.16.1 The Trust Deed;
  - 1.16.2 the Terms and Conditions of the Group 1 Notes;
  - 1.16.3 the Security Documents; and
  - 1.16.4 any other document which is from time to time designated by the Trustee (on behalf of the Group 1 Noteholders), as a Finance Document;
- 1.17 **Financial Indebtedness** means, without double counting, any indebtedness for or in respect of:
- 1.17.1 moneys borrowed or credit provided;
  - 1.17.2 any acceptance credit facility (including any dematerialised equivalent);
  - 1.17.3 any note purchase facility, bond, note, debenture, loan stock or other similar instrument;
  - 1.17.4 any suspensive sale or instalment credit transaction;
  - 1.17.5 any agreement treated as a finance or capital lease in accordance with IFRS;
  - 1.17.6 receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
  - 1.17.7 any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark to market value of the derivative transaction will be used to calculate its amount other than in respect of the Esor share incentive scheme);
  - 1.17.8 any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution;
  - 1.17.9 any redeemable preference share;
  - 1.17.10 any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing; or

- 1.17.11 any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in the above clauses;
- 1.18 **Fixed Charge Cover Ratio** means, in respect of a Measurement Period, the historical ratio of pro-forma Consolidated EBITDA to pro forma Consolidated Net Finance Costs, at the end of that relevant Measurement Period;
- 1.19 **GBF Agreement** means a general banking facility agreement entered into between a GBF Lender, the Issuer and/or its Subsidiaries, in terms of which the GBF Lender grants to the Issuer and/or its Subsidiaries, a revolving working capital facility and ancillary facilities, in aggregate up to R180 000 000 (of which R150 000 000 relates to performance bank guarantees in respect of the obligations of Group Companies under contracts with customers), to fund the Issuer's (and/or such Subsidiaries') working capital, overdraft, letters of credit and foreign exchange contract requirements from time to time, including the issuing of guarantees, on the terms and conditions set out therein, as amended, novated and/or substituted from time to time in accordance with its terms;
- 1.20 **GBF Lender** means a lender under a GBF Agreement from time to time;
- 1.21 **Group** means the Issuer and its Subsidiaries;
- 1.22 **Group 1 Noteholders** means the holders of the Group 1 Notes;
- 1.23 **Group 1 Notes** means:
- 1.23.1 the Initial Notes; and
- 1.23.2 the Additional Notes, if any,
- and designated as such in the Applicable Pricing Supplement;
- 1.24 **Holding Company** means a holding company within the meaning of the Companies Act;
- 1.25 **IFRS** means International Financial Reporting Standards and the interpretation of those standards as adopted by the International Accounting Standards Board;
- 1.26 **Indemnity** means the indemnity agreement between the Issuer and the Security SPV, pursuant to which the Issuer indemnifies and holds the Security SPV harmless in respect of claims made against the Security SPV under, amongst others, the Security SPV Guarantee, as amended, novated and/or substituted from time to time in accordance with its terms;
- 1.27 **Initial Notes** means all Tranches of Notes issued in terms of the Programme on the same date as Tranche 1 of Series 1 of the Notes;
- 1.28 **Interest Receivable** means, for any Measurement Period, the aggregate amount, without double counting, of all interest and other financing charges received or receivable;

- 1.29 **Issuer Security Cession** means the cession in security by the Issuer of its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book granted to the Security SPV, as security for the obligations of the Issuer to the Security SPV under the Indemnity;
- 1.30 **Leverage Ratio** means, in respect of a Measurement Period, the ratio of Net Debt to the historical ratio of pro-forma Consolidated EBITDA, at the end of that relevant Measurement Period;
- 1.31 **Material Subsidiary** means a direct or indirect Subsidiary of the Issuer whose total assets or EBITDA exceed 5% of the consolidated total assets or consolidated EBITDA of the Group as a whole, calculated by reference to the last audited (consolidated or, as the case may be, unconsolidated) annual or unaudited semi-annual accounts of the Subsidiary, whichever is the latest, and the latest audited annual or unaudited semi-annual consolidated accounts of the Issuer, whichever is the latest. For the purposes of this definition, intangible assets, deferred tax assets, investments in Subsidiaries of the Issuer and loans to Subsidiaries of the Issuer are excluded from the calculation of total assets;
- 1.32 **Mauritian Fixed and Floating Charge** means the fixed and floating charge agreement in terms of which each Frankipile Mauritius International Limited and Frankipile International Projects Limited grants a fixed and floating charge over its bank accounts, trade receivables and intra-group claims to the Security SPV;
- 1.33 **Mauritian Pledge** means the pledge of its shares by Esorfranki Plant (Pty) Ltd in Frankipile Mauritius International Limited and Frankipile International Projects Limited to the Security SPV;
- 1.34 **Measurement Period** means a period of 12 months ending on the last day of the month preceding the date on which the relevant ratio is calculated;
- 1.35 **Minority Investment** means, in relation to the Issuer or a Restricted Group Company, the acquisition of, or subscription for, shares or other ownership interests in or securities of, any company or other person, which is not, or does not become, a Subsidiary;
- 1.36 **Net Debt** means, at any time, in respect of the Group, on a consolidated basis, the sum of all Financial Indebtedness of the Group less any Cash and Cash Equivalents held by the Group;
- 1.37 **Ordinary Resolution of the Group 1 Noteholders** means a resolution passed at a properly constituted meeting of the Group 1 Noteholders, by a majority of the votes cast at a poll by the members of the Group 1 Noteholders, present in person or by proxy;
- 1.38 **Permitted Treasury Transaction** means:
- 1.38.1 any Treasury Transaction entered into to hedge the Group 1 Notes up to a maximum of 100% of the Outstanding Principal Amount of the Group 1 Notes;

- 1.38.2 any Treasury Transaction entered into with a GBF Lender under the terms of any GBF Agreement; and
- 1.38.3 any Treasury Transaction entered into in the ordinary course of business (and not for investment or speculative purposes) on arm's length terms where used as a hedge to protect against an actual exposure or risk incurred or to be incurred by a Restricted Group Company as a result of:
- 1.38.3.1 interest rate exposure in relation to any payment obligations on interest bearing Financial Indebtedness in the ordinary course of business; or
- 1.38.3.2 currency exposure in respect of payments due under import contracts;
- provided that in respect of any Treasury Transaction permitted pursuant to this Condition 1.38:
- 1.38.4 other than the Treasury Transaction permitted under Condition 1.38.1, any restructure, refinancing or amendment of such Treasury Transaction which results in the extension of the due date for payment of any amount payable under such Treasury Transaction or any increase of the indebtedness of a Restricted Group Company shall only be permitted if the Conditions set out in Condition 25.1.1 have been complied with; or
- 1.38.5 if such Treasury Transaction is concluded on the basis, or with the result, that at the time at which such Treasury Transaction is concluded or becomes effective (the **Relevant Date**), it results in the incurrence of Financial Indebtedness by any Restricted Group Company on the Relevant Date, it shall only be permitted if the Conditions set out in Condition 25.1.1 have been complied with;
- 1.39 **Person** means any individual, company, partnership, joint venture, association, trust, unincorporated organisation or government or any agency or political subdivision thereof;
- 1.40 **Potential Event of Default** means any event or circumstance specified in Condition 12.1 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under any Finance Document or any combination of any of the foregoing) be an Event of Default;
- 1.41 **Pro Rata Share** means, in relation to a Group 1 Note, the ratio which the Outstanding Principal Amount of that Group 1 Note bears to the Outstanding Principal Amount of all the Group 1 Notes;
- 1.42 **Restricted Payment** means, in relation to the Issuer or any other Restricted Group Company:
- 1.42.1 a Distribution; or
- 1.42.2 a Minority Investment;

- 1.43     **Restricted Subsidiary** means any Subsidiary of the Issuer that is not an Unrestricted Subsidiary;
- 1.44     **Restricted Group Company** means the Issuer and each Restricted Subsidiary;
- 1.45     **Security** means the security granted in favour of the Security SPV by the Issuer and other Group Companies, created pursuant to the Security Documents;
- 1.46     **Security Documents** means:
- 1.46.1     the Security SPV Guarantee;
- 1.46.2     the Indemnity;
- 1.46.3     the Issuer Security Cession;
- 1.46.4     the Subsidiary Guarantee;
- 1.46.5     the Subsidiary Guarantor Security Cession(s);
- 1.46.6     Mauritian Pledge;
- 1.46.7     Mauritian Fixed and Floating Charge;
- 1.46.8     Botswanan Pledge;
- 1.46.9     Botswanan Security Cession;
- 1.46.10     the Special Notarial Bonds; and
- 1.46.11     any other document which is from time to time designated by the Group 1 Noteholders as a Security Document;
- 1.47     **Security Provider** means the Security SPV, Esorfranki Construction (Pty) Ltd, Esorfranki Plant (Pty) Ltd, Esorfranki Property Developments (Pty) Ltd, Frankipile Mauritius International Limited, Frankipile International Projects Ltd, Frankipile Botswana (Pty) Ltd and each other Restricted Group Company that guarantees or otherwise directly or indirectly provides credit support for the obligations of the Issuer to Group 1 Noteholders;
- 1.48     **Security SPV** means Tizabuzz (RF) Proprietary Limited (Registration number 2012/061270/07), a company duly registered and incorporated in accordance with the company laws of South Africa;
- 1.49     **Security SPV Guarantee** means the guarantee issued by the Security SPV in favour of the Trustee for the benefit of the Group 1 Noteholders for the obligations of the Issuer under the Group 1 Notes, as amended, novated and/or substituted from time to time in accordance with its terms;

- 1.50 **Secured Creditors** means, for purposes of the Security Documents, the Group 1 Noteholders;
- 1.51 **South African Group** means a member of the Group incorporated in South Africa;
- 1.52 **Special Notarial Bond** means each first ranking special notarial bond granted by each of Esorfranki Construction (Pty) Ltd and Esorfranki Plant (Pty) Ltd, over specified plant and equipment of each such Subsidiary, in favour of the Security SPV, as security for its obligations to the Security SPV under the Subsidiary Guarantee;
- 1.53 **Subsidiary** means a subsidiary within the meaning of the Companies Act;
- 1.54 **Subsidiary Guarantee** the unconditional and irrevocable guarantee given by each Subsidiary Guarantor to the Security SPV, jointly and severally guaranteeing the obligations of the Issuer to the Security SPV under the Indemnity;
- 1.55 **Subsidiary Guarantor** means each of Esorfranki Construction (Pty) Ltd, Esorfranki Plant (Pty) Ltd, Esorfranki Property Developments (Pty) Ltd, Frankipile Mauritius International Limited, Frankipile International Projects Ltd, Frankipile Botswana (Pty) Ltd and any additional Subsidiary of the Issuer that accedes to the Subsidiary Guarantee, if and for so long as each such company is a party to the Subsidiary Guarantee in accordance with the provisions of the Terms and Conditions of the Group 1 Notes;
- 1.56 **Subsidiary Guarantor Security Cession** means the cession in security by each Subsidiary Guarantor, if applicable, of its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book granted to the Security SPV, as security for its obligations to the Security SPV under the Subsidiary Guarantee;
- 1.57 **Transaction Documents** means, for the purposes of Condition 12.1.8 (Events of Default), the Security Documents and the Trust Deed;
- 1.58 **Trust Deed** means the trust deed constituting the Esorfranki Note Trust;
- 1.59 **Trustee** means the trustee for the time being of the Esorfranki Note Trust, which shall initially be Maitland Trust Limited (Registration number 1981/009543/06), a company duly registered and incorporated in accordance with the company laws of South Africa;
- 1.60 **Treasury Transaction** means any currency or interest purchase, cap or collar agreement, forward rate agreements, interest rates or currency future or option contracts, foreign exchange or currency purchase or sale agreement, interest rate swap, currency swap or combined interest rate and currency swap agreement and any other similar agreement in each case entered into in connection with any fluctuation in any rate or price; and
- 1.61 **Unrestricted Subsidiary** means any Subsidiary of the Issuer that has not guaranteed, on an unlimited basis, or otherwise directly or indirectly provided credit support for the obligations of the Issuer to Group 1 Noteholders.

2. For purposes of Condition 25, an Event of Default is "continuing" if it has not been remedied to the satisfaction of the Trustee or waived in writing by the Trustee (in each case, acting on the instructions of an Extraordinary Resolution of the Group 1 Noteholders).

## DOCUMENTS INCORPORATED BY REFERENCE

For so long as the Group 1 Notes are outstanding, the following documents listed below are deemed to be incorporated into, and to form part of, the Programme Memorandum in addition to the documents listed in the Programme Memorandum and will be available for inspection by Group 1 Noteholders at the Specified Office of the Issuer:

- (a) the Trust Deed; and
- (b) the Security Documents;

## TRUSTEE

Maitland Trust Limited (Registration number 1981/009543/06) has been appointed in terms of a trust deed between the Trustee and the Issuer, to act as trustee for the benefit of Group 1 Noteholders.

Pursuant to the Trust Deed, the Trustee is entitled to exercise the rights conferred on the Trustee and is obliged to perform the duties imposed on the Trustee in terms of the Conditions of the Group 1 Notes, including the rights and duties in terms of Condition 12.2 (Steps following an Event of Default relating to the Group 1 Notes), Condition 23 (Meetings of the Group 1 Noteholders) and Condition 25 (Covenants).

The Trust Deed sets out provisions relating to the replacement of the Trustee, including following a resolution to this effect by the Noteholders, by a majority consisting of not less than 75% of the votes cast on a poll by the Noteholders, present in person or by proxy at a meeting convened in terms of the Terms and Conditions of the Notes.

The Trust Deed contains provisions for the indemnification of the Trustee and for its relief from responsibility, including relieving it from taking proceedings unless indemnified and/or secured and/or prefunded to its satisfaction. The Trustee is entitled to enter into business transactions with the Issuer and any entity related to the Issuer without accounting for any profit. The Trustee may rely without liability to Group 1 Noteholders on a report, confirmation or certificate or any advice of any accountants, financial advisers or investment bank, whether or not addressed to it and whether their liability in relation thereto is limited (by its terms or by any engagement letter relating thereto entered into by the Trustee or in any other manner) by reference to a monetary cap, methodology or otherwise. The Trustee shall be obliged to accept and be entitled to rely on any such report, confirmation or certificate or advice where the Issuer procures delivery of the same pursuant to its obligation to do so under any provision of these Conditions or the Trust Deed and such report, confirmation or certificate or advice shall be binding on the Issuer, the Trustee and the Group 1 Noteholders in the absence of manifest error.

In connection with the exercise of its functions the Trustee shall have regard to the interests of the Group Noteholders as a class and, in particular but without limitation, shall not have regard to the consequences of the exercise of its trusts, powers or discretions for individual Group 1 Noteholders resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory, and the Trustee shall not be entitled to require, nor shall any Group 1 Noteholder be entitled to claim, from the Issuer or any other person any indemnification or payment in respect of any tax consequences of any such exercise upon individual Group 1 Noteholders.



**APPLICABLE PRICING SUPPLEMENT**

**Esorfranki Limited**

(the "Issuer")

*(Incorporated with limited liability in South Africa under registration number 1994/000732/06)*

**Issue of R125 000 000 Senior Secured Floating Rate Notes with a Stock Code EFC02**

**Under its R1 000 000 000 Domestic Medium Term Note Programme**

This document constitutes the Applicable Pricing Supplement relating to the issue of Notes described in this Applicable Pricing Supplement.

This Applicable Pricing Supplement must be read in conjunction with the Programme Memorandum issued by the Issuer dated 25 July 2012, as may be amended or supplemented from time to time. To the extent that there is any conflict or inconsistency between the contents of this Applicable Pricing Supplement and the Programme Memorandum, the provisions of this Applicable Pricing Supplement shall prevail.

Any capitalised terms not defined in this Applicable Pricing Supplement shall have the meanings ascribed to them in the Terms and Conditions. References in this Applicable Pricing Supplement to the Terms and Conditions are to the section of the Programme Memorandum headed "*Terms and Conditions of the Notes*". References to any Condition in this Applicable Pricing Supplement are to that Condition of the Terms and Conditions.

**The Group 1 Notes do not have a credit rating and are of a speculative nature. Prior to investing in Group 1 Notes prospective investors should seek independent professional advice.** See the sections of the Programme Memorandum titled "Description of the Group" and "Risk Factors" and all the Schedules to this Applicable Pricing Supplement, for some of the investment considerations to be taken into account by prospective investors in the Group 1 Notes.

The Issuer and each Subsidiary Guarantor certifies that to the best of its knowledge and belief there are no facts that have been omitted from the Programme Memorandum which would make any statement false or misleading and that all reasonable enquiries to ascertain such facts have been made and that the Programme Memorandum contains all information required by Applicable Law and, in relation to any Tranche of Notes listed on the Interest Rate Market of the JSE, the JSE Debt Listings Requirements. The Issuer and each Subsidiary Guarantor accepts full responsibility for the information contained in the Programme Memorandum, the Applicable Pricing Supplements and the annual financial report and any amendments to the annual financial report or any supplements from time to time, except as otherwise stated therein.

The JSE assumes no responsibility or liability of whatsoever nature for the contents of the Programme Memorandum or this Applicable Pricing Supplement or the annual financial statements or any other information incorporated by reference into the Programme Memorandum (as amended or restated from time to time), and the JSE makes no representation as to the accuracy or completeness of the Programme Memorandum or this Applicable Pricing Supplement, the annual financial statements or any other

information incorporated by reference into the Programme Memorandum (as amended or restated from time to time). The JSE expressly disclaims any liability for any loss arising from or in reliance upon the whole or any part of this Programme Memorandum or this Applicable Pricing Supplement or the annual financial report or any other information incorporated by reference into this Programme Memorandum (as amended or restated from time to time).

#### **DESCRIPTION OF THE NOTES**

1. Issuer	Esorfranki Limited
2. Status of the Notes	Senior Notes
3. Security	Secured. These Notes are Group 1 Notes. See Appendix "B" for a description of the security structure
4. Listed/Unlisted	Listed
5. Series number	2
6. Tranche number	1
7. Aggregate Principal Amount of this Tranche	R125 000 000
8. Interest/Payment Basis	Floating Rate
9. Issue Date and first settlement date	24 August 2012
10. Minimum Denomination per Note	R1 000 000
11. Specified Denomination (Principal Amount per Note)	R1 000 000
12. Issue Price(s)	100% of the Principal Amount of each Note
13. Applicable Business Day Convention, if different to that specified in the Terms and Conditions	Following Business Day
14. Interest Commencement Date(s)	24 August 2012
15. Step-Up Date	N/A
16. Final Redemption Date	24 August 2015
17. Specified Currency	ZAR

18. Additional Business Centre	N/A
19. Maturity Amount	100% of the Principal Amount of each Note
20. Set out the relevant description of any additional/amended Terms and Conditions relating to the Notes (including additional covenants, if any)	See Appendix "C" for additional/amended Terms and Conditions relating to the Notes.

#### **FIXED RATE NOTES**

21. Fixed Interest Rate	N/A
22. Interest Payment Date(s)	N/A
23. Interest Period(s)	N/A
24. Initial Broken Amount	N/A
25. Final Broken Amount	N/A
26. Step-Up Rate	N/A
27. Any other items relating to the particular method of calculating interest	N/A

#### **FLOATING RATE NOTES**

28. Interest Payment Date(s)	the last day of August, November, February and May of each year, or if such day is not a Business Day then in accordance with the Following Business Day convention
29. Interest Period(s)	From (and including) each Interest Payment Date to (but excluding) the following Interest Payment Date, provided that the first Interest Period shall be from (and including) the Interest Commencement Date to (but excluding) 30 November 2012 and the last Interest Period shall be from (and including) 31 May 2015 to (but excluding) the Final Redemption Date
30. Manner in which the Interest Rate is to be	Screen Rate Determination

determined	
31. Margin/Spread for the Interest Rate	4.50% per annum to be added to the relevant Reference Rate
32. Margin/Spread for the Step-Up Rate	N/A
33. If Screen Determination	
(a) Reference Rate (including relevant period by reference to which the Interest Rate is to be calculated)	An interpolated rate between 3 month JIBAR and 6 month JIBAR for the first Interest Period, 3 month JIBAR for each Interest Period thereafter and an interpolated rate between 1 month JIBAR and 3 month JIBAR for the last Interest Period
(b) Rate Determination Date(s)	The first day of each Interest Period, namely the last day of August, November, February and May of each year, or if such day is not a Business Day then in accordance with the Following Business day convention
(c) Relevant Screen page and Reference Code	SAFEY Page (or the SAFEX nominated successor screen for JIBAR) under the caption "SFX 3M YIELD
34. If Interest Rate to be calculated otherwise than by reference to Screen Rate Determination, insert basis for determining Interest Rate/Margin/Fall back provisions	N/A
35. Any other terms relating to the particular method of calculating interest	N/A
<b>ZERO COUPON NOTES</b>	
36. (a) Implied Yield	N/A
(b) Reference Price	N/A
(c) Equivalent Discount Rate	N/A
(d) Spread to Reference Rate	N/A
(e) Maturity Date	N/A
(f) Day Count	N/A

(g) Any other formula or basis for determining N/A  
amount payable

#### INDEXED NOTES

37. (a) Type of Indexed Notes N/A
- (b) Index/Formula by reference to which N/A  
Interest Amount/Final Redemption  
Amount is to be determined
- (c) Manner in which the Interest N/A  
Amount/Final Redemption Amount is to  
be determined
- (d) Interest Period N/A
- (e) Interest Payment Date(s) N/A
- (f) If different from the Calculation Agent, N/A  
agent responsible for calculating amount  
of principal and interest
- (g) Provisions where calculation by reference N/A  
to Index and/or Formula is impossible or  
impracticable

#### OTHER NOTES

38. If the Notes are not Fixed Rate Notes or N/A  
Floating Rate Notes, or if the Notes are a  
combination of the above and some other  
Note, set out the relevant description of any  
additional Terms and Conditions relating to  
such Notes

#### PROVISIONS REGARDING REDEMPTION/ MATURITY

39. Redemption at the option of the Issuer in Yes  
terms of Condition 8.4: if yes:

(a) Optional Redemption Date(s)	Any Interest Payment Date after 28 February 2014 (ie 1.5 year no call period)
(c) Optional Redemption Amount(s) and method, if any, of calculation of such amount(s)	The Principal Amount of the Note being redeemed, multiplied by the following percentages in each of the following periods (in each period, both dates inclusive):  1 March 2014 to 31 August 2014 (ie year 1.5 - 2.0) – 103%; 1 September 2014 to 28 February 2015 (ie year 2.0 - 2.5) – 102%; 1 March 2015 to 24 August 2015 (ie year 2.5 - 3.0) – 101%;
(d) Minimum period of notice	30 days
(e) If redeemable in part:	
Minimum Redemption Amount(s)	N/A
Higher Redemption Amount(s)	N/A
(f) Other terms applicable on Redemption	N/A
40. Redemption at the option of the holders of the Senior Notes (Put Option) in terms of Condition 8.5: if yes	No
(a) Optional Redemption Date(s) (Put)	N/A
(b) Optional Redemption Amount(s) (Put) and method, if any, of calculation of such amount(s)	N/A
(c) Minimum period of notice	N/A
(d) If redeemable in part:	N/A
Minimum Redemption Amount(s)	N/A
Higher Redemption Amount(s)	N/A

	(e) Other terms applicable on Redemption	N/A
41.	Redemption at the option of the holders of the Notes upon the occurrence of a Put Event in terms of Condition 8.6:	
	(a) Delisting of the Notes of this Tranche/the ordinary shares of the Issuer from the JSE	Yes
	(b) Change of Control	Yes
	(c) Issuer disposing of the whole or the greater part of its undertaking or assets	Yes
42.	Early Redemption Amount(s) payable on redemption for Taxation reasons in terms of Condition 8.3 or Optional Redemption following a Put Event in terms of Condition 8.6 or early redemption following an Event of Default in terms of Condition 12 : if yes	Yes
	Early Redemption Amount and method, if any, of calculation of such amount	<p>i) In the case of Redemption for Taxation reasons in terms of Condition 8.3 - Early Redemption Amount calculated as per Condition 8.7.</p> <p>ii) In the case of early redemption following an Event of Default in terms of Condition 12 - Early Redemption Amount calculated as per Condition 8.7</p> <p>iii) In the case of Optional Redemption following a Put Event in terms of Condition 8.6 - Early Redemption Amount shall be calculated as set out below:</p> <p>For the Interest Payment Dates from the Issue Date to 28 February 2014 (both dates inclusive) (ie year 0 - 1.5): the Principal Amount of the Note being redeemed, plus the Present Value of the Margin (as defined below).</p> <p>For the Interest Payment Dates from 1 March 2014 to 24 August 2015 (both dates inclusive) (ie year 1.5 - 3.0): the Principal Amount of the Note being</p>

redeemed multiplied by 101%.

For the purposes of this Condition 8.6:

Present Value of Margin = Sum (Margin x Discount Factor)

Where

Margin = the Margin element (as referred to in paragraph 31) of each interest payment from the Put Date to the Final Redemption Date

Discount Factor =  $1/(1+i)^t$

Where

i = the nominal annual compound annual rate from a South African Bank's swap curve relating to the period from the Put Date to each relevant Interest Payment Date

$t = (\text{future Interest Payment Date} - \text{Put Date})/365$

Put Date = the date on which the Notes are to be redeemed following exercise by a Noteholder of its right of redemption following a Put Event in terms of Condition 8.6

## GENERAL

43. Additional selling restrictions	N/A
44. International Securities Numbering (ISIN)	ZAG000097858
45. Stock Code	EFC02
46. Financial Exchange	JSE
47. Dealer(s)	Absa Capital
48. If syndicated, names of Lead Manager(s)	N/A
49. Method of distribution	Private placement
50. Rating assigned to this Tranche of Notes (if	N/A

any)

51.	Rating Agency, if any	N/A
52.	Governing Law	South Africa
53.	Last Day to Register	by 17h00 on the Business Day preceding the Books Closed Period
54.	Books Closed Period	the 10 days prior to each Interest Payment Date and Redemption Date
55.	Calculation Agent	Absa Capital
56.	Specified Office of the Calculation Agent	15 Alice Lane, Sandton, 2196
57.	Transfer Agent	Absa Capital
58.	Specified Office of the Transfer Agent	15 Alice Lane, Sandton, 2196
59.	Debt Sponsor	Absa Capital
60.	Issuer's Settlement Agent	Absa Investor Services, a division of Absa Bank Limited
61.	Specified Office of the Issuer's Settlement Agent	15 Alice Lane, Sandton, 2196
62.	Stabilisation Manager, if any	N/A
63.	Programme Amount	R1 000 000 000
64.	Aggregate Outstanding Principal Amount of Notes in issue on the Issue Date of this Tranche	R0, excluding this Tranche of Notes and any other Tranche(s) of Group to be issued on the Issue Date
65.	Aggregate Outstanding Principal Amount of Notes in issue in respect of the Series on the Issue Date of this Tranche	R0, excluding this Tranche of Notes and any other Tranche(s) of Notes to be issued in respect of the Series on the Issue Date
66.	Aggregate Outstanding Principal Amount of Group 1 Notes in issue on the Issue Date of this Tranche	R0, excluding this Tranche of Notes and any other Tranche(s) of Group to be issued on the Issue Date
67.	Additional Events of Default	See Appendix "C"
68.	Trustee	Maitland Trust Limited

69. Specified Office of the Trustee	32 Fricker Road, Illovo Boulevard, Sandton, 2196
70. Other provisions	N/A

DISCLOSURE REQUIREMENTS IN TERMS OF PARAGRAPH 3 (5) OF THE COMMERCIAL PAPER REGULATIONS – SEE APPENDIX "A"

SECURITY STRUCTURE - SEE APPENDIX "B"

ADDITIONAL/AMENDED TERMS AND CONDITIONS RELATING TO THE NOTES – SEE APPENDIX "C"

This Pricing Supplement amends, restates and replaces the pricing supplement dated 1 August 2012 in respect of the Notes of this Tranche with effect from the date of signature of this pricing supplement.

Application is hereby made to list this Tranche of the Notes, as from 24 August 2012, pursuant to the Esorfranki Limited Domestic Medium Term Note Programme. The Programme was registered with the JSE on 26 July 2012.

ESORFRANKI LIMITED

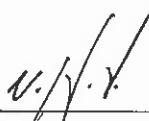
By: \_\_\_\_\_



Director, duly authorised

Date: 22 AUGUST 2012

By: \_\_\_\_\_



Director, duly authorised

Date: 22 AUGUST 2012

## APPENDIX "A"

### Disclosure Requirements in terms of paragraph 3(5) of the Commercial Paper Regulations

At the date of this Applicable Pricing Supplement:

#### Paragraph 3(5)(a)

The ultimate borrower is the Issuer.

#### Paragraph 3(5)(b)

The Issuer is a going concern and can in all circumstances be reasonably expected to meet its commitments under the Notes.

#### Paragraph 3(5)(c)

The auditor of the Issuer is KPMG Inc.

#### Paragraph 3(5)(d)

As at the date of this issue:

- (a) the Issuer has not issued any Notes; and
- (b) [it is not anticipated that the Issuer will issue additional Notes during the remainder of its current financial year, in addition to the Notes issued on the Issue Date of this Tranche of Notes.

#### Paragraph 3(5)(e)

Prospective investors in the Notes are to consider this Applicable Pricing Supplement, the Programme Memorandum and the documentation incorporated therein by reference in order to ascertain the nature of the financial and commercial risks of an investment in the Notes. In addition, prospective investors in the Notes are to consider the latest audited financial statements of the Issuer which are incorporated into the Programme Memorandum by reference and which may be requested from the Issuer.

#### Paragraph 3(5)(f)

There has been no material adverse change in the Issuer's financial position since the date of its last audited financial statements.

#### Paragraph 3(5)(g)

The Notes issued will be listed, as stated in the Applicable Pricing Supplement.

#### Paragraph 3(5)(h)

The funds to be raised through the issue of the Notes are to be used by the Issuer to refinance existing debt and incur capital expenditure.

Paragraph 3(5)(i)

The Notes are secured.

Paragraph 3(5)(j)

KPMG Inc, the auditors of the Issuer, have confirmed that nothing has come to their attention to indicate that this issue of Notes issued under the Programme will not comply in all respects with the relevant provisions of the Commercial Paper Regulations (Government Notice 2172 in Government Gazette No, 16167 of 14 December 1994) published under Paragraph (cc) of the definition of the "business of a bank" in terms of Section 1 of the Banks Act, 1990).

ESORFRANKI LIMITED

By: H. K. K. K. K.

Director, duly authorised

Date: 22 AUGUST 2012

By: V. V. V.

Director, duly authorised

Date: 22 AUGUST 2012

## APPENDIX "B"

### SECURITY STRUCTURE

The Group 1 Notes share in the same Security.

### SECURITY SPV GUARANTEE

The Security SPV will bind itself under a Security SPV Guarantee to the Trustee for the benefit of the Group 1 Noteholders, for the obligations of the Issuer to Group 1 Noteholders. Pursuant to such Security SPV Guarantee, the Security SPV will undertake in favour of the Trustee to pay it the full amount then owing to each Group 1 Noteholder by the Issuer on written demand from the Trustee on behalf of the Group 1 Noteholders. Following an Event of Default under the Group 1 Notes, the Trustee (on behalf of the Group 1 Noteholders), may declare the amounts outstanding under the Group 1 Note to be immediately due and payable. If there is a failure by the Issuer to pay the amount due to a Group 1 Noteholder upon delivery of such an acceleration notice, a decision may be made by the Group 1 Noteholders in terms of the Conditions, requiring the Trustee to make a demand under the Security SPV Guarantee. The liability of the Security SPV pursuant to the Security SPV Guarantee will, however, be limited in the aggregate to the net amount recovered by the Security SPV from the Issuer arising out of the Indemnity and, if necessary, the Security Documents referred to below.

### ISSUER INDEMNITY

The Issuer will give an Indemnity to the Security SPV in respect of claims that may be made against the Security SPV arising out of the Security SPV Guarantee. The Issuer shall not be entitled to refuse to make payment under the Indemnity to the Security SPV by reason of the fact that the Security SPV has not paid the claims of the Group 1 Noteholders under the Security SPV Guarantee nor shall the Issuer be entitled to refuse to make payment by reason of the fact that the liability of the Security SPV in respect of any such Security SPV Guarantee is limited in the manner set out in the Security SPV Guarantee.

### SECURITY DOCUMENTS

In accordance with the Security Documents, the Issuer cedes in security its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, as security for the obligations of the Issuer to the Security SPV under the Indemnity.

In accordance with the Security Documents, Esorfranki Construction (Pty) Ltd (incorporated in South Africa) binds itself under a guarantee to the Security SPV for the obligations of the Issuer to the Security SPV under the Indemnity. As security for its obligations to the Security SPV under the guarantee, Esorfranki Construction (Pty) Ltd (i) grants a special notarial bond over plant and equipment to the Security SPV, and (ii) cedes in security its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, all on the terms and as described in such Security Documents. Esorfranki Construction (Pty) Ltd has granted an irrevocable and unconditional power of attorney in favour of the Security SPV to register such special notarial bond with effect from the Issue Date.

In accordance with the Security Documents, Esorfranki Plant (Pty) Ltd (incorporated in South Africa) binds itself under a guarantee to the Security SPV for the obligations of the Issuer to the Security SPV under the Indemnity. As security for its obligations to the Security SPV under the guarantee, Esorfranki Plant (Pty) Ltd (i) grants a special notarial bond over plant and equipment to the Security SPV, and (ii) cedes in security its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, all on the terms and as described in such Security Documents. Esorfranki Plant (Pty) Ltd has granted an irrevocable and unconditional power of attorney in favour of the Security SPV to register such special notarial bond with effect from the Issue Date.

In accordance with the Security Documents, each of Esorfranki Property Developments (Pty) Ltd (incorporated in South Africa), Frankipile Mauritius International Limited (incorporated in Mauritius), Frankipile International Projects Ltd (incorporated in Mauritius) and Frankipile Botswana (Pty) Ltd (incorporated in Botswana), binds itself under a guarantee to the Security SPV for the obligations of the Issuer to the Security SPV under the Indemnity. As security for its obligations to the Security SPV under the guarantee, each such company cedes in security its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, all on the terms and as described in such Security Documents. In terms of the laws of Botswana, the Botswanan Pledge and the Botswanan Security Cession comprise contractual obligations of Frankipile Botswana (Pty) Ltd to the Security SPV. A registered deed of hypothecation granted to a third party would have priority over such contractual security by Frankipile Botswana (Pty) Ltd.

The Issuer will procure that future Subsidiaries incorporated in South Africa that contribute greater than 5% individually to the aggregated EBIDTA or tangible operating assets of the Group become Subsidiary Guarantors and that the Issuer and all Subsidiary Guarantors account for at least 85% of the aggregated EBIDTA or tangible operating assets of the Group.

The obligations of the Subsidiary Guarantors under the Subsidiary Guarantee are joint and several.

## THE SECURITY SPV

### Introduction

The Security SPV was incorporated and registered in South Africa on 29 March 2012, under registration number 2012/061270/07, as a private company with limited liability. The issued share capital of the Security SPV comprises 100 ordinary share of R1,00 par value, held by the Tizabuzz Security SPV Owner Trust, IT Number 2126/2012. The Security SPV has no subsidiaries. The current trustees of the Tizabuzz Security SPV Owner Trust are Maitland Trust Limited. The Security SPV has adopted a new memorandum of incorporation, including ring-fencing provisions, which has been filed with the Companies and Intellectual Property Commission. The issue of a new registration certificate is pending. Until the new registration certificate is issued, all references in the Transaction Documents to Tizabuzz (RF) Proprietary Limited shall be construed as a reference to Tizabuzz Proprietary Limited.

### Directors

The director of the Security SPV is David Towers.

David is a director and trustee on numerous investment vehicles, including securitisation vehicles, structured finance special purpose vehicles and exchange traded funds. David has extensive experience in debt capital markets and structured finance having worked for several major local and international banks and institutions in corporate banking and structured finance roles as well as spending a period as an independent consultant focusing on the debt capital markets. Prior to joining Maitland in 2011 he worked at Moody's Investors Service where he was responsible for assessing various asset-backed structured finance transactions. Prior to that he was Legal Counsel to the Bond Exchange of South Africa. David has B. Com, LLB and LLM degrees from the University of the Witwatersrand.

### Registered office

The registered office of the Security SPV is situated at 1<sup>st</sup> Floor, 32 Fricker Road, Illovo, 2196.

### Auditors

The current auditors of the Security SPV are BDO South Africa Inc.

### Activities

The activities of the Security SPV are to enter into, amend and perform the obligations and exercise the Security SPV's rights under the Security SPV Guarantee, the Indemnity and the Security Documents.

## APPENDIX "C"

### ADDITIONAL/AMENDED TERMS AND CONDITIONS RELATING TO THE NOTES OF THE SERIES

#### EVENTS OF DEFAULT

Condition 12.1 of the Terms and Conditions set out in the Programme Memorandum is amended in relation to the Notes of this Tranche by the insertion of the following new Condition 12.1.12:

*"Condition 12.1.12 Special Notarial Bonds*

Each of Esorfranki Construction (Proprietary) Limited and Esorfranki Plant (Proprietary) Limited fail to lodge a special notarial bond over specified plant and equipment, in form and substance approved by the Dealer on the Issue Date, within 20 Business Days of the Issue Date."

Condition 12.2 (Steps following an Event of Default relating to the Senior Notes) of the Terms and Conditions set out in the Programme Memorandum is amended in relation to the Notes of this Tranche by the deletion of Condition 12.2 and the replacement thereof of the following Condition 12.2:

12.

12.2 **Condition 12.2 Steps following an Event of Default relating to the Group 1 Notes**

- 12.2.1 If an Event of Default occurs in relation to the Notes of the Series:
  - 12.2.1.1 the Calculation Agent and/or the Issuer will forthwith inform the Trustee thereof; and
  - 12.2.1.2 the Trustee will, as soon as such Event of Default comes to its notice (whether as a result of having been informed by the Calculation Agent and/or the Issuer thereof pursuant to Condition 12.2.1.1 or otherwise), forthwith call a meeting of the Group 1 Noteholders.
- 12.2.2 The Trustee shall immediately upon becoming aware of the occurrence of an Event of Default set out in Condition 12.1.6 (*Insolvency Events*) and if any other Event of Default has occurred and is continuing at its discretion may, and if so directed by an Extraordinary Resolution of the Group 1 Noteholders shall, give written notice to the Issuer that the Group 1 Notes are, and they shall accordingly become immediately due and payable at their Early Redemption Amount together with accrued interest (if any) thereon to the date of payment.

## MEETINGS OF THE GROUP 1 NOTEHOLDERS

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 23:

### 23. Condition 23 - Meetings of the Group 1 Noteholders

Where a meeting of the Group 1 Noteholders is to be convened, in accordance with these Terms and Conditions, the trust deed of the Esorfranki Group 1 Note Trust or the Security SPV Guarantee, then the provisions of this Condition 23 shall apply.

#### 23.1 Convening of meetings

- 23.1.1 The Issuer or the Trustee may at any time convene a meeting of the Group 1 Noteholders (a "meeting").
- 23.1.2 The Issuer or the Trustee will convene a meeting of the Group 1 Noteholders upon the requisition in writing of Group 1 Noteholders holding not less than 20% of the aggregate Outstanding Principal Amount of the Group 1 Notes (a "requisition notice").
- 23.1.3 Whenever the Issuer wishes to convene a meeting, it will forthwith give notice in writing to the Group 1 Noteholders in the manner prescribed in Condition 16 and to the Trustee in accordance with the provisions of the Trust Deed of the place, day and hour of the meeting, the nature of the business to be transacted at the meeting and the resolutions to be proposed and considered at the meeting.
- 23.1.4 Whenever the Trustee wishes or is obliged to convene a meeting it will forthwith give notice in writing to the Group 1 Noteholders and the Issuer in the manner prescribed in Condition 16, of the place, day and hour of the meeting, the nature of the business to be transacted at the meeting and the resolutions to be proposed and considered at the meeting.
- 23.1.5 All meetings of the Group 1 Noteholders will be held in Johannesburg.

#### 23.2 Requisition

- 23.2.1 A requisition notice will state the nature of the business for which the meeting is to be held and the resolutions to be proposed and considered at the meeting and will be deposited at the Specified Office of the Issuer or the Trustee, as the case may be.
- 23.2.2 A requisition notice may consist of several documents in like form, each signed by one or more requisitionists.

#### 23.3 Convening of meetings by requisitionists

If the Issuer or the Trustee, as the case may be, does not convene a meeting to be held within 20 days of the deposit of a requisition notice, the requisitionists may themselves convene the meeting, but the meeting so convened will be held within 60 days from the date

of such deposit and will be convened as nearly as possible in the same manner as that in which meetings may be convened by the Issuer. Whenever the requisitionists are about to so convene any such meeting, requisitionists shall forthwith give notice of the meeting to the Issuer and the Trustee.

**23.4 Notice of meeting**

- 23.4.1 Unless the holders of at least 90% of the aggregate Outstanding Principal Amount of the Group 1 Notes, agree in writing to a shorter period, at least 15 days' written notice, specifying the place, day and time of the meeting, the nature of the business for which the meeting is to be held and the resolutions to be proposed and considered at the meeting, will be given to each Group 1 Noteholder, to the Issuer and to the Trustee.
- 23.4.2 The accidental omission to give such notice to any Group 1 Noteholder, to the Issuer or to the Trustee, as the case may be, or the non-receipt of any such notice, will not invalidate the proceedings at a meeting.

**23.5 Quorum**

- 23.5.1 A quorum at a meeting shall:
- 23.5.1.1 for the purposes of considering an Ordinary Resolution, consist of Group 1 Noteholders present in person or by proxy and holding in the aggregate not less than one-third of the aggregate Outstanding Principal Amount of the Group 1 Notes;
- 23.5.1.2 for the purposes of considering a resolution in respect of the dismissal of the Trustee and approval of the appointment of any new Trustee in accordance with the provisions of the Trust Deed or an Extraordinary Resolution, consist of Group 1 Noteholders present in person or by proxy and holding in the aggregate not less than a clear majority of the aggregate Outstanding Principal Amount of the Group 1 Notes.
- 23.5.2 No business will be transacted at a meeting of the Group 1 Noteholders unless a quorum is present at the time when the meeting proceeds to business.
- 23.5.3 If, within 15 minutes from the time appointed for the meeting, a quorum is not present, the meeting will, if it was convened on the requisition of the Group 1 Noteholders be dissolved. In every other case the meeting will stand adjourned to the same day in the third week thereafter, at the same time and place, or if that day is not a Business Day, the next succeeding Business Day. If at such adjourned meeting a quorum is not present the Group 1 Noteholders present, in person or by proxy, will constitute a quorum for the purpose of considering any resolution, including an Extraordinary Resolution.

23.6 **Chairman**

The chairman of the meeting shall be appointed by the Trustee. If the Trustee or the person appointed by the Trustee to preside as chairman of the meeting is not present within 10 minutes of the time appointed for the holding of the meeting, the Group 1 Noteholders then present will choose one of their own number to preside as chairman.

23.7 **Adjournment**

23.7.1 Subject to the provisions of this Condition 23, the chairman may, with the consent of, and will on the direction of, the meeting adjourn the meeting from time to time and from place to place.

23.7.2 No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

23.7.3 At least 14 days' written notice of the place, day and time of an adjourned meeting will be given by the Issuer or the Trustee, as the case may be, to the Issuer, the Trustee and each Group 1 Noteholder. In the case of a meeting adjourned in terms of Condition 23.6.3, the notice will state that the Group 1 Noteholders present in person or by proxy at the adjourned meeting will constitute a quorum.

23.8 **How questions are decided**

23.8.1 At a meeting, a resolution put to the vote will be decided on a poll.

23.8.2 In the case of an equality of votes, the chairman will not be entitled to a casting vote in addition to the vote, if any, to which he is entitled.

23.9 **Votes**

Voting shall only take place on a poll and not on a show of hands. On a poll every Group 1 Noteholder, present in person or by proxy, will be entitled to that proportion of the total votes which the aggregate Outstanding Principal Amount of the Group 1 Notes held by such Group 1 Noteholder bears to the aggregate Outstanding Principal Amount of all the Group 1 Notes. In relation to joint Group 1 Noteholders, the vote may be exercised only by that Group 1 Noteholder whose name appears first on the Register in the event that more than one of such Group 1 Noteholders is present, in person or by proxy, at the meeting. The Group 1 Noteholder in respect of Group 1 Notes held in the Central Securities Depository in uncertificated form shall vote at any such meeting on behalf of the holders of Beneficial Interests in such Group 1 Notes in accordance with the instructions to the Central Securities Depository's Nominee from the holders of Beneficial Interests conveyed through the Participants in accordance with the Applicable Procedures.

23.10 **Proxies and representatives**

23.10.1 Group 1 Noteholders, present either in person or by proxy, may vote on a poll. A Group 1 Noteholder, may by an instrument in writing (a "proxy form") signed by the Group 1

- Noteholder (or his duly authorised agent) or, in the case of a juristic person, signed on its behalf by a duly authorised officer of the juristic person, appoint any person (a "proxy" or "proxies") to act on his or its behalf in connection with any meeting or proposed meeting.
- 23.10.2 A person appointed to act as proxy need not be a Group 1 Noteholder.
- 23.10.3 The proxy form will be deposited at the Specified Office of the Issuer or at the Specified Office of the Transfer Agent, as the case may be, not less than 24 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in such proxy proposes to vote.
- 23.10.4 No proxy form will be valid after the expiration of 6 months from the date named in it as the date of its execution.
- 23.10.5 Notwithstanding Condition 23.10.4, a proxy form will be valid for any adjourned meeting, unless the contrary is stated thereon.
- 23.10.6 A vote given in accordance with the terms of a proxy form will be valid notwithstanding the previous death or incapacity of the principal or revocation or amendment of the proxy form or of any of the instructions of the Group 1 Noteholder, pursuant to which the proxy form was executed or of the authority under which the proxy form was executed or the transfer of Group 1 Notes or in respect of which the proxy was given, provided that no intimation in writing of such death, incapacity, revocation or amendment shall have been received by the Issuer at its Specified Office or the Transfer Agent at its Specified Office, as the case may be, more than, and that the transfer has been given effect to less than, 12 hours before the commencement of the meeting or adjourned meeting at which the proxy is to be used.
- 23.10.7 Any Group 1 Noteholder which is a juristic person may authorise any person to act as its representative in connection with any meeting or proposed meeting of the Group 1 Noteholders, by resolution of the directors or other governing body of the juristic person. Any reference in the Terms and Conditions to a Group 1 Noteholder or any other member of the Group 1 Noteholders present in person, includes the duly authorised representative of a Group 1 Noteholder or any other member of the Group 1 Noteholders, as the case may be, which is a juristic person.
- 23.11 **Minutes**
- 23.11.1 The Issuer will cause minutes of all resolutions and proceedings of meetings to be duly entered in the minute books of the Issuer.
- 23.11.2 Any such minutes as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings held or by the chairman of the next succeeding meeting, will be receivable in evidence without any further proof, and until the contrary is proved, a meeting the Group 1 Noteholders in respect of the proceedings of which minutes have been so made will be deemed to have been duly

held and convened and all resolutions passed thereat, or proceedings held, to have been duly passed and held.

**23.12 Written resolutions**

A resolution in writing submitted to the Group 1 Noteholders entitled to exercise voting rights in relation to the resolution, and signed by the requisite majority of the Group 1 Noteholders Noteholders, shall be as valid and effective as if it had been passed at a meeting duly convened and constituted and shall be deemed (unless a statement to the contrary is made in that resolution) to have been passed on the last day on which that resolution is signed by any one or more of the Group 1 Noteholders. That resolution may consist of two or more documents in the same form each of which is signed by one or more of the Group 1 Noteholders.

### THIRD PARTY RIGHTS AND OBLIGATIONS

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 24 (Third party rights and obligations):

#### 24. Condition 24 Third party rights and obligations

- 24.1 Each Group 1 Noteholder, upon its subscription for Group 1 Notes and the issue of Group 1 Notes to it, or upon the transfer of Group 1 Notes to it, as the case may be, shall be bound by those provisions of the Security SPV Guarantee which confer rights and/or impose obligations on the Group 1 Noteholders.
- 24.2 It is recorded that in terms of the Security SPV Guarantee, the Security SPV, upon signing the Security SPV Guarantee, is deemed to have given notice of the Terms and Conditions of the Group 1 Notes, and the Security SPV shall be bound by those provisions of the Terms and Conditions of the Group 1 Notes which confer rights and/or impose obligations on the Security SPV.

## COVENANTS

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 25 (Covenants):

### 25. Condition 25 Covenants

#### 25.1 Financial Indebtedness

- 25.1.1 There shall be no limitation on the incurrence of any Financial Indebtedness by the Issuer or any other Restricted Group Company:
- 25.1.1.1 if, immediately after the incurrence of such Financial Indebtedness, (i) the Leverage Ratio is less than 2.50 times; and (ii) the Fixed Charge Cover Ratio is at least 2.50 times, in each case calculated when the Issuer or any other Restricted Group Company wishes to incur additional Financial Indebtedness, after adjusting the relevant ratio giving the pro forma effect of such incurrence of additional Financial Indebtedness; and
- 25.1.1.2 the Issuer delivers a certificate (signed by 2 directors of the Issuer) to the Trustee at least 10 Business Days prior to the proposed date of incurrence of such Financial Indebtedness, (i) confirming compliance with the Financial Indebtedness Covenant and accompanied by the relevant calculations, and (ii) confirming that as at the date of such certificate there is no Event of Default or Potential Event of Default which is continuing, and immediately after the incurrence of such Financial Indebtedness, no Event of Default or Potential Event of Default will occur or be continuing as a result of the incurrence of the Financial Indebtedness.
- 25.1.2 If the provisions of Condition 25.1.1 are not satisfied, then the Issuer shall not, and shall procure that such other Restricted Group Company shall not, incur such additional Financial Indebtedness at that time. This restriction does not apply to the incurrence of any additional Financial Indebtedness:
- 25.1.2.1 under any GBF Agreement; provided that the aggregate outstandings, at any time, under the GBF Agreements do not exceed the lower of (i) R180 000 000 (of which R150 000 000 relates to performance bank guarantees in respect of the obligations of Group Companies under contracts with customers), and (ii) 40% of trade debtors of the Issuer and other Restricted Group Companies that are less than 90 days old;
- 25.1.2.2 under asset-backed facilities of vehicles, plant, equipment or computers concluded by Restricted Group Companies, provided that the aggregate outstandings under such asset-backed facilities by Restricted Group Companies does not exceed an aggregate amount of R170 000 000 from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;

- 25.1.2.3 to finance the purchase, construction or improvement of property and equipment at fair market value and of a type which is usual for a business of such nature, up to an aggregate amount of R20 000 000 from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;
  - 25.1.2.4 under any Permitted Treasury Transactions;
  - 25.1.2.5 in addition to that referred to in the other sub paragraphs of this Condition 25.1, which in aggregate does not exceed R20 000 000 from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;
  - 25.1.2.6 to refinance any existing debt of the Issuer or any Restricted Group Company in whole or in part;
  - 25.1.2.7 under guarantees granted by the Issuer or financial institutions in respect of the obligations of Group Companies under contracts with customers;
  - 25.1.2.8 between the Issuer and any Restricted Group Company or between or among Restricted Group Companies; or
  - 25.1.2.9 expressly permitted in writing by an Extraordinary Resolution of the Group 1 Noteholders.
- 25.1.3 The Leverage Ratio and Fixed Charge Cover Ratio will be calculated using the audited consolidated annual financial statements of the Issuer, if available, failing which the unaudited consolidated management accounts of the Issuer, for the relevant Measurement Period.

## 25.2 **Restricted Payments**

- 25.2.1 There shall be no limitation on the making of any Restricted Payment by the Issuer or any other Restricted Group Company if:
  - 25.2.1.1 immediately after making such Restricted Payment, (i) the Leverage Ratio is less than 2.50 times; and (ii) the Fixed Charge Cover Ratio is at least 2.50 times, calculated when the Issuer or any other Restricted Group Company wishes to make a Restricted Payment; and
  - 25.2.1.2 the aggregate amount of all Restricted Payments declared or made after the Issue Date of the Initial Notes by the Issuer and each other Restricted Group Company does not exceed 50% of Consolidated PAT plus 100% of the proceeds of share issuances, (or such higher percentage expressly permitted in writing by an Extraordinary Resolution of the Group 1 Noteholders), calculated on a cumulative basis during the period beginning on the first day of the month in which the Initial Notes are issued and ending on the last day of the month ending prior to the date of such proposed Restricted Payment; and

- 25.2.1.3 after the Restricted Payment is made, the Issuer or any other Restricted Group Company could incur at least R1.00 of additional Financial Indebtedness under the provisions of Condition 25.1.1 of the Financial Indebtedness Covenant; and
- 25.2.1.4 the Issuer delivers a certificate (signed by 2 directors of the Issuer) to the Trustee at least 10 Business Days prior to the proposed date of making the Restricted Payment, (i) confirming compliance with the Restricted Payment Covenant and accompanied by the relevant calculations, and (ii) confirming that as at the date of the certificate there is no Event of Default or Potential Event of Default which is continuing, and immediately after the date of making the Restricted Payment, no Event of Default or Potential Event of Default will occur or be continuing as a result of the date of making the Restricted Payment.
- 25.2.2 If the provisions of Condition 25.2.1 are not satisfied, then the Issuer shall not, and shall procure that such other Restricted Group Company shall not, make such Restricted Payment at that time. This restriction does not apply to:
- 25.2.2.1 the payment of any dividend within 60 days of its declaration if at such date of its declaration such payment would have been permitted by the provisions of this covenant;
- 25.2.2.2 Restricted Payments by the Issuer and Restricted Group Companies which in aggregate do not exceed R20 000 000 calculated from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;
- 25.2.2.3 a Restricted Payment by the Issuer or another Restricted Group Company to a Restricted Group Company; or
- 25.2.2.4 any Restricted Payment expressly permitted in writing by an Extraordinary Resolution of the Group 1 Noteholders.
- 25.2.3 The Fixed Charge Cover Ratio and Consolidated PAT will be calculated using the audited consolidated annual financial statements of the Issuer, if available, failing which the unaudited consolidated management accounts of the Issuer, for the relevant Measurement Period.
- 25.3 Limitation on Issuances and Sales of Shares of Restricted Subsidiaries**
- 25.3.1 The Issuer will not sell, pledge, alienate or otherwise dispose of any shares of a Restricted Subsidiary, and will not permit any Restricted Group Company (other than as permitted under the "Negative Pledge" covenant), directly or indirectly, to issue, sell, pledge, alienate or otherwise dispose, any shares of a Restricted Subsidiary (including options, warrants or other rights to purchase such shares). This restriction does not apply to:
- 25.3.1.1 any issuance or sale of shares of a Restricted Subsidiary to the Issuer or a wholly owned Restricted Subsidiary;

- 25.3.1.2 any issuance or sale of shares of a Restricted Subsidiary made in compliance with the "Disposal of Assets" covenant and if, immediately after giving effect to such issuance or sale, such Restricted Subsidiary would no longer constitute a Restricted Subsidiary and any remaining investment in such Person would have been permitted to have been made under the "Restricted Payments" covenant if made on the date of such issuance or sale;
- 25.3.1.3 any issuance or sale of shares of a Restricted Subsidiary made in compliance with the "Disposal of Assets" covenant and if immediately after giving effect to such issuance or sale such Restricted Subsidiary would continue to be a Restricted Subsidiary;
- 25.3.1.4 any issuance of shares of a Restricted Subsidiary, if after giving effect to such issuance, the Issuer directly or indirectly maintains at least the same percentage ownership of such Restricted Subsidiary as it owned immediately prior to such issuance;
- 25.3.1.5 shares issued by a Person prior to the time:
  - 25.3.1.5.1 such Person becomes a Restricted Subsidiary,
  - 25.3.1.5.2 such Person consolidates or merges with or into a Restricted Subsidiary, or
  - 25.3.1.5.3 a Restricted Subsidiary consolidates or merges with or into such Person; but only if such shares were not issued or incurred by such Person in anticipation of it becoming a Restricted Subsidiary.

#### 25.4 **Transactions with Affiliates**

- 25.4.1 The Issuer shall not, and and undertakes to procure that other Restricted Group Companies shall not, enter into any transaction or series of related transactions with, or for the benefit of, any Affiliate of the Issuer or any other Restricted Group Company unless such transaction or series of transactions is entered into in good faith and
  - 25.4.1.1 such transaction or series of transactions is on terms that, taken as a whole, are not materially less favourable to the Issuer or such Restricted Group Company, as the case may be, than those that could have been obtained in comparable arm's-length transactions with third parties that are not Affiliates;
  - 25.4.1.2 with respect to any transaction or series of related transactions involving aggregate payments or the transfer of assets or provision of services, in each case having a value greater than ZAR 5 000 000, the board of directors of the Issuer shall resolve with the participation of the majority of the Disinterested Directors (or in the event that there is only one Disinterested Director, by the resolution of such Disinterested Director), that such transaction or series of related transactions complies with Condition 25.4.1.1 above (and deliver a copy

- of such resolution to the Trustee under cover of a certificate (signed by 2 directors of the Issuer); and
- 25.4.1.3 with respect to any transaction or series of related transactions involving aggregate payments or the transfer of assets or the provision of services, in each case having a value greater than ZAR 10 000 000, the Restricted Group Company shall obtain a written opinion of an accounting, appraisal or investment banking firm of national standing, stating that the transaction or series of transactions is fair to the such Restricted Group Company from a financial point of view (and deliver a copy of such opinion to the Trustee).
- 25.4.2 The restrictions in Condition 25.4.1 shall not apply to transactions between the Issuer and other Restricted Group Companies and shall not preclude loans to Unrestricted Group Companies made in accordance with Condition 25.11.
- 25.5 Consolidations, Mergers and Acquisitions**
- 25.5.1 The Issuer will not, and will procure that each other Restricted Group Company will not, in a single transaction or a series of related transactions (i) acquire or subscribe for shares or other ownership interests in, or securities of, any Person, or (ii) acquire any business of any Person, or (iii) make any investment (whether debt or equity) in any Person, or (iv) enter into any amalgamation, unbundling, merger, consolidation or reconstruction with or into any other Person.
- 25.5.2 The restriction set out above will not apply (i) to any transaction or series of related transactions expressly permitted in writing by Extraordinary Resolution of the Group 1 Noteholders or (ii) if any payment in respect of such transaction or series of related transactions is made to another Restricted Group Company, or (iii) if :
- 25.5.2.1 immediately after giving effect to any such transaction or series of related transactions, in the case of any amalgamation, unbundling, merger, consolidation or reconstruction, either
- 25.5.2.1.1 the Issuer or the relevant Restricted Group Company, as the case may be, will be the continuing company; or
- 25.5.2.1.2 the Person (if other than the Issuer or the relevant Restricted Group Company, as the case may be) formed by or surviving any such amalgamation, unbundling, merger, consolidation or reconstruction (the "Surviving Entity") (i) will be a company duly incorporated and validly existing under the laws of South Africa, and (ii) will expressly assume the obligations of the Issuer or the relevant Restricted Group Company, as the case may be, under the Group 1 Notes and the Security Documents, in each case in form and substance satisfactory to the Trustee; and
- 25.5.2.1.3 each Restricted Group Company, unless it is the other party to the transactions described above, will confirm in writing that its guarantee will

- continue to apply to the obligations of the Issuer, the relevant Restricted Group Company or the Surviving Entity, as the case may be, under the Group 1 Notes;
- 25.5.2.2 immediately after giving effect to such transaction or series of related transactions on a pro forma basis (and treating any obligation of the Issuer or any Restricted Group Company incurred in connection with or as a result of such transaction or series of related transactions as having been incurred by the Issuer or such Restricted Group Company at the time of such transaction) no Event of Default will have occurred and be continuing;
- 25.5.2.3 immediately after giving effect to such transaction or series of related transactions on a pro forma basis (on the assumption that the transaction or series of related transactions occurred on the first day of the Measurement Period prior to the consummation of such transaction or series of related transactions with the appropriate adjustments with respect to the transaction or series of related transactions being included in such pro forma calculation), the Issuer (or the Surviving Entity if the Issuer is not a continuing obligor under the Group 1 Notes) (i) could incur at least R1.00 of additional Financial Indebtedness under the provisions of the "Financial Indebtedness" covenant or (ii) would have a Fixed Charge Cover Ratio no less than it was immediately prior to giving effect to such transaction or series of related transactions;
- 25.5.2.4 immediately after giving effect to any such transaction or series of related transactions, the Consolidated Net Worth is equal to or greater than the Consolidated Net Worth prior to the proposed transaction based on the pro-forma consolidated balance sheet of the Issuer;
- 25.5.2.5 any payment in respect of such transaction or series of related transactions is made utilising funds which could otherwise be distributed as a Restricted Payment in terms of Condition 25.2 (Restricted Payments) at the end of the Measurement Period immediately preceding such transaction or series of related transactions;
- 25.5.2.6 the provisions of the "Negative Pledge" are complied with should any of the Issuer's or any Restricted Group Company's property or assets become subject to any Encumbrance immediately after giving effect to any such transaction or series of related transactions; and
- 25.5.2.7 the Issuer or the Surviving Entity will have delivered to the Trustee, in form and substance satisfactory to the Trustee, at least 10 Business Days prior to the proposed transaction, a certificate (signed by 2 directors of the Issuer) showing the computations to demonstrate compliance with Condition 25.5.2.2, 25.5.2.3, 25.5.2.4 and 25.5.2.5.

25.5.3 Nothing in this Condition 25.5 shall prevent a Restricted Subsidiary from consolidating with, merging into or transferring all or substantially all of its properties and assets to the Issuer or any other Restricted Subsidiary.

**25.6 Dividend Payments and other payments from Restricted Subsidiaries**

25.6.1 The Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create or otherwise cause or allow to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Restricted Subsidiary to:

25.6.1.1 pay dividends in cash or otherwise, or make any other distributions on or in respect of its share capital or any other interest or participation in, or measured by, its profits

25.6.1.2 pay any debt owed to the Issuer or any Restricted Group Company;

25.6.1.3 make loans or advances to the Issuer or any Restricted Group Company; or

25.6.1.4 transfer any of its properties or assets to the Issuer or Restricted Group Company.

25.6.2 The restrictions in Condition 25.6.1 shall not apply to encumbrances and restrictions imposed by the Terms and Conditions of the Group 1 Notes or the Security Documents or restrictions imposed by Applicable Law.

**25.7 Impairment of Security Interest**

25.7.1 The Issuer and each Restricted Group Company shall all times maintain in full force and effect (or where appropriate, promptly renew in a timely manner) all Encumbrances created pursuant to the Security Documents to which it is a party and from time to time execute, acknowledge and deliver or cause to be executed, acknowledged and delivered such further documents and/or instruments as may be reasonably requested by the Security SPV for perfecting or maintaining in full force and effect the Encumbrances granted under such Security Documents.

25.7.2 The Issuer will not, and the Issuer will not permit any Restricted Group Company to, take or omit to take any action that would, or would reasonably be expected to, have the result of impairing the Security provided under and pursuant to the Security Documents.

**25.8 Business Activities**

The Issuer will not, and will procure that Restricted Group Companies will not, enter into any new business type which the Issuer or other Restricted Group Companies do not have knowledge and experience in.

25.9 **Disposals of Assets**

- 25.9.1 Subject to the Security Documents and for so long as there is no Event of Default which is continuing, the Issuer and each other Restricted Group Company may, either in a single transaction or a series of transactions and whether related or not and whether voluntarily or involuntarily, dispose of all or any part of its assets, provided that:
- 25.9.1.1 the disposal is at a fair value (ie a value as could reasonably be expected to be obtained in an arm's length transaction. For a transaction or series of transaction exceeding R10, 000,000.00, a board resolution must confirm that the disposal is at fair value); and
- 25.9.1.2 the disposal proceeds, whether in cash or otherwise, must, subject to Condition 25.9.2, be applied, within 6 months of the relevant disposal, in repayment of the Group 1 Notes pursuant to the exercise by the Issuer of its right of Optional Redemption in terms of Condition 8.4, in repayment of the outstandings under any GBF Agreement, for capital expenditure or replacement capital expenditure or for the investment in any other asset comparable or superior as to type, value, quality and title, provided that if investment is made in a business from the disposal proceeds then such entity becomes a Restricted Group Company and Security is provided to the Security SPV.
- 25.9.2 If the disposal proceeds are not applied, within 6 months of the relevant disposal, for the purposes referred to in Condition 25.9.1.2, then the Issuer shall offer to redeem the Group 1 Notes, in an amount equal to so much of the disposal proceeds in respect of the relevant asset disposed of as exceeds R20 000 000, rounded down to the nearest R1 000 000 (the "**Excess Disposal Proceeds**"), in accordance with the remaining provisions of this Condition 25.9.
- 25.9.3 On or before the date of the expiry of the 6 month period referred to in Condition 25.9.2, the Issuer shall, by delivering a written notice (the "**Prepayment Offer Notice**") to each Group 1 Noteholder to that effect, offer to redeem the Group 1 Notes held by each such Group 1 Noteholder, on the date for redemption specified in the Prepayment Offer Notice (which shall not be later 10 Business Days after the expiry of the 6 month period referred to in Condition 25.9.2)(the "**Prepayment Offer Redemption Date**"), in an amount equal to its Pro Rata Share of the Excess Disposal Proceeds.
- 25.9.4 Each Group 1 Noteholder shall, within 10 Business Days of receipt of the Prepayment Offer Notice, notify the Issuer in writing whether it wishes to accept the offer, in whole or in part. If a Group 1 Noteholder fails to notify the Issuer of the acceptance of the offer in accordance with the provisions of this Condition 25.9.4, such Group 1 Noteholder shall be regarded as not having accepted the offer.
- 25.9.5 The Issuer shall, on the Prepayment Offer Redemption Date, redeem the Group 1 Notes of those Group 1 Noteholders who have accepted the offer in accordance with the provisions of Condition 25.9.4. Group 1 Notes redeemed pursuant to this

Condition 25.9.5 will be redeemed at their Early Redemption Amount referred to in Condition 8.7, together with accrued unpaid interest (if any) from (and including) the immediately preceding Interest Payment Date to (but excluding) the date of redemption.

- 25.9.6 The restrictions in Condition 25.9.1 do not apply to any disposal:
- 25.9.6.1 of trading stock made on arm's length terms in the ordinary course of trading;
  - 25.9.6.2 of any asset (not being a business or shares) on arm's length terms in exchange for any other asset comparable or superior as to type, value, quality and title;
  - 25.9.6.3 by the Issuer of the whole or the greater part of its undertaking or assets, which disposal may be made subject to compliance with the provisions of Conditions 8.6;
  - 25.9.6.4 of obsolete or redundant buildings and yards, vehicles, plant and equipment, for cash on arm's length terms; or
  - 25.9.6.5 constituted by a security interest which is permitted under Condition 11 (Negative Pledge).
- 25.9.7 Notwithstanding anything to the contrary contained in this Condition 25.9, if the Issuer exercises its right of Optional Redemption, in whole and not in part only, in terms of Condition 8.4:
- 25.9.7.1 the provisions of this Condition 25.9 shall not apply; and
  - 25.9.7.2 the Issuer and each Restricted Subsidiary, shall be entitled to dispose of all or substantially all of its assets whether in a single transaction or a series of related transactions, without any approval of the Group 1 Noteholders and any Security held in this regard shall be released upon the redemption in full of the Group 1 Notes and repayment in full of the other Group 1 Noteholders.
- 25.10 **Sale and Leaseback Transactions**
- 25.10.1 The Issuer shall not, and shall procure that no other Restricted Group Company shall, dispose of any of its assets to a third party on terms where any such asset is or may be required to be leased to or re-acquired or acquired by a Restricted Group Company, in circumstances where the transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset. This restriction does not apply to:
- 25.10.1.1 a transaction in terms of which the Restricted Group Company could have incurred the Financial Indebtedness in terms of the Financial Indebtedness Covenant in Condition 25.1 and the asset could have been given as security in terms of the Condition 11 (Negative Pledge);

- 25.10.1.2 the gross sale proceeds are at least equal to the fair market value of the asset, as determined by the directors acting in good faith; and
- 25.10.1.3 the disposal of the asset is permitted, and the proceeds of such disposal are applied, in accordance with Condition 25.10 (Disposals of Assets).
- 25.10.2 The restrictions in Condition 25.10.1 do not apply to any such disposal of assets by a Restricted Group Company to another Restricted Group Company.

**25.11 Loans to Unrestricted Group Companies**

Except as permitted in terms of Condition 25.5, the Issuer will not, and will not permit any other Restricted Group Company, to make any loans to any Person that is not a Restricted Group Company. This restriction will not apply to loans by a Restricted Group Company to Unrestricted Subsidiaries provided that the sum of all loans by Restricted Group Companies to Unrestricted Subsidiaries does not exceed 15% of the consolidated total assets (excluding intangible assets and deferred tax assets) of the Group.

**25.12 Treasury Transactions**

The Issuer and each Restricted Group Company shall not enter into any Treasury Transaction other than Permitted Treasury Transactions.

**25.13 Hedging**

The Issuer shall ensure that its board considers, on a quarterly basis, the hedging requirements of the Group.

**25.14 Information Undertakings**

- 25.14.1 The Issuer undertakes to deliver to the Trustee:
- 25.14.1.1 and to the JSE, its audited consolidated annual financial statements and reviewed unaudited interim consolidated financial results, within 90 days of each financial year end of the Issuer and within 60 days of each financial half year end of the Issuer, as the case may be, commencing with the half year ending on 31 August 2012;
- 25.14.1.2 within 90 days of each financial year end, a broker's letter detailing the insurance policies of the Group, together with a copy of the board resolution approving such insurance cover;
- 25.14.1.3 upon request by the Trustee, an up to date copy of the register of any Restricted Subsidiary;
- 25.14.1.4 promptly upon becoming aware of the same, details of any litigation, arbitration, mediation or similar proceedings either commenced, threatened or pending against it or any other Restricted Group Company which, if adversely

determined, would involve a liability in excess of R10 000 000 or its equivalent in any other currency.

- 25.14.2 The Issuer shall deliver to the Trustee, together with the financial statements delivered to the Trustee in terms of Condition 25.14.1.1, a certificate, signed by 2 directors of the Issuer, confirming compliance with the Covenants and with the provisions of Condition 26.3 and Condition 26.4 during the 6 months prior to the relevant financial year end or financial half year end, as the case may be.
- 25.14.3 Each compliance certificate delivered with the audited consolidated annual financial statements shall be accompanied by a certificate from the Issuer's auditors confirming the calculations and satisfaction of the provisions of Condition 26.3 and Condition 26.4 in the compliance certificates delivered by the Issuer to the Trustee during the previous year.
- 25.14.4 If there is a change in the IFRS accounting principles from that applicable at the Issue Date, then the Issuer may convene a meeting of the Group 1 Noteholders to approve, by Extraordinary Resolution, any changes required to the financial ratios referred to in the relevant Covenants so as to put the Issuer in the same position that it would have been in had a change in the IFRS accounting principles not occurred. Until such amendments are approved by Extraordinary Resolution of the Group 1 Noteholders, the Issuer will provide a description of any changes necessary for the financial statements delivered in terms of Condition 25.14.3 to reflect the IFRS accounting principles applicable at the Issue Date, and the financial ratios referred to in the relevant Covenants will be calculated on the basis of pro forma financial statements reflecting the IFRS accounting principles applicable at the Issue Date.

**25.15      Amendments to Transaction Documents and Security Documents**

The Issuer will not, and will not allow any Restricted Group Company, to agree to any amendment to, cancellation of, waiver in respect of, or discharge or release from, the Security Documents or Transaction Documents, without the prior authorisation of an Extraordinary Resolution of the Group 1 Noteholders.

## GUARANTEES

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 26 (Guarantees):

### 26. Condition 26 Guarantees

- 26.1 The Issuer has procured that the obligations of the Issuer to the Security SPV under the Indemnity are guaranteed by the Subsidiary Guarantors on the terms and conditions as contained in the Subsidiary Guarantee. Additional Subsidiary Guarantors may accede to the Subsidiary Guarantee from time to time. The Issuer shall notify the Noteholders in writing of such accession in accordance with Condition 16.
- 26.2 If a Subsidiary Guarantor ceases to be a Material Subsidiary, the Issuer is entitled to remove such Subsidiary as a Subsidiary Guarantor, provided that no amount is then due under the Subsidiary Guarantee and provided that the provisions of Condition 26.5 have been satisfied. The Issuer shall notify the Noteholders in writing of such cessation in accordance with Condition 16.
- 26.3 If, after the Issue Date, any member of the South African Group is a Material Subsidiary, the Issuer must promptly procure that that Material Subsidiary becomes a Subsidiary Guarantor.
- 26.4 If at any time after the Issue Date:
  - the aggregate contribution of the Issuer and all the Subsidiary Guarantors to the consolidated total assets (excluding intangible assets, deferred tax assets, investments in Subsidiaries of the Issuer and loans to Subsidiaries of the Issuer) of the Group or the consolidated EBITDA of the Group,
  - is less than
    - 85% of the consolidated total assets (excluding intangible assets, deferred tax assets, investments in Subsidiaries of the Issuer and loans to Subsidiaries of the Issuer) of the Group or the consolidated EBITDA of the Group (such shortfall being the **Financial Support Deficit**),
  - then the Issuer must procure, within 90 days of the end of each financial year end and financial half year end of the Issuer, that so many additional members of the South African Group become Subsidiary Guarantors as is necessary to ensure that there is no Financial Support Deficit.
- 26.5 The Issuer is not required to comply with Conditions 26.4 and 26.5 to the extent that it is unlawful for the relevant person to become a Subsidiary Guarantor or that person becoming a Subsidiary Guarantor would result in personal liability for its directors, officers or other management.

## ADDITIONAL DEFINITIONS IN RESPECT OF THE GROUP 1 NOTES

1. Terms and expressions set out below will have the meanings set out below in the Terms and Conditions of the Group 1 Notes of the Tranche referred to in this Applicable Pricing Supplement:
  - 1.1 **"Additional Notes"** means every Tranche of Notes issued in terms of the Programme in addition to the Initial Notes, which participate in the same Security as that granted in favour of the holders of the Initial Notes (and thus identified in the Applicable Pricing Supplement as Group 1 Notes) and are issued on the same Terms and Conditions as the Initial Notes, except for their respective Issue Dates, Interest Commencement Dates, Issue Price, Interest Rate, Interest Payment Dates, early redemption penalties or fees and Final Redemption Dates;
  - 1.2 **Affiliate** means, in relation to any Person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company or any Person that owns, directly or indirectly, 20% or more of such Person's ordinary share capital;
  - 1.3 **Botswanan Pledge** means the pledge by Frankipile International Projects Limited of its shares in Frankipile Botswana (Pty) Ltd to the Security SPV;
  - 1.4 **Botswanan Security Cession** means the cession in security by Frankipile Botswana (Pty) Ltd of its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries (if any) and its reversionary interest in its debtors book granted to the Security SPV, as security for its obligations to the Security SPV under the Subsidiary Guarantee;
  - 1.5 **Cash and Cash Equivalents** means cash on hand and on demand deposit, deposits held on call with financial institutions and other short-term highly liquid investments that are readily convertible to a known amount of cash and are subject to an insignificant risk of changes in value and bank overdrafts, in each case, which is freely available to the Group at that time and which is capable of being applied against Financial Indebtedness of the Group;
  - 1.6 **Consolidated EBIT** means, in relation to a Measurement Period, the aggregate of:
    - 1.6.1 the consolidated operating profits (excluding the results from discontinued operations) of the Group before Consolidated Net Finance Costs and tax for that Measurement Period;

adjusted by:

    - 1.6.1.1 excluding any items which represent gains or losses arising on:
      - 1.6.1.1.1 restructurings of the activities of an entity and reversals of any provisions for the costs of restructuring;
      - 1.6.1.1.2 disposals of non-current assets;
      - 1.6.1.1.3 the disposal of assets associated with discontinued operations;

- 1.6.1.1.4 movements of any provision;
- 1.6.1.2 excluding any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis) which is reported through the income statement;
- 1.6.1.3 excluding extraordinary gains or losses;
- 1.6.1.4 excluding non-cash items; and
- 1.6.1.5 excluding debt raising costs;
- 1.7 **Consolidated EBITDA** means, in relation to a Measurement Period, Consolidated EBIT for that Measurement Period after adding back any depreciation and amortisation and excluding any charge for impairment or any reversal of any previous charge made in the period;
- 1.8 **Consolidated Net Finance Costs** means, in relation to a Measurement Period, all Finance Costs (whether paid, payable or added to principal) incurred by the Group during that period calculated on a consolidated basis less Interest Receivable by the Group during that period calculated on a consolidated basis;
- 1.9 **Consolidated Net Worth** means at any time the aggregate of:
  - 1.9.1 the amount paid up or credited as paid up on the issued share capital of Restricted Group Companies; and
  - 1.9.2 the net amount standing to the credit (or debit) of the consolidated reserves of Restricted Group Companies;
- 1.10 **Consolidated PAT** means, in relation to a Measurement Period, the aggregate of:
  - 1.10.1 the consolidated operating profits (excluding the results from discontinued operations) of the Group after Consolidated Net Finance Costs and tax for that Measurement Period;
  - adjusted by:
    - 1.10.1.1 excluding any items which represent gains or losses, together with any related provisions for taxes on such gains or losses, arising on:
      - 1.10.1.1.1 restructurings of the activities of an entity and reversals of any provisions for the costs of restructuring;
      - 1.10.1.1.2 disposals of non-current assets;
      - 1.10.1.1.3 the disposal of assets associated with discontinued operations;
      - 1.10.1.1.4 reversals of any provision;

- 1.10.1.2 excluding any unrealised gains or losses, together with any related provisions for taxes on such gains or losses, on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis) which is reported through the income statement;
- 1.10.1.3 excluding any net after tax extraordinary gains or losses;
- 1.10.1.4 excluding non-cash items in relation to write-ups, write-downs or write-offs of assets of the Group, together with any related provisions for taxes on such non-cash items;
- 1.10.1.5 excluding debt and equity raising costs, together with any related provisions for taxes on such debt and equity raising costs; and
- 1.10.1.6 excluding any interest accrued on subordinated, unsecured loans, if any;
- 1.11 **Covenants** means the covenants referred to in Condition 25;
- 1.12 "**Disinterested Director**" means, with respect to any transaction or series of related transactions, a member of the Issuer's Board of Directors who does not have any material direct or indirect financial interest in or with respect to such transaction or series of related transactions or is not an Affiliate, or an officer, director or employee of any Person (other than the Issuer) who has any direct or indirect financial interest in or with respect to such transaction or series of related transactions;
- 1.13 **Distribution** means, in relation to the Issuer or a Restricted Group Company, to:
- 1.13.1 declare, make or pay any dividend, charge, fee or other distribution (whether in cash or in kind) on or in respect of its shares or share capital (or any class of its share capital);
- 1.13.2 repay or distribute any share premium account;
- 1.13.3 pay any management, advisory or other fee or royalty to or to the order of its shareholders;
- 1.13.4 pay any principal or interest in respect of amounts due (whether in respect of an inter-company loan, subordinated loan or otherwise) to or to the order of its shareholders; or
- 1.13.5 redeem, purchase or repay any of its shares or share capital (or any instrument convertible into shares or share capital) or resolve to do so;
- 1.14 **Extraordinary Resolution of the Group 1 Noteholders** means a resolution passed at a properly constituted meeting of the Group 1 Noteholders, by a majority consisting of not less than 66,67% of the votes cast at a poll by members of the Group 1 Noteholders, present in person or by proxy;
- 1.15 **Finance Costs** means, for any Measurement Period, the aggregate amount, without double counting, of the accrued interest, dividends on redeemable preference shares, commission,

fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Financial Indebtedness (excluding any such charges on any derivative transaction, protecting against or benefiting from fluctuations in any rate or price), but taking no account of any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis) which is reported through the income statement;

- 1.16 **Finance Documents** means collectively and individually any of:
- 1.16.1 The Trust Deed;
  - 1.16.2 the Terms and Conditions of the Group 1 Notes;
  - 1.16.3 the Security Documents; and
  - 1.16.4 any other document which is from time to time designated by the Trustee (on behalf of the Group 1 Noteholders), as a Finance Document;
- 1.17 **Financial Indebtedness** means, without double counting, any indebtedness for or in respect of:
- 1.17.1 moneys borrowed or credit provided;
  - 1.17.2 any acceptance credit facility (including any dematerialised equivalent);
  - 1.17.3 any note purchase facility, bond, note, debenture, loan stock or other similar instrument;
  - 1.17.4 any suspensive sale or instalment credit transaction;
  - 1.17.5 any agreement treated as a finance or capital lease in accordance with IFRS;
  - 1.17.6 receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
  - 1.17.7 any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark to market value of the derivative transaction will be used to calculate its amount other than in respect of the Esor share incentive scheme);
  - 1.17.8 any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution;
  - 1.17.9 any redeemable preference share;
  - 1.17.10 any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing; or

- 1.17.11 any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in the above clauses;
- 1.18 **Fixed Charge Cover Ratio** means, in respect of a Measurement Period, the historical ratio of pro-forma Consolidated EBITDA to pro forma Consolidated Net Finance Costs, at the end of that relevant Measurement Period;
- 1.19 **GBF Agreement** means a general banking facility agreement entered into between a GBF Lender, the Issuer and/or its Subsidiaries, in terms of which the GBF Lender grants to the Issuer and/or its Subsidiaries, a revolving working capital facility and ancillary facilities, in aggregate up to R180 000 000 (of which R150 000 000 relates to performance bank guarantees in respect of the obligations of Group Companies under contracts with customers), to fund the Issuer's (and/or such Subsidiaries') working capital, overdraft, letters of credit and foreign exchange contract requirements from time to time, including the issuing of guarantees, on the terms and conditions set out therein, as amended, novated and/or substituted from time to time in accordance with its terms;
- 1.20 **GBF Lender** means a lender under a GBF Agreement from time to time;
- 1.21 **Group** means the Issuer and its Subsidiaries;
- 1.22 **Group 1 Noteholders** means the holders of the Group 1 Notes;
- 1.23 **Group 1 Notes** means:
- 1.23.1 the Initial Notes; and
- 1.23.2 the Additional Notes, if any,
- and designated as such in the Applicable Pricing Supplement;
- 1.24 **Holding Company** means a holding company within the meaning of the Companies Act;
- 1.25 **IFRS** means International Financial Reporting Standards and the interpretation of those standards as adopted by the International Accounting Standards Board;
- 1.26 **Indemnity** means the indemnity agreement between the Issuer and the Security SPV, pursuant to which the Issuer indemnifies and holds the Security SPV harmless in respect of claims made against the Security SPV under, amongst others, the Security SPV Guarantee, as amended, novated and/or substituted from time to time in accordance with its terms;
- 1.27 **Initial Notes** means all Tranches of Notes issued in terms of the Programme on the same date as Tranche 1 of Series 1 of the Notes;
- 1.28 **Interest Receivable** means, for any Measurement Period, the aggregate amount, without double counting, of all interest and other financing charges received or receivable;

- 1.29 **Issuer Security Cession** means the cession in security by the Issuer of its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book granted to the Security SPV, as security for the obligations of the Issuer to the Security SPV under the Indemnity;
- 1.30 **Leverage Ratio** means, in respect of a Measurement Period, the ratio of Net Debt to the historical ratio of pro-forma Consolidated EBITDA, at the end of that relevant Measurement Period;
- 1.31 **Material Subsidiary** means a direct or indirect Subsidiary of the Issuer whose total assets or EBITDA exceed 5% of the consolidated total assets or consolidated EBITDA of the Group as a whole, calculated by reference to the last audited (consolidated or, as the case may be, unconsolidated) annual or unaudited semi-annual accounts of the Subsidiary, whichever is the latest, and the latest audited annual or unaudited semi-annual consolidated accounts of the Issuer, whichever is the latest. For the purposes of this definition, intangible assets, deferred tax assets, investments in Subsidiaries of the Issuer and loans to Subsidiaries of the Issuer are excluded from the calculation of total assets;
- 1.32 **Mauritian Fixed and Floating Charge** means the fixed and floating charge agreement in terms of which each Frankipile Mauritius International Limited and Frankipile International Projects Limited grants a fixed and floating charge over its bank accounts, trade receivables and intra-group claims to the Security SPV;
- 1.33 **Mauritian Pledge** means the pledge of its shares by Esorfranki Plant (Pty) Ltd in Frankipile Mauritius International Limited and Frankipile International Projects Limited to the Security SPV;
- 1.34 **Measurement Period** means a period of 12 months ending on the last day of the month preceding the date on which the relevant ratio is calculated;
- 1.35 **Minority Investment** means, in relation to the Issuer or a Restricted Group Company, the acquisition of, or subscription for, shares or other ownership interests in or securities of, any company or other person, which is not, or does not become, a Subsidiary;
- 1.36 **Net Debt** means, at any time, in respect of the Group, on a consolidated basis, the sum of all Financial Indebtedness of the Group less any Cash and Cash Equivalents held by the Group;
- 1.37 **Ordinary Resolution of the Group 1 Noteholders** means a resolution passed at a properly constituted meeting of the Group 1 Noteholders, by a majority of the votes cast at a poll by the members of the Group 1 Noteholders, present in person or by proxy;
- 1.38 **Permitted Treasury Transaction** means:
- 1.38.1 any Treasury Transaction entered into to hedge the Group 1 Notes up to a maximum of 100% of the Outstanding Principal Amount of the Group 1 Notes;

- 1.38.2 any Treasury Transaction entered into with a GBF Lender under the terms of any GBF Agreement; and
- 1.38.3 any Treasury Transaction entered into in the ordinary course of business (and not for investment or speculative purposes) on arm's length terms where used as a hedge to protect against an actual exposure or risk incurred or to be incurred by a Restricted Group Company as a result of:
- 1.38.3.1 interest rate exposure in relation to any payment obligations on interest bearing Financial Indebtedness in the ordinary course of business; or
- 1.38.3.2 currency exposure in respect of payments due under import contracts;
- provided that in respect of any Treasury Transaction permitted pursuant to this Condition 1.38:
- 1.38.4 other than the Treasury Transaction permitted under Condition 1.38.1, any restructure, refinancing or amendment of such Treasury Transaction which results in the extension of the due date for payment of any amount payable under such Treasury Transaction or any increase of the indebtedness of a Restricted Group Company shall only be permitted if the Conditions set out in Condition 25.1.1 have been complied with; or
- 1.38.5 if such Treasury Transaction is concluded on the basis, or with the result, that at the time at which such Treasury Transaction is concluded or becomes effective (the **Relevant Date**), it results in the incurrence of Financial Indebtedness by any Restricted Group Company on the Relevant Date, it shall only be permitted if the Conditions set out in Condition 25.1.1 have been complied with;
- 1.39 **Person** means any individual, company, partnership, joint venture, association, trust, unincorporated organisation or government or any agency or political subdivision thereof;
- 1.40 **Potential Event of Default** means any event or circumstance specified in Condition 12.1 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under any Finance Document or any combination of any of the foregoing) be an Event of Default;
- 1.41 **Pro Rata Share** means, in relation to a Group 1 Note, the ratio which the Outstanding Principal Amount of that Group 1 Note bears to the Outstanding Principal Amount of all the Group 1 Notes;
- 1.42 **Restricted Payment** means, in relation to the Issuer or any other Restricted Group Company:
- 1.42.1 a Distribution; or
- 1.42.2 a Minority Investment;

- 1.43 **Restricted Subsidiary** means any Subsidiary of the Issuer that is not an Unrestricted Subsidiary;
- 1.44 **Restricted Group Company** means the Issuer and each Restricted Subsidiary;
- 1.45 **Security** means the security granted in favour of the Security SPV by the Issuer and other Group Companies, created pursuant to the Security Documents;
- 1.46 **Security Documents** means:
- 1.46.1 the Security SPV Guarantee;
  - 1.46.2 the Indemnity;
  - 1.46.3 the Issuer Security Cession;
  - 1.46.4 the Subsidiary Guarantee;
  - 1.46.5 the Subsidiary Guarantor Security Cession(s);
  - 1.46.6 Mauritian Pledge;
  - 1.46.7 Mauritian Fixed and Floating Charge;
  - 1.46.8 Botswanan Pledge;
  - 1.46.9 Botswanan Security Cession;
  - 1.46.10 the Special Notarial Bonds; and
  - 1.46.11 any other document which is from time to time designated by the Group 1 Noteholders as a Security Document;
- 1.47 **Security Provider** means the Security SPV, Esorfranki Construction (Pty) Ltd, Esorfranki Plant (Pty) Ltd, Esorfranki Property Developments (Pty) Ltd, Frankipile Mauritius International Limited, Frankipile International Projects Ltd, Frankipile Botswana (Pty) Ltd and each other Restricted Group Company that guarantees or otherwise directly or indirectly provides credit support for the obligations of the Issuer to Group 1 Noteholders;
- 1.48 **Security SPV** means Tizabuzz (RF) Proprietary Limited (Registration number 2012/061270/07), a company duly registered and incorporated in accordance with the company laws of South Africa;
- 1.49 **Security SPV Guarantee** means the guarantee issued by the Security SPV in favour of the Trustee for the benefit of the Group 1 Noteholders for the obligations of the Issuer under the Group 1 Notes, as amended, novated and/or substituted from time to time in accordance with its terms;

- 1.50 **Secured Creditors** means, for purposes of the Security Documents, the Group 1 Noteholders;
- 1.51 **South African Group** means a member of the Group incorporated in South Africa;
- 1.52 **Special Notarial Bond** means each first ranking special notarial bond granted by each of Esorfranki Construction (Pty) Ltd and Esorfranki Plant (Pty) Ltd, over specified plant and equipment of each such Subsidiary, in favour of the Security SPV, as security for its obligations to the Security SPV under the Subsidiary Guarantee;
- 1.53 **Subsidiary** means a subsidiary within the meaning of the Companies Act;
- 1.54 **Subsidiary Guarantee** the unconditional and irrevocable guarantee given by each Subsidiary Guarantor to the Security SPV, jointly and severally guaranteeing the obligations of the Issuer to the Security SPV under the Indemnity;
- 1.55 **Subsidiary Guarantor** means each of Esorfranki Construction (Pty) Ltd, Esorfranki Plant (Pty) Ltd, Esorfranki Property Developments (Pty) Ltd, Frankipile Mauritius International Limited, Frankipile International Projects Ltd, Frankipile Botswana (Pty) Ltd and any additional Subsidiary of the Issuer that accedes to the Subsidiary Guarantee, if and for so long as each such company is a party to the Subsidiary Guarantee in accordance with the provisions of the Terms and Conditions of the Group 1 Notes;
- 1.56 **Subsidiary Guarantor Security Cession** means the cession in security by each Subsidiary Guarantor, if applicable, of its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book granted to the Security SPV, as security for its obligations to the Security SPV under the Subsidiary Guarantee;
- 1.57 **Transaction Documents** means, for the purposes of Condition 12.1.8 (Events of Default), the Security Documents and the Trust Deed;
- 1.58 **Trust Deed** means the trust deed constituting the Esorfranki Note Trust;
- 1.59 **Trustee** means the trustee for the time being of the Esorfranki Note Trust, which shall initially be Maitland Trust Limited (Registration number 1981/009543/06), a company duly registered and incorporated in accordance with the company laws of South Africa;
- 1.60 **Treasury Transaction** means any currency or interest purchase, cap or collar agreement, forward rate agreements, interest rates or currency future or option contracts, foreign exchange or currency purchase or sale agreement, interest rate swap, currency swap or combined interest rate and currency swap agreement and any other similar agreement in each case entered into in connection with any fluctuation in any rate or price; and
- 1.61 **Unrestricted Subsidiary** means any Subsidiary of the Issuer that has not guaranteed, on an unlimited basis, or otherwise directly or indirectly provided credit support for the obligations of the Issuer to Group 1 Noteholders.

2. For purposes of Condition 25, an Event of Default is "continuing" if it has not been remedied to the satisfaction of the Trustee or waived in writing by the Trustee (in each case, acting on the instructions of an Extraordinary Resolution of the Group 1 Noteholders).

## DOCUMENTS INCORPORATED BY REFERENCE

For so long as the Group 1 Notes are outstanding, the following documents listed below are deemed to be incorporated into, and to form part of, the Programme Memorandum in addition to the documents listed in the Programme Memorandum and will be available for inspection by Group 1 Noteholders at the Specified Office of the Issuer:

- (a) the Trust Deed; and
- (b) the Security Documents;

## TRUSTEE

Maitland Trust Limited (Registration number 1981/009543/06) has been appointed in terms of a trust deed between the Trustee and the Issuer, to act as trustee for the benefit of Group 1 Noteholders.

Pursuant to the Trust Deed, the Trustee is entitled to exercise the rights conferred on the Trustee and is obliged to perform the duties imposed on the Trustee in terms of the Conditions of the Group 1 Notes, including the rights and duties in terms of Condition 12.2 (Steps following an Event of Default relating to the Group 1 Notes), Condition 23 (Meetings of the Group 1 Noteholders) and Condition 25 (Covenants).

The Trust Deed sets out provisions relating to the replacement of the Trustee, including following a resolution to this effect by the Noteholders, by a majority consisting of not less than 75% of the votes cast on a poll by the Noteholders, present in person or by proxy at a meeting convened in terms of the Terms and Conditions of the Notes.

The Trust Deed contains provisions for the indemnification of the Trustee and for its relief from responsibility, including relieving it from taking proceedings unless indemnified and/or secured and/or prefunded to its satisfaction. The Trustee is entitled to enter into business transactions with the Issuer and any entity related to the Issuer without accounting for any profit. The Trustee may rely without liability to Group 1 Noteholders on a report, confirmation or certificate or any advice of any accountants, financial advisers or investment bank, whether or not addressed to it and whether their liability in relation thereto is limited (by its terms or by any engagement letter relating thereto entered into by the Trustee or in any other manner) by reference to a monetary cap, methodology or otherwise. The Trustee shall be obliged to accept and be entitled to rely on any such report, confirmation or certificate or advice where the Issuer procures delivery of the same pursuant to its obligation to do so under any provision of these Conditions or the Trust Deed and such report, confirmation or certificate or advice shall be binding on the Issuer, the Trustee and the Group 1 Noteholders in the absence of manifest error.

In connection with the exercise of its functions the Trustee shall have regard to the interests of the Group Noteholders as a class and, in particular but without limitation, shall not have regard to the consequences of the exercise of its trusts, powers or discretions for individual Group 1 Noteholders resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory, and the Trustee shall not be entitled to require, nor shall any Group 1 Noteholder be entitled to claim, from the Issuer or any other person any indemnification or payment in respect of any tax consequences of any such exercise upon individual Group 1 Noteholders.



**APPLICABLE PRICING SUPPLEMENT**

**Esorfranki Limited**

(the "Issuer")

*(Incorporated with limited liability in South Africa under registration number 1994/000732/06)*

**Issue of R45 000 000 Senior Secured Floating Rate Notes with a Stock Code EFC03**

**Under its R1 000 000 000 Domestic Medium Term Note Programme**

This document constitutes the Applicable Pricing Supplement relating to the issue of Notes described in this Applicable Pricing Supplement.

This Applicable Pricing Supplement must be read in conjunction with the Programme Memorandum issued by the Issuer dated 25 July 2012, as may be amended or supplemented from time to time. To the extent that there is any conflict or inconsistency between the contents of this Applicable Pricing Supplement and the Programme Memorandum, the provisions of this Applicable Pricing Supplement shall prevail.

Any capitalised terms not defined in this Applicable Pricing Supplement shall have the meanings ascribed to them in the Terms and Conditions. References in this Applicable Pricing Supplement to the Terms and Conditions are to the section of the Programme Memorandum headed "*Terms and Conditions of the Notes*". References to any Condition in this Applicable Pricing Supplement are to that Condition of the Terms and Conditions.

**The Group 1 Notes do not have a credit rating and are of a speculative nature. Prior to investing in Group 1 Notes prospective investors should seek independent professional advice.** See the sections of the Programme Memorandum titled "Description of the Group" and "Risk Factors" and all the Schedules to this Applicable Pricing Supplement, for some of the investment considerations to be taken into account by prospective investors in the Group 1 Notes.

The Issuer and each Subsidiary Guarantor certifies that to the best of its knowledge and belief there are no facts that have been omitted from the Programme Memorandum which would make any statement false or misleading and that all reasonable enquiries to ascertain such facts have been made and that the Programme Memorandum contains all information required by Applicable Law and, in relation to any Tranche of Notes listed on the Interest Rate Market of the JSE, the JSE Debt Listings Requirements. The Issuer and each Subsidiary Guarantor accepts full responsibility for the information contained in the Programme Memorandum, the Applicable Pricing Supplements and the annual financial report and any amendments to the annual financial report or any supplements from time to time, except as otherwise stated therein.

The JSE assumes no responsibility or liability of whatsoever nature for the contents of the Programme Memorandum or this Applicable Pricing Supplement or the annual financial statements or any other information incorporated by reference into the Programme Memorandum (as amended or restated from time to time), and the JSE makes no representation as to the accuracy or completeness of the Programme Memorandum or this Applicable Pricing Supplement, the annual financial statements or any other

information incorporated by reference into the Programme Memorandum (as amended or restated from time to time). The JSE expressly disclaims any liability for any loss arising from or in reliance upon the whole or any part of this Programme Memorandum or this Applicable Pricing Supplement or the annual financial report or any other information incorporated by reference into this Programme Memorandum (as amended or restated from time to time).

#### **DESCRIPTION OF THE NOTES**

1. Issuer	Esorfranki Limited
2. Status of the Notes	Senior Notes
3. Security	Secured. These Notes are Group 1 Notes. See Appendix "B" for a description of the security structure
4. Listed/Unlisted	Listed
5. Series number	3
6. Tranche number	1
7. Aggregate Principal Amount of this Tranche	R45 000 000
8. Interest/Payment Basis	Floating Rate
9. Issue Date and first settlement date	24 August 2012
10. Minimum Denomination per Note	R1 000 000
11. Specified Denomination (Principal Amount per Note)	R1 000 000
12. Issue Price(s)	100% of the Principal Amount of each Note
13. Applicable Business Day Convention, if different to that specified in the Terms and Conditions	Following Business Day
14. Interest Commencement Date(s)	24 August 2012
15. Step-Up Date	N/A
16. Final Redemption Date	24 August 2016
17. Specified Currency	ZAR

18. Additional Business Centre	N/A
19. Maturity Amount	100% of the Principal Amount of each Note
20. Set out the relevant description of any additional/amended Terms and Conditions relating to the Notes (including additional covenants, if any)	See Appendix "C" for additional/amended Terms and Conditions relating to the Notes.

#### **FIXED RATE NOTES**

21. Fixed Interest Rate	N/A
22. Interest Payment Date(s)	N/A
23. Interest Period(s)	N/A
24. Initial Broken Amount	N/A
25. Final Broken Amount	N/A
26. Step-Up Rate	N/A
27. Any other items relating to the particular method of calculating interest	N/A

#### **FLOATING RATE NOTES**

28. Interest Payment Date(s)	the last day of August, November, February and May of each year, or if such day is not a Business Day then in accordance with the Following Business Day convention
29. Interest Period(s)	From (and including) each Interest Payment Date to (but excluding) the following Interest Payment Date, provided that the first Interest Period shall be from (and including) the Interest Commencement Date to (but excluding) 30 November 2012 and the last Interest Period shall be from (and including) 31 May 2016 to (but excluding) the Final Redemption Date
30. Manner in which the Interest Rate is to be	Screen Rate Determination

determined

31. Margin/Spread for the Interest Rate	5.00% per annum to be added to the relevant Reference Rate
32. Margin/Spread for the Step-Up Rate	N/A
33. If Screen Determination	
(a) Reference Rate (including relevant period by reference to which the Interest Rate is to be calculated)	An interpolated rate between 3 month JIBAR and 6 month JIBAR for the first Interest Period, 3 month JIBAR for each Interest Period thereafter and an interpolated rate between 1 month JIBAR and 3 month JIBAR for the last Interest Period
(b) Rate Determination Date(s)	The first day of each Interest Period, namely the last day of August, November, February and May of each year, or if such day is not a Business Day then in accordance with the Following Business day convention
(c) Relevant Screen page and Reference Code	SAFEY Page (or the SAFEX nominated successor screen for JIBAR) under the caption "SFX 3M YIELD
34. If Interest Rate to be calculated otherwise than by reference to Screen Rate Determination, insert basis for determining Interest Rate/Margin/Fall back provisions	N/A
35. Any other terms relating to the particular method of calculating interest	N/A
<b>ZERO COUPON NOTES</b>	N/A
36. (a) Implied Yield	N/A
(b) Reference Price	N/A
(c) Equivalent Discount Rate	N/A
(d) Spread to Reference Rate	N/A
(e) Maturity Date	N/A
(f) Day Count	N/A

- (g) Any other formula or basis for determining N/A  
amount payable

#### **INDEXED NOTES**

37. (a) Type of Indexed Notes N/A
- (b) Index/Formula by reference to which N/A  
Interest Amount/Final Redemption  
Amount is to be determined
- (c) Manner in which the Interest N/A  
Amount/Final Redemption Amount is to  
be determined
- (d) Interest Period N/A
- (e) Interest Payment Date(s) N/A
- (f) If different from the Calculation Agent, N/A  
agent responsible for calculating amount  
of principal and interest
- (g) Provisions where calculation by reference N/A  
to Index and/or Formula is impossible or  
impracticable

#### **OTHER NOTES**

38. If the Notes are not Fixed Rate Notes or N/A  
Floating Rate Notes, or if the Notes are a  
combination of the above and some other  
Note, set out the relevant description of any  
additional Terms and Conditions relating to  
such Notes

#### **PROVISIONS REGARDING REDEMPTION/ MATURITY**

39. Redemption at the option of the Issuer in Yes  
terms of Condition 8.4: if yes:

(a) Optional Redemption Date(s)	Any Interest Payment Date after 31 August 2014 (ie 2.0 year no call period)
(c) Optional Redemption Amount(s) and method, if any, of calculation of such amount(s)	The Principal Amount of the Note being redeemed, multiplied by the following percentages in each of the following periods (in each period, both dates inclusive):  1 September 2014 to 28 February 2015 (ie year 2.0 - 2.5) – 103%; 1 March 2015 to 31 August 2015 (ie year 2.5 - 3.0) – 102%; 1 September 2015 to 24 August 2016 (ie year 3.0 - 4.0) – 101%;
(d) Minimum period of notice	30 days
(e) If redeemable in part:	
Minimum Redemption Amount(s)	N/A
Higher Redemption Amount(s)	N/A
(f) Other terms applicable on Redemption	N/A
40. Redemption at the option of the holders of the Senior Notes (Put Option) in terms of Condition 8.5: if yes	No
(a) Optional Redemption Date(s) (Put)	N/A
(b) Optional Redemption Amount(s) (Put) and method, if any, of calculation of such amount(s)	N/A
(c) Minimum period of notice	N/A
(d) If redeemable in part:	N/A
Minimum Redemption Amount(s)	N/A
Higher Redemption Amount(s)	N/A

	(e) Other terms applicable on Redemption	N/A
41.	Redemption at the option of the holders of the Notes upon the occurrence of a Put Event in terms of Condition 8.6:	
	(a) Delisting of the Notes of this Tranche/the ordinary shares of the Issuer from the JSE	Yes
	(b) Change of Control	Yes
	(c) Issuer disposing of the whole or the greater part of its undertaking or assets	Yes
42.	Early Redemption Amount(s) payable on redemption for Taxation reasons in terms of Condition 8.3 or Optional Redemption following a Put Event in terms of Condition 8.6 or early redemption following an Event of Default in terms of Condition 12 : if yes	Yes
	Early Redemption Amount and method, if any, of calculation of such amount	<p>i) In the case of Redemption for Taxation reasons in terms of Condition 8.3 - Early Redemption Amount calculated as per Condition 8.7.</p> <p>ii) In the case of early redemption following an Event of Default in terms of Condition 12 - Early Redemption Amount calculated as per Condition 8.7</p> <p>iii) In the case of Optional Redemption following a Put Event in terms of Condition 8.6 - Early Redemption Amount shall be calculated as set out below:</p> <p>For the Interest Payment Dates from the Issue Date to 31 August 2014 (both dates inclusive) (ie year 0 - 2.0): the Principal Amount of the Note being redeemed, plus the Present Value of the Margin (as defined below).</p> <p>For the Interest Payment Dates from 1 September 2014 to 24 August 2016 (both dates inclusive) (ie year 2.0 - 4.0): the Principal Amount</p>

of the Note being redeemed multiplied by 101%.

For the purposes of this Condition 8.6:

Present Value of Margin = Sum (Margin x Discount Factor)

Where

Margin = the Margin element (as referred to in paragraph 31) of each interest payment from the Put Date to the Final Redemption Date

Discount Factor =  $1/((1+i)^t)$

Where

i = the nominal annual compound annual rate from a South African Bank's swap curve relating to the period from the Put Date to each relevant Interest Payment Date

$t = (\text{future Interest Payment Date} - \text{Put Date})/ 365$

Put Date = the date on which the Notes are to be redeemed following exercise by a Noteholder of its right of redemption following a Put Event in terms of Condition 8.6

## GENERAL

43. Additional selling restrictions	N/A
44. International Securities Numbering (ISIN)	ZAG000097866
45. Stock Code	EFC03
46. Financial Exchange	JSE
47. Dealer(s)	Absa Capital
48. If syndicated, names of Lead Manager(s)	N/A
49. Method of distribution	Private placement
50. Rating assigned to this Tranche of Notes (if	N/A

any)

51.	Rating Agency, if any	N/A
52.	Governing Law	South Africa
53.	Last Day to Register	by 17h00 on the Business Day preceding the Books Closed Period
54.	Books Closed Period	the 10 days prior to each Interest Payment Date and Redemption Date
55.	Calculation Agent	Absa Capital
56.	Specified Office of the Calculation Agent	15 Alice Lane, Sandton, 2196
57.	Transfer Agent	Absa Capital
58.	Specified Office of the Transfer Agent	15 Alice Lane, Sandton, 2196
59.	Debt Sponsor	Absa Capital
60.	Issuer's Settlement Agent	Absa Investor Services, a division of Absa Bank Limited
61.	Specified Office of the Issuer's Settlement Agent	15 Alice Lane, Sandton, 2196
62.	Stabilisation Manager, if any	N/A
63.	Programme Amount	R1 000 000 000
64.	Aggregate Outstanding Principal Amount of Notes in issue on the Issue Date of this Tranche	R0, excluding this Tranche of Notes and any other Tranche(s) of Group to be issued on the Issue Date
65.	Aggregate Outstanding Principal Amount of Notes in issue in respect of the Series on the Issue Date of this Tranche	R0, excluding this Tranche of Notes and any other Tranche(s) of Notes to be issued in respect of the Series on the Issue Date
66.	Aggregate Outstanding Principal Amount of Group 1 Notes in issue on the Issue Date of this Tranche	R0, excluding this Tranche of Notes and any other Tranche(s) of Group to be issued on the Issue Date
67.	Additional Events of Default	See Appendix "C"
68.	Trustee	Maitland Trust Limited

69. Specified Office of the Trustee	32 Fricker Road, Illovo Boulevard, Sandton, 2196
70. Other provisions	N/A

DISCLOSURE REQUIREMENTS IN TERMS OF PARAGRAPH 3 (5) OF THE COMMERCIAL PAPER REGULATIONS – SEE APPENDIX "A"

SECURITY STRUCTURE - SEE APPENDIX "B"

ADDITIONAL/AMENDED TERMS AND CONDITIONS RELATING TO THE NOTES – SEE APPENDIX "C"

This Pricing Supplement amends, restates and replaces the pricing supplement dated 13 August 2012 in respect of the Notes of this Tranche with effect from the date of signature of this pricing supplement.

Application is hereby made to list this Tranche of the Notes, as from 24 August 2012, pursuant to the Esorfranki Limited Domestic Medium Term Note Programme. The Programme was registered with the JSE on 26 July 2012.

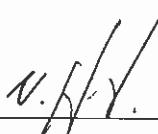
ESORFRANKI LIMITED

By: \_\_\_\_\_



Director, duly authorised

By: \_\_\_\_\_



Director, duly authorised

Date: 22 AUGUST 2012

Date: 22 AUGUST 2012

## APPENDIX "A"

### Disclosure Requirements in terms of paragraph 3(5) of the Commercial Paper Regulations

At the date of this Applicable Pricing Supplement:

#### Paragraph 3(5)(a)

The ultimate borrower is the Issuer.

#### Paragraph 3(5)(b)

The Issuer is a going concern and can in all circumstances be reasonably expected to meet its commitments under the Notes.

#### Paragraph 3(5)(c)

The auditor of the Issuer is KPMG Inc.

#### Paragraph 3(5)(d)

As at the date of this issue:

- (a) the Issuer has not issued any Notes; and
- (b) it is not anticipated that the Issuer will issue additional Notes during the remainder of its current financial year, in addition to the Notes issued on the Issue Date of this Tranche of Notes.

#### Paragraph 3(5)(e)

Prospective investors in the Notes are to consider this Applicable Pricing Supplement, the Programme Memorandum and the documentation incorporated therein by reference in order to ascertain the nature of the financial and commercial risks of an investment in the Notes. In addition, prospective investors in the Notes are to consider the latest audited financial statements of the Issuer which are incorporated into the Programme Memorandum by reference and which may be requested from the Issuer.

#### Paragraph 3(5)(f)

There has been no material adverse change in the Issuer's financial position since the date of its last audited financial statements.

#### Paragraph 3(5)(g)

The Notes issued will be listed, as stated in the Applicable Pricing Supplement.

#### Paragraph 3(5)(h)

The funds to be raised through the issue of the Notes are to be used by the Issuer to refinance existing debt and incur capital expenditure.

Paragraph 3(5)(i)

The Notes are secured.

Paragraph 3(5)(i)

KPMG Inc, the auditors of the Issuer, have confirmed that nothing has come to their attention to indicate that this issue of Notes issued under the Programme will not comply in all respects with the relevant provisions of the Commercial Paper Regulations (Government Notice 2172 in Government Gazette No, 16167 of 14 December 1994) published under Paragraph (cc) of the definition of the "business of a bank" in terms of Section 1 of the Banks Act, 1990).

**ESORFRANKI LIMITED**

By: St. Howell

Director, duly authorised

Date: 22 AUGUST 2012

By: W.H.Y.

Director, duly authorised

Date: 22 AUGUST 2012

## APPENDIX "B"

### SECURITY STRUCTURE

The Group 1 Notes share in the same Security.

### SECURITY SPV GUARANTEE

The Security SPV will bind itself under a Security SPV Guarantee to the Trustee for the benefit of the Group 1 Noteholders, for the obligations of the Issuer to Group 1 Noteholders. Pursuant to such Security SPV Guarantee, the Security SPV will undertake in favour of the Trustee to pay it the full amount then owing to each Group 1 Noteholder by the Issuer on written demand from the Trustee on behalf of the Group 1 Noteholders. Following an Event of Default under the Group 1 Notes, the Trustee (on behalf of the Group 1 Noteholders), may declare the amounts outstanding under the Group 1 Note to be immediately due and payable. If there is a failure by the Issuer to pay the amount due to a Group 1 Noteholder upon delivery of such an acceleration notice, a decision may be made by the Group 1 Noteholders in terms of the Conditions, requiring the Trustee to make a demand under the Security SPV Guarantee. The liability of the Security SPV pursuant to the Security SPV Guarantee will, however, be limited in the aggregate to the net amount recovered by the Security SPV from the Issuer arising out of the Indemnity and, if necessary, the Security Documents referred to below.

### ISSUER INDEMNITY

The Issuer will give an Indemnity to the Security SPV in respect of claims that may be made against the Security SPV arising out of the Security SPV Guarantee. The Issuer shall not be entitled to refuse to make payment under the Indemnity to the Security SPV by reason of the fact that the Security SPV has not paid the claims of the Group 1 Noteholders under the Security SPV Guarantee nor shall the Issuer be entitled to refuse to make payment by reason of the fact that the liability of the Security SPV in respect of any such Security SPV Guarantee is limited in the manner set out in the Security SPV Guarantee.

### SECURITY DOCUMENTS

In accordance with the Security Documents, the Issuer cedes in security its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, as security for the obligations of the Issuer to the Security SPV under the Indemnity.

In accordance with the Security Documents, Esorfranki Construction (Pty) Ltd (incorporated in South Africa) binds itself under a guarantee to the Security SPV for the obligations of the Issuer to the Security SPV under the Indemnity. As security for its obligations to the Security SPV under the guarantee, Esorfranki Construction (Pty) Ltd (i) grants a special notarial bond over plant and equipment to the Security SPV, and (ii) cedes in security its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, all on the terms and as described in such Security Documents. Esorfranki Construction (Pty) Ltd has granted an irrevocable and unconditional power of attorney in favour of the Security SPV to register such special notarial bond with effect from the Issue Date.

In accordance with the Security Documents, Esorfranki Plant (Pty) Ltd (incorporated in South Africa) binds itself under a guarantee to the Security SPV for the obligations of the Issuer to the Security SPV under the Indemnity. As security for its obligations to the Security SPV under the guarantee, Esorfranki Plant (Pty) Ltd (i) grants a special notarial bond over plant and equipment to the Security SPV, and (ii) cedes in security its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, all on the terms and as described in such Security Documents. Esorfranki Plant (Pty) Ltd has granted an irrevocable and unconditional power of attorney in favour of the Security SPV to register such special notarial bond with effect from the Issue Date.

In accordance with the Security Documents, each of Esorfranki Property Developments (Pty) Ltd (incorporated in South Africa), Frankipile Mauritius International Limited (incorporated in Mauritius), Frankipile International Projects Ltd (incorporated in Mauritius) and Frankipile Botswana (Pty) Ltd (incorporated in Botswana), binds itself under a guarantee to the Security SPV for the obligations of the Issuer to the Security SPV under the Indemnity. As security for its obligations to the Security SPV under the guarantee, each such company cedes in security its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, all on the terms and as described in such Security Documents. In terms of the laws of Botswana, the Botswanan Pledge and the Botswanan Security Cession comprise contractual obligations of Frankipile Botswana (Pty) Ltd to the Security SPV. A registered deed of hypothecation granted to a third party would have priority over such contractual security by Frankipile Botswana (Pty) Ltd.

The Issuer will procure that future Subsidiaries incorporated in South Africa that contribute greater than 5% individually to the aggregated EBIDTA or tangible operating assets of the Group become Subsidiary Guarantors and that the Issuer and all Subsidiary Guarantors account for at least 85% of the aggregated EBIDTA or tangible operating assets of the Group.

The obligations of the Subsidiary Guarantors under the Subsidiary Guarantee are joint and several.

## THE SECURITY SPV

### Introduction

The Security SPV was incorporated and registered in South Africa on 29 March 2012, under registration number 2012/061270/07, as a private company with limited liability. The issued share capital of the Security SPV comprises 100 ordinary share of R1,00 par value, held by the Tizabuzz Security SPV Owner Trust, IT Number 2126/2012. The Security SPV has no subsidiaries. The current trustees of the Tizabuzz Security SPV Owner Trust are Maitland Trust Limited. The Security SPV has adopted a new memorandum of incorporation, including ring-fencing provisions, which has been filed with the Companies and Intellectual Property Commission. The issue of a new registration certificate is pending. Until the new registration certificate is issued, all references in the Transaction Documents to Tizabuzz (RF) Proprietary Limited shall be construed as a reference to Tizabuzz Proprietary Limited.

### Directors

The director of the Security SPV is David Towers.

David is a director and trustee on numerous investment vehicles, including securitisation vehicles, structured finance special purpose vehicles and exchange traded funds. David has extensive experience in debt capital markets and structured finance having worked for several major local and international banks and institutions in corporate banking and structured finance roles as well as spending a period as an independent consultant focusing on the debt capital markets. Prior to joining Maitland in 2011 he worked at Moody's Investors Service where he was responsible for assessing various asset-backed structured finance transactions. Prior to that he was Legal Counsel to the Bond Exchange of South Africa. David has B. Com, LLB and LLM degrees from the University of the Witwatersrand.

### Registered office

The registered office of the Security SPV is situated at 1<sup>st</sup> Floor, 32 Fricker Road, Illovo, 2196.

### Auditors

The current auditors of the Security SPV are BDO South Africa Inc.

### Activities

The activities of the Security SPV are to enter into, amend and perform the obligations and exercise the Security SPV's rights under the Security SPV Guarantee, the Indemnity and the Security Documents.

## APPENDIX "C"

### ADDITIONAL/AMENDED TERMS AND CONDITIONS RELATING TO THE NOTES OF THE SERIES

#### EVENTS OF DEFAULT

Condition 12.1 of the Terms and Conditions set out in the Programme Memorandum is amended in relation to the Notes of this Tranche by the insertion of the following new Condition 12.1.12:

*"Condition 12.1.12 Special Notarial Bonds*

Each of Esorfranki Construction (Proprietary) Limited and Esorfranki Plant (Proprietary) Limited fail to lodge a special notarial bond over specified plant and equipment, in form and substance approved by the Dealer on the Issue Date, within 20 Business Days of the Issue Date."

Condition 12.2 (Steps following an Event of Default relating to the Senior Notes) of the Terms and Conditions set out in the Programme Memorandum is amended in relation to the Notes of this Tranche by the deletion of Condition 12.2 and the replacement thereof of the following Condition 12.2:

12.

**12.2 Condition 12.2 Steps following an Event of Default relating to the Group 1 Notes**

- 12.2.1 If an Event of Default occurs in relation to the Notes of the Series:
  - 12.2.1.1 the Calculation Agent and/or the Issuer will forthwith inform the Trustee thereof; and
  - 12.2.1.2 the Trustee will, as soon as such Event of Default comes to its notice (whether as a result of having been informed by the Calculation Agent and/or the Issuer thereof pursuant to Condition 12.2.1.1 or otherwise), forthwith call a meeting of the Group 1 Noteholders.
- 12.2.2 The Trustee shall immediately upon becoming aware of the occurrence of an Event of Default set out in Condition 12.1.6 (*Insolvency Events*) and if any other Event of Default has occurred and is continuing at its discretion may, and if so directed by an Extraordinary Resolution of the Group 1 Noteholders shall, give written notice to the Issuer that the Group 1 Notes are, and they shall accordingly become immediately due and payable at their Early Redemption Amount together with accrued interest (if any) thereon to the date of payment.

## MEETINGS OF THE GROUP 1 NOTEHOLDERS

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 23:

### 23. Condition 23 - Meetings of the Group 1 Noteholders

Where a meeting of the Group 1 Noteholders is to be convened, in accordance with these Terms and Conditions, the trust deed of the Esorfranki Group 1 Note Trust or the Security SPV Guarantee, then the provisions of this Condition 23 shall apply.

#### 23.1 Convening of meetings

23.1.1 The Issuer or the Trustee may at any time convene a meeting of the Group 1 Noteholders (a "meeting").

23.1.2 The Issuer or the Trustee will convene a meeting of the Group 1 Noteholders upon the requisition in writing of Group 1 Noteholders holding not less than 20% of the aggregate Outstanding Principal Amount of the Group 1 Notes (a "requisition notice").

23.1.3 Whenever the Issuer wishes to convene a meeting, it will forthwith give notice in writing to the Group 1 Noteholders in the manner prescribed in Condition 16 and to the Trustee in accordance with the provisions of the Trust Deed of the place, day and hour of the meeting, the nature of the business to be transacted at the meeting and the resolutions to be proposed and considered at the meeting.

23.1.4 Whenever the Trustee wishes or is obliged to convene a meeting it will forthwith give notice in writing to the Group 1 Noteholders and the Issuer in the manner prescribed in Condition 16, of the place, day and hour of the meeting, the nature of the business to be transacted at the meeting and the resolutions to be proposed and considered at the meeting.

23.1.5 All meetings of the Group 1 Noteholders will be held in Johannesburg.

#### 23.2 Requisition

23.2.1 A requisition notice will state the nature of the business for which the meeting is to be held and the resolutions to be proposed and considered at the meeting and will be deposited at the Specified Office of the Issuer or the Trustee, as the case may be.

23.2.2 A requisition notice may consist of several documents in like form, each signed by one or more requisitionists.

#### 23.3 Convening of meetings by requisitionists

If the Issuer or the Trustee, as the case may be, does not convene a meeting to be held within 20 days of the deposit of a requisition notice, the requisitionists may themselves convene the meeting, but the meeting so convened will be held within 60 days from the date

of such deposit and will be convened as nearly as possible in the same manner as that in which meetings may be convened by the Issuer. Whenever the requisitionists are about to so convene any such meeting, requisitionists shall forthwith give notice of the meeting to the Issuer and the Trustee.

**23.4 Notice of meeting**

- 23.4.1 Unless the holders of at least 90% of the aggregate Outstanding Principal Amount of the Group 1 Notes, agree in writing to a shorter period, at least 15 days' written notice, specifying the place, day and time of the meeting, the nature of the business for which the meeting is to be held and the resolutions to be proposed and considered at the meeting, will be given to each Group 1 Noteholder, to the Issuer and to the Trustee.
- 23.4.2 The accidental omission to give such notice to any Group 1 Noteholder, to the Issuer or to the Trustee, as the case may be, or the non-receipt of any such notice, will not invalidate the proceedings at a meeting.

**23.5 Quorum**

- 23.5.1 A quorum at a meeting shall:
  - 23.5.1.1 for the purposes of considering an Ordinary Resolution, consist of Group 1 Noteholders present in person or by proxy and holding in the aggregate not less than one-third of the aggregate Outstanding Principal Amount of the Group 1 Notes;
  - 23.5.1.2 for the purposes of considering a resolution in respect of the dismissal of the Trustee and approval of the appointment of any new Trustee in accordance with the provisions of the Trust Deed or an Extraordinary Resolution, consist of Group 1 Noteholders present in person or by proxy and holding in the aggregate not less than a clear majority of the aggregate Outstanding Principal Amount of the Group 1 Notes.
- 23.5.2 No business will be transacted at a meeting of the Group 1 Noteholders unless a quorum is present at the time when the meeting proceeds to business.
- 23.5.3 If, within 15 minutes from the time appointed for the meeting, a quorum is not present, the meeting will, if it was convened on the requisition of the Group 1 Noteholders be dissolved. In every other case the meeting will stand adjourned to the same day in the third week thereafter, at the same time and place, or if that day is not a Business Day, the next succeeding Business Day. If at such adjourned meeting a quorum is not present the Group 1 Noteholders present, in person or by proxy, will constitute a quorum for the purpose of considering any resolution, including an Extraordinary Resolution.

**23.6 Chairman**

The chairman of the meeting shall be appointed by the Trustee. If the Trustee or the person appointed by the Trustee to preside as chairman of the meeting is not present within 10 minutes of the time appointed for the holding of the meeting, the Group 1 Noteholders then present will choose one of their own number to preside as chairman.

**23.7 Adjournment**

23.7.1 Subject to the provisions of this Condition 23, the chairman may, with the consent of, and will on the direction of, the meeting adjourn the meeting from time to time and from place to place.

23.7.2 No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

23.7.3 At least 14 days' written notice of the place, day and time of an adjourned meeting will be given by the Issuer or the Trustee, as the case may be, to the Issuer, the Trustee and each Group 1 Noteholder. In the case of a meeting adjourned in terms of Condition 23.6.3, the notice will state that the Group 1 Noteholders present in person or by proxy at the adjourned meeting will constitute a quorum.

**23.8 How questions are decided**

23.8.1 At a meeting, a resolution put to the vote will be decided on a poll.

23.8.2 In the case of an equality of votes, the chairman will not be entitled to a casting vote in addition to the vote, if any, to which he is entitled.

**23.9 Votes**

Voting shall only take place on a poll and not on a show of hands. On a poll every Group 1 Noteholder, present in person or by proxy, will be entitled to that proportion of the total votes which the aggregate Outstanding Principal Amount of the Group 1 Notes held by such Group 1 Noteholder bears to the aggregate Outstanding Principal Amount of all the Group 1 Notes. In relation to joint Group 1 Noteholders, the vote may be exercised only by that Group 1 Noteholder whose name appears first on the Register in the event that more than one of such Group 1 Noteholders is present, in person or by proxy, at the meeting. The Group 1 Noteholder in respect of Group 1 Notes held in the Central Securities Depository in uncertificated form shall vote at any such meeting on behalf of the holders of Beneficial Interests in such Group 1 Notes in accordance with the instructions to the Central Securities Depository's Nominee from the holders of Beneficial Interests conveyed through the Participants in accordance with the Applicable Procedures.

**23.10 Proxies and representatives**

23.10.1 Group 1 Noteholders, present either in person or by proxy, may vote on a poll. A Group 1 Noteholder, may by an instrument in writing (a "proxy form") signed by the Group 1

Noteholder (or his duly authorised agent) or, in the case of a juristic person, signed on its behalf by a duly authorised officer of the juristic person, appoint any person (a "proxy" or "proxies") to act on his or its behalf in connection with any meeting or proposed meeting.

- 23.10.2 A person appointed to act as proxy need not be a Group 1 Noteholder.
- 23.10.3 The proxy form will be deposited at the Specified Office of the Issuer or at the Specified Office of the Transfer Agent, as the case may be, not less than 24 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in such proxy proposes to vote.
- 23.10.4 No proxy form will be valid after the expiration of 6 months from the date named in it as the date of its execution.
- 23.10.5 Notwithstanding Condition 23.10.4, a proxy form will be valid for any adjourned meeting, unless the contrary is stated thereon.
- 23.10.6 A vote given in accordance with the terms of a proxy form will be valid notwithstanding the previous death or incapacity of the principal or revocation or amendment of the proxy form or of any of the instructions of the Group 1 Noteholder , pursuant to which the proxy form was executed or of the authority under which the proxy form was executed or the transfer of Group 1 Notes or in respect of which the proxy was given, provided that no intimation in writing of such death, incapacity, revocation or amendment shall have been received by the Issuer at its Specified Office or the Transfer Agent at its Specified Office, as the case may be, more than, and that the transfer has been given effect to less than, 12 hours before the commencement of the meeting or adjourned meeting at which the proxy is to be used.
- 23.10.7 Any Group 1 Noteholder which is a juristic person may authorise any person to act as its representative in connection with any meeting or proposed meeting of the Group 1 Noteholders, by resolution of the directors or other governing body of the juristic person. Any reference in the Terms and Conditions to a Group 1 Noteholder or any other member of the Group 1 Noteholders present in person, includes the duly authorised representative of a Group 1 Noteholder or any other member of the Group 1 Noteholders, as the case may be, which is a juristic person.

#### 23.11 Minutes

- 23.11.1 The Issuer will cause minutes of all resolutions and proceedings of meetings to be duly entered in the minute books of the Issuer.
- 23.11.2 Any such minutes as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings held or by the chairman of the next succeeding meeting, will be receivable in evidence without any further proof, and until the contrary is proved, a meeting the Group 1 Noteholders in respect of the proceedings of which minutes have been so made will be deemed to have been duly

held and convened and all resolutions passed thereat, or proceedings held, to have been duly passed and held.

**23.12 Written resolutions**

A resolution in writing submitted to the Group 1 Noteholders entitled to exercise voting rights in relation to the resolution, and signed by the requisite majority of the Group 1 Noteholders Noteholders, shall be as valid and effective as if it had been passed at a meeting duly convened and constituted and shall be deemed (unless a statement to the contrary is made in that resolution) to have been passed on the last day on which that resolution is signed by any one or more of the Group 1 Noteholders. That resolution may consist of two or more documents in the same form each of which is signed by one or more of the Group 1 Noteholders.

### THIRD PARTY RIGHTS AND OBLIGATIONS

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 24 (Third party rights and obligations):

#### 24. Condition 24 Third party rights and obligations

- 24.1 Each Group 1 Noteholder, upon its subscription for Group 1 Notes and the issue of Group 1 Notes to it, or upon the transfer of Group 1 Notes to it, as the case may be, shall be bound by those provisions of the Security SPV Guarantee which confer rights and/or impose obligations on the Group 1 Noteholders.
- 24.2 It is recorded that in terms of the Security SPV Guarantee, the Security SPV, upon signing the Security SPV Guarantee, is deemed to have given notice of the Terms and Conditions of the Group 1 Notes, and the Security SPV shall be bound by those provisions of the Terms and Conditions of the Group 1 Notes which confer rights and/or impose obligations on the Security SPV.

## COVENANTS

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 25 (Covenants):

### 25. Condition 25 Covenants

#### 25.1 Financial Indebtedness

- 25.1.1 There shall be no limitation on the incurrence of any Financial Indebtedness by the Issuer or any other Restricted Group Company:
- 25.1.1.1 if, immediately after the incurrence of such Financial Indebtedness, (i) the Leverage Ratio is less than 2.50 times; and (ii) the Fixed Charge Cover Ratio is at least 2.50 times, in each case calculated when the Issuer or any other Restricted Group Company wishes to incur additional Financial Indebtedness, after adjusting the relevant ratio giving the pro forma effect of such incurrence of additional Financial Indebtedness; and
- 25.1.1.2 the Issuer delivers a certificate (signed by 2 directors of the Issuer) to the Trustee at least 10 Business Days prior to the proposed date of incurrence of such Financial Indebtedness, (i) confirming compliance with the Financial Indebtedness Covenant and accompanied by the relevant calculations, and (ii) confirming that as at the date of such certificate there is no Event of Default or Potential Event of Default which is continuing, and immediately after the incurrence of such Financial Indebtedness, no Event of Default or Potential Event of Default will occur or be continuing as a result of the incurrence of the Financial Indebtedness.
- 25.1.2 If the provisions of Condition 25.1.1 are not satisfied, then the Issuer shall not, and shall procure that such other Restricted Group Company shall not, incur such additional Financial Indebtedness at that time. This restriction does not apply to the incurrence of any additional Financial Indebtedness:
- 25.1.2.1 under any GBF Agreement; provided that the aggregate outstandings, at any time, under the GBF Agreements do not exceed the lower of (i) R180 000 000 (of which R150 000 000 relates to performance bank guarantees in respect of the obligations of Group Companies under contracts with customers), and (ii) 40% of trade debtors of the Issuer and other Restricted Group Companies that are less than 90 days old;
- 25.1.2.2 under asset-backed facilities of vehicles, plant, equipment or computers concluded by Restricted Group Companies, provided that the aggregate outstandings under such asset-backed facilities by Restricted Group Companies does not exceed an aggregate amount of R170 000 000 from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;

- 25.1.2.3 to finance the purchase, construction or improvement of property and equipment at fair market value and of a type which is usual for a business of such nature, up to an aggregate amount of R20 000 000 from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;
  - 25.1.2.4 under any Permitted Treasury Transactions;
  - 25.1.2.5 in addition to that referred to in the other sub paragraphs of this Condition 25.1, which in aggregate does not exceed R20 000 000 from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;
  - 25.1.2.6 to refinance any existing debt of the Issuer or any Restricted Group Company in whole or in part;
  - 25.1.2.7 under guarantees granted by the Issuer or financial institutions in respect of the obligations of Group Companies under contracts with customers;
  - 25.1.2.8 between the Issuer and any Restricted Group Company or between or among Restricted Group Companies; or
  - 25.1.2.9 expressly permitted in writing by an Extraordinary Resolution of the Group 1 Noteholders.
- 25.1.3 The Leverage Ratio and Fixed Charge Cover Ratio will be calculated using the audited consolidated annual financial statements of the Issuer, if available, failing which the unaudited consolidated management accounts of the Issuer, for the relevant Measurement Period.

## 25.2 **Restricted Payments**

- 25.2.1 There shall be no limitation on the making of any Restricted Payment by the Issuer or any other Restricted Group Company if:
  - 25.2.1.1 immediately after making such Restricted Payment, (i) the Leverage Ratio is less than 2.50 times; and (ii) the Fixed Charge Cover Ratio is at least 2.50 times, calculated when the Issuer or any other Restricted Group Company wishes to make a Restricted Payment; and
  - 25.2.1.2 the aggregate amount of all Restricted Payments declared or made after the Issue Date of the Initial Notes by the Issuer and each other Restricted Group Company does not exceed 50% of Consolidated PAT plus 100% of the proceeds of share issuances, (or such higher percentage expressly permitted in writing by an Extraordinary Resolution of the Group 1 Noteholders), calculated on a cumulative basis during the period beginning on the first day of the month in which the Initial Notes are issued and ending on the last day of the month ending prior to the date of such proposed Restricted Payment; and

- 25.2.1.3 after the Restricted Payment is made, the Issuer or any other Restricted Group Company could incur at least R1.00 of additional Financial Indebtedness under the provisions of Condition 25.1.1 of the Financial Indebtedness Covenant; and
- 25.2.1.4 the Issuer delivers a certificate (signed by 2 directors of the Issuer) to the Trustee at least 10 Business Days prior to the proposed date of making the Restricted Payment, (i) confirming compliance with the Restricted Payment Covenant and accompanied by the relevant calculations, and (ii) confirming that as at the date of the certificate there is no Event of Default or Potential Event of Default which is continuing, and immediately after the date of making the Restricted Payment, no Event of Default or Potential Event of Default will occur or be continuing as a result of the date of making the Restricted Payment.
- 25.2.2 If the provisions of Condition 25.2.1 are not satisfied, then the Issuer shall not, and shall procure that such other Restricted Group Company shall not, make such Restricted Payment at that time. This restriction does not apply to:
- 25.2.2.1 the payment of any dividend within 60 days of its declaration if at such date of its declaration such payment would have been permitted by the provisions of this covenant;
- 25.2.2.2 Restricted Payments by the Issuer and Restricted Group Companies which in aggregate do not exceed R20 000 000 calculated from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;
- 25.2.2.3 a Restricted Payment by the Issuer or another Restricted Group Company to a Restricted Group Company; or
- 25.2.2.4 any Restricted Payment expressly permitted in writing by an Extraordinary Resolution of the Group 1 Noteholders.
- 25.2.3 The Fixed Charge Cover Ratio and Consolidated PAT will be calculated using the audited consolidated annual financial statements of the Issuer, if available, failing which the unaudited consolidated management accounts of the Issuer, for the relevant Measurement Period.
- 25.3 Limitation on Issuances and Sales of Shares of Restricted Subsidiaries**
- 25.3.1 The Issuer will not sell, pledge, alienate or otherwise dispose of any shares of a Restricted Subsidiary, and will not permit any Restricted Group Company (other than as permitted under the "Negative Pledge" covenant), directly or indirectly, to issue, sell, pledge, alienate or otherwise dispose, any shares of a Restricted Subsidiary (including options, warrants or other rights to purchase such shares). This restriction does not apply to:
- 25.3.1.1 any issuance or sale of shares of a Restricted Subsidiary to the Issuer or a wholly owned Restricted Subsidiary;

- 25.3.1.2 any issuance or sale of shares of a Restricted Subsidiary made in compliance with the "Disposal of Assets" covenant and if, immediately after giving effect to such issuance or sale, such Restricted Subsidiary would no longer constitute a Restricted Subsidiary and any remaining investment in such Person would have been permitted to have been made under the "Restricted Payments" covenant if made on the date of such issuance or sale;
- 25.3.1.3 any issuance or sale of shares of a Restricted Subsidiary made in compliance with the "Disposal of Assets" covenant and if immediately after giving effect to such issuance or sale such Restricted Subsidiary would continue to be a Restricted Subsidiary;
- 25.3.1.4 any issuance of shares of a Restricted Subsidiary, if after giving effect to such issuance, the Issuer directly or indirectly maintains at least the same percentage ownership of such Restricted Subsidiary as it owned immediately prior to such issuance;
- 25.3.1.5 shares issued by a Person prior to the time:
  - 25.3.1.5.1 such Person becomes a Restricted Subsidiary,
  - 25.3.1.5.2 such Person consolidates or merges with or into a Restricted Subsidiary, or
  - 25.3.1.5.3 a Restricted Subsidiary consolidates or merges with or into such Person; but only if such shares were not issued or incurred by such Person in anticipation of it becoming a Restricted Subsidiary.

#### 25.4 **Transactions with Affiliates**

- 25.4.1 The Issuer shall not, and and undertakes to procure that other Restricted Group Companies shall not, enter into any transaction or series of related transactions with, or for the benefit of, any Affiliate of the Issuer or any other Restricted Group Company unless such transaction or series of transactions is entered into in good faith and
  - 25.4.1.1 such transaction or series of transactions is on terms that, taken as a whole, are not materially less favourable to the Issuer or such Restricted Group Company, as the case may be, than those that could have been obtained in comparable arm's-length transactions with third parties that are not Affiliates;
  - 25.4.1.2 with respect to any transaction or series of related transactions involving aggregate payments or the transfer of assets or provision of services, in each case having a value greater than ZAR 5 000 000, the board of directors of the Issuer shall resolve with the participation of the majority of the Disinterested Directors (or in the event that there is only one Disinterested Director, by the resolution of such Disinterested Director), that such transaction or series of related transactions complies with Condition 25.4.1.1 above (and deliver a copy

of such resolution to the Trustee under cover of a certificate (signed by 2 directors of the Issuer); and

- 25.4.1.3 with respect to any transaction or series of related transactions involving aggregate payments or the transfer of assets or the provision of services, in each case having a value greater than ZAR 10 000 000, the Restricted Group Company shall obtain a written opinion of an accounting, appraisal or investment banking firm of national standing, stating that the transaction or series of transactions is fair to the such Restricted Group Company from a financial point of view (and deliver a copy of such opinion to the Trustee).
- 25.4.2 The restrictions in Condition 25.4.1 shall not apply to transactions between the Issuer and other Restricted Group Companies and shall not preclude loans to Unrestricted Group Companies made in accordance with Condition 25.11.

## 25.5 **Consolidations, Mergers and Acquisitions**

- 25.5.1 The Issuer will not, and will procure that each other Restricted Group Company will not, in a single transaction or a series of related transactions (i) acquire or subscribe for shares or other ownership interests in, or securities of, any Person, or (ii) acquire any business of any Person, or (iii) make any investment (whether debt or equity) in any Person, or (iv) enter into any amalgamation, unbundling, merger, consolidation or reconstruction with or into any other Person.
- 25.5.2 The restriction set out above will not apply (i) to any transaction or series of related transactions expressly permitted in writing by Extraordinary Resolution of the Group 1 Noteholders or (ii) if any payment in respect of such transaction or series of related transactions is made to another Restricted Group Company, or (iii) if :
- 25.5.2.1 immediately after giving effect to any such transaction or series of related transactions, in the case of any amalgamation, unbundling, merger, consolidation or reconstruction, either
- 25.5.2.1.1 the Issuer or the relevant Restricted Group Company, as the case may be, will be the continuing company; or
- 25.5.2.1.2 the Person (if other than the Issuer or the relevant Restricted Group Company, as the case may be) formed by or surviving any such amalgamation, unbundling, merger, consolidation or reconstruction (the "Surviving Entity") (i) will be a company duly incorporated and validly existing under the laws of South Africa, and (ii) will expressly assume the obligations of the Issuer or the relevant Restricted Group Company, as the case may be, under the Group 1 Notes and the Security Documents, in each case in form and substance satisfactory to the Trustee; and
- 25.5.2.1.3 each Restricted Group Company, unless it is the other party to the transactions described above, will confirm in writing that its guarantee will

- continue to apply to the obligations of the Issuer, the relevant Restricted Group Company or the Surviving Entity, as the case may be, under the Group 1 Notes;
- 25.5.2.2 immediately after giving effect to such transaction or series of related transactions on a pro forma basis (and treating any obligation of the Issuer or any Restricted Group Company incurred in connection with or as a result of such transaction or series of related transactions as having been incurred by the Issuer or such Restricted Group Company at the time of such transaction) no Event of Default will have occurred and be continuing;
- 25.5.2.3 immediately after giving effect to such transaction or series of related transactions on a pro forma basis (on the assumption that the transaction or series of related transactions occurred on the first day of the Measurement Period prior to the consummation of such transaction or series of related transactions with the appropriate adjustments with respect to the transaction or series of related transactions being included in such pro forma calculation), the Issuer (or the Surviving Entity if the Issuer is not a continuing obligor under the Group 1 Notes) (i) could incur at least R1.00 of additional Financial Indebtedness under the provisions of the "Financial Indebtedness" covenant or (ii) would have a Fixed Charge Cover Ratio no less than it was immediately prior to giving effect to such transaction or series of related transactions;
- 25.5.2.4 immediately after giving effect to any such transaction or series of related transactions, the Consolidated Net Worth is equal to or greater than the Consolidated Net Worth prior to the proposed transaction based on the pro forma consolidated balance sheet of the Issuer;
- 25.5.2.5 any payment in respect of such transaction or series of related transactions is made utilising funds which could otherwise be distributed as a Restricted Payment in terms of Condition 25.2 (Restricted Payments) at the end of the Measurement Period immediately preceding such transaction or series of related transactions;
- 25.5.2.6 the provisions of the "Negative Pledge" are complied with should any of the Issuer's or any Restricted Group Company's property or assets become subject to any Encumbrance immediately after giving effect to any such transaction or series of related transactions; and
- 25.5.2.7 the Issuer or the Surviving Entity will have delivered to the Trustee, in form and substance satisfactory to the Trustee, at least 10 Business Days prior to the proposed transaction, a certificate (signed by 2 directors of the Issuer) showing the computations to demonstrate compliance with Condition 25.5.2.2, 25.5.2.3, 25.5.2.4 and 25.5.2.5.

25.5.3 Nothing in this Condition 25.5 shall prevent a Restricted Subsidiary from consolidating with, merging into or transferring all or substantially all of its properties and assets to the Issuer or any other Restricted Subsidiary.

**25.6 Dividend Payments and other payments from Restricted Subsidiaries**

25.6.1 The Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create or otherwise cause or allow to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Restricted Subsidiary to:

25.6.1.1 pay dividends in cash or otherwise, or make any other distributions on or in respect of its share capital or any other interest or participation in, or measured by, its profits

25.6.1.2 pay any debt owed to the Issuer or any Restricted Group Company;

25.6.1.3 make loans or advances to the Issuer or any Restricted Group Company; or

25.6.1.4 transfer any of its properties or assets to the Issuer or Restricted Group Company.

25.6.2 The restrictions in Condition 25.6.1 shall not apply to encumbrances and restrictions imposed by the Terms and Conditions of the Group 1 Notes or the Security Documents or restrictions imposed by Applicable Law.

**25.7 Impairment of Security Interest**

25.7.1 The Issuer and each Restricted Group Company shall all times maintain in full force and effect (or where appropriate, promptly renew in a timely manner) all Encumbrances created pursuant to the Security Documents to which it is a party and from time to time execute, acknowledge and deliver or cause to be executed, acknowledged and delivered such further documents and/or instruments as may be reasonably requested by the Security SPV for perfecting or maintaining in full force and effect the Encumbrances granted under such Security Documents.

25.7.2 The Issuer will not, and the Issuer will not permit any Restricted Group Company to, take or omit to take any action that would, or would reasonably be expected to, have the result of impairing the Security provided under and pursuant to the Security Documents.

**25.8 Business Activities**

The Issuer will not, and will procure that Restricted Group Companies will not, enter into any new business type which the Issuer or other Restricted Group Companies do not have knowledge and experience in.

25.9 **Disposals of Assets**

- 25.9.1 Subject to the Security Documents and for so long as there is no Event of Default which is continuing, the Issuer and each other Restricted Group Company may, either in a single transaction or a series of transactions and whether related or not and whether voluntarily or involuntarily, dispose of all or any part of its assets, provided that:
- 25.9.1.1 the disposal is at a fair value (ie a value as could reasonably be expected to be obtained in an arm's length transaction. For a transaction or series of transaction exceeding R10, 000,000.00, a board resolution must confirm that the disposal is at fair value); and
- 25.9.1.2 the disposal proceeds, whether in cash or otherwise, must, subject to Condition 25.9.2, be applied, within 6 months of the relevant disposal, in repayment of the Group 1 Notes pursuant to the exercise by the Issuer of its right of Optional Redemption in terms of Condition 8.4, in repayment of the outstandings under any GBF Agreement, for capital expenditure or replacement capital expenditure or for the investment in any other asset comparable or superior as to type, value, quality and title, provided that if investment is made in a business from the disposal proceeds then such entity becomes a Restricted Group Company and Security is provided to the Security SPV.
- 25.9.2 If the disposal proceeds are not applied, within 6 months of the relevant disposal, for the purposes referred to in Condition 25.9.1.2, then the Issuer shall offer to redeem the Group 1 Notes, in an amount equal to so much of the disposal proceeds in respect of the relevant asset disposed of as exceeds R20 000 000, rounded down to the nearest R1 000 000 (the "**Excess Disposal Proceeds**"), in accordance with the remaining provisions of this Condition 25.9.
- 25.9.3 On or before the date of the expiry of the 6 month period referred to in Condition 25.9.2, the Issuer shall, by delivering a written notice (the "**Prepayment Offer Notice**") to each Group 1 Noteholder to that effect, offer to redeem the Group 1 Notes held by each such Group 1 Noteholder, on the date for redemption specified in the Prepayment Offer Notice (which shall not be later 10 Business Days after the expiry of the 6 month period referred to in Condition 25.9.2)(the "**Prepayment Offer Redemption Date**"), in an amount equal to its Pro Rata Share of the Excess Disposal Proceeds.
- 25.9.4 Each Group 1 Noteholder shall, within 10 Business Days of receipt of the Prepayment Offer Notice, notify the Issuer in writing whether it wishes to accept the offer, in whole or in part. If a Group 1 Noteholder fails to notify the Issuer of the acceptance of the offer in accordance with the provisions of this Condition 25.9.4, such Group 1 Noteholder shall be regarded as not having accepted the offer.
- 25.9.5 The Issuer shall, on the Prepayment Offer Redemption Date, redeem the Group 1 Notes of those Group 1 Noteholders who have accepted the offer in accordance with the provisions of Condition 25.9.4. Group 1 Notes redeemed pursuant to this

Condition 25.9.5 will be redeemed at their Early Redemption Amount referred to in Condition 8.7, together with accrued unpaid interest (if any) from (and including) the immediately preceding Interest Payment Date to (but excluding) the date of redemption.

- 25.9.6 The restrictions in Condition 25.9.1 do not apply to any disposal:
- 25.9.6.1 of trading stock made on arm's length terms in the ordinary course of trading;
  - 25.9.6.2 of any asset (not being a business or shares) on arm's length terms in exchange for any other asset comparable or superior as to type, value, quality and title;
  - 25.9.6.3 by the Issuer of the whole or the greater part of its undertaking or assets, which disposal may be made subject to compliance with the provisions of Conditions 8.6;
  - 25.9.6.4 of obsolete or redundant buildings and yards, vehicles, plant and equipment, for cash on arm's length terms; or
  - 25.9.6.5 constituted by a security interest which is permitted under Condition 11 (Negative Pledge).
- 25.9.7 Notwithstanding anything to the contrary contained in this Condition 25.9, if the Issuer exercises its right of Optional Redemption, in whole and not in part only, in terms of Condition 8.4:
- 25.9.7.1 the provisions of this Condition 25.9 shall not apply; and
  - 25.9.7.2 the Issuer and each Restricted Subsidiary, shall be entitled to dispose of all or substantially all of its assets whether in a single transaction or a series of related transactions, without any approval of the Group 1 Noteholders and any Security held in this regard shall be released upon the redemption in full of the Group 1 Notes and repayment in full of the other Group 1 Noteholders.
- 25.10 **Sale and Leaseback Transactions**
- 25.10.1 The Issuer shall not, and shall procure that no other Restricted Group Company shall, dispose of any of its assets to a third party on terms where any such asset is or may be required to be leased to or re-acquired or acquired by a Restricted Group Company, in circumstances where the transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset. This restriction does not apply to:
- 25.10.1.1 a transaction in terms of which the Restricted Group Company could have incurred the Financial Indebtedness in terms of the Financial Indebtedness Covenant in Condition 25.1 and the asset could have been given as security in terms of the Condition 11 (Negative Pledge);

- 25.10.1.2 the gross sale proceeds are at least equal to the fair market value of the asset, as determined by the directors acting in good faith; and
- 25.10.1.3 the disposal of the asset is permitted, and the proceeds of such disposal are applied, in accordance with Condition 25.10 (Disposals of Assets).
- 25.10.2 The restrictions in Condition 25.10.1 do not apply to any such disposal of assets by a Restricted Group Company to another Restricted Group Company.

**25.11      Loans to Unrestricted Group Companies**

Except as permitted in terms of Condition 25.5, the Issuer will not, and will not permit any other Restricted Group Company, to make any loans to any Person that is not a Restricted Group Company. This restriction will not apply to loans by a Restricted Group Company to Unrestricted Subsidiaries provided that the sum of all loans by Restricted Group Companies to Unrestricted Subsidiaries does not exceed 15% of the consolidated total assets (excluding intangible assets and deferred tax assets) of the Group.

**25.12      Treasury Transactions**

The Issuer and each Restricted Group Company shall not enter into any Treasury Transaction other than Permitted Treasury Transactions.

**25.13      Hedging**

The Issuer shall ensure that its board considers, on a quarterly basis, the hedging requirements of the Group.

**25.14      Information Undertakings**

- 25.14.1 The Issuer undertakes to deliver to the Trustee:
- 25.14.1.1 and to the JSE, its audited consolidated annual financial statements and reviewed unaudited interim consolidated financial results, within 90 days of each financial year end of the Issuer and within 60 days of each financial half year end of the Issuer, as the case may be, commencing with the half year ending on 31 August 2012;
- 25.14.1.2 within 90 days of each financial year end, a broker's letter detailing the insurance policies of the Group, together with a copy of the board resolution approving such insurance cover;
- 25.14.1.3 upon request by the Trustee, an up to date copy of the register of any Restricted Subsidiary;
- 25.14.1.4 promptly upon becoming aware of the same, details of any litigation, arbitration, mediation or similar proceedings either commenced, threatened or pending against it or any other Restricted Group Company which, if adversely

determined, would involve a liability in excess of R10 000 000 or its equivalent in any other currency.

- 25.14.2 The Issuer shall deliver to the Trustee, together with the financial statements delivered to the Trustee in terms of Condition 25.14.1.1, a certificate, signed by 2 directors of the Issuer, confirming compliance with the Covenants and with the provisions of Condition 26.3 and Condition 26.4 during the 6 months prior to the relevant financial year end or financial half year end, as the case may be.
- 25.14.3 Each compliance certificate delivered with the audited consolidated annual financial statements shall be accompanied by a certificate from the Issuer's auditors confirming the calculations and satisfaction of the provisions of Condition 26.3 and Condition 26.4 in the compliance certificates delivered by the Issuer to the Trustee during the previous year.
- 25.14.4 If there is a change in the IFRS accounting principles from that applicable at the Issue Date, then the Issuer may convene a meeting of the Group 1 Noteholders to approve, by Extraordinary Resolution, any changes required to the financial ratios referred to in the relevant Covenants so as to put the Issuer in the same position that it would have been in had a change in the IFRS accounting principles not occurred. Until such amendments are approved by Extraordinary Resolution of the Group 1 Noteholders, the Issuer will provide a description of any changes necessary for the financial statements delivered in terms of Condition 25.14.3 to reflect the IFRS accounting principles applicable at the Issue Date, and the financial ratios referred to in the relevant Covenants will be calculated on the basis of pro forma financial statements reflecting the IFRS accounting principles applicable at the Issue Date.

**25.15      Amendments to Transaction Documents and Security Documents**

The Issuer will not, and will not allow any Restricted Group Company, to agree to any amendment to, cancellation of, waiver in respect of, or discharge or release from, the Security Documents or Transaction Documents, without the prior authorisation of an Extraordinary Resolution of the Group 1 Noteholders.

## GUARANTEES

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 26 (Guarantees):

### 26. Condition 26 Guarantees

- 26.1 The Issuer has procured that the obligations of the Issuer to the Security SPV under the Indemnity are guaranteed by the Subsidiary Guarantors on the terms and conditions as contained in the Subsidiary Guarantee. Additional Subsidiary Guarantors may accede to the Subsidiary Guarantee from time to time. The Issuer shall notify the Noteholders in writing of such accession in accordance with Condition 16.
- 26.2 If a Subsidiary Guarantor ceases to be a Material Subsidiary, the Issuer is entitled to remove such Subsidiary as a Subsidiary Guarantor, provided that no amount is then due under the Subsidiary Guarantee and provided that the provisions of Condition 26.5 have been satisfied. The Issuer shall notify the Noteholders in writing of such cessation in accordance with Condition 16.
- 26.3 If, after the Issue Date, any member of the South African Group is a Material Subsidiary, the Issuer must promptly procure that that Material Subsidiary becomes a Subsidiary Guarantor.
- 26.4 If at any time after the Issue Date:
  - the aggregate contribution of the Issuer and all the Subsidiary Guarantors to the consolidated total assets (excluding intangible assets, deferred tax assets, investments in Subsidiaries of the Issuer and loans to Subsidiaries of the Issuer) of the Group or the consolidated EBITDA of the Group,
  - is less than
    - 85% of the consolidated total assets (excluding intangible assets, deferred tax assets, investments in Subsidiaries of the Issuer and loans to Subsidiaries of the Issuer) of the Group or the consolidated EBITDA of the Group (such shortfall being the **Financial Support Deficit**),
  - then the Issuer must procure, within 90 days of the end of each financial year end and financial half year end of the Issuer, that so many additional members of the South African Group become Subsidiary Guarantors as is necessary to ensure that there is no Financial Support Deficit.
- 26.5 The Issuer is not required to comply with Conditions 26.4 and 26.5 to the extent that it is unlawful for the relevant person to become a Subsidiary Guarantor or that person becoming a Subsidiary Guarantor would result in personal liability for its directors, officers or other management.

## ADDITIONAL DEFINITIONS IN RESPECT OF THE GROUP 1 NOTES

1. Terms and expressions set out below will have the meanings set out below in the Terms and Conditions of the Group 1 Notes of the Tranche referred to in this Applicable Pricing Supplement:
  - 1.1 **"Additional Notes"** means every Tranche of Notes issued in terms of the Programme in addition to the Initial Notes, which participate in the same Security as that granted in favour of the holders of the Initial Notes (and thus identified in the Applicable Pricing Supplement as Group 1 Notes) and are issued on the same Terms and Conditions as the Initial Notes, except for their respective Issue Dates, Interest Commencement Dates, Issue Price, Interest Rate, Interest Payment Dates, early redemption penalties or fees and Final Redemption Dates;
  - 1.2 **Affiliate** means, in relation to any Person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company or any Person that owns, directly or indirectly, 20% or more of such Person's ordinary share capital;
  - 1.3 **Botswanan Pledge** means the pledge by Frankipile International Projects Limited of its shares in Frankipile Botswana (Pty) Ltd to the Security SPV;
  - 1.4 **Botswanan Security Cession** means the cession in security by Frankipile Botswana (Pty) Ltd of its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries (if any) and its reversionary interest in its debtors book granted to the Security SPV, as security for its obligations to the Security SPV under the Subsidiary Guarantee;
  - 1.5 **Cash and Cash Equivalents** means cash on hand and on demand deposit, deposits held on call with financial institutions and other short-term highly liquid investments that are readily convertible to a known amount of cash and are subject to an insignificant risk of changes in value and bank overdrafts, in each case, which is freely available to the Group at that time and which is capable of being applied against Financial Indebtedness of the Group;
  - 1.6 **Consolidated EBIT** means, in relation to a Measurement Period, the aggregate of:
    - 1.6.1 the consolidated operating profits (excluding the results from discontinued operations) of the Group before Consolidated Net Finance Costs and tax for that Measurement Period;

adjusted by:

    - 1.6.1.1 excluding any items which represent gains or losses arising on:
    - 1.6.1.1.1 restructurings of the activities of an entity and reversals of any provisions for the costs of restructuring;
    - 1.6.1.1.2 disposals of non-current assets;
    - 1.6.1.1.3 the disposal of assets associated with discontinued operations;

- 1.6.1.1.4 movements of any provision;
- 1.6.1.2 excluding any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis) which is reported through the income statement;
- 1.6.1.3 excluding extraordinary gains or losses;
- 1.6.1.4 excluding non-cash items; and
- 1.6.1.5 excluding debt raising costs;
- 1.7 **Consolidated EBITDA** means, in relation to a Measurement Period, Consolidated EBIT for that Measurement Period after adding back any depreciation and amortisation and excluding any charge for impairment or any reversal of any previous charge made in the period;
- 1.8 **Consolidated Net Finance Costs** means, in relation to a Measurement Period, all Finance Costs (whether paid, payable or added to principal) incurred by the Group during that period calculated on a consolidated basis less Interest Receivable by the Group during that period calculated on a consolidated basis;
- 1.9 **Consolidated Net Worth** means at any time the aggregate of:
  - 1.9.1 the amount paid up or credited as paid up on the issued share capital of Restricted Group Companies; and
  - 1.9.2 the net amount standing to the credit (or debit) of the consolidated reserves of Restricted Group Companies;
- 1.10 **Consolidated PAT** means, in relation to a Measurement Period, the aggregate of:
  - 1.10.1 the consolidated operating profits (excluding the results from discontinued operations) of the Group after Consolidated Net Finance Costs and tax for that Measurement Period;
  - adjusted by:
    - 1.10.1.1 excluding any items which represent gains or losses, together with any related provisions for taxes on such gains or losses, arising on:
      - 1.10.1.1.1 restructurings of the activities of an entity and reversals of any provisions for the costs of restructuring;
      - 1.10.1.1.2 disposals of non-current assets;
      - 1.10.1.1.3 the disposal of assets associated with discontinued operations;
      - 1.10.1.1.4 reversals of any provision;

- 1.10.1.2 excluding any unrealised gains or losses, together with any related provisions for taxes on such gains or losses, on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis) which is reported through the income statement;
- 1.10.1.3 excluding any net after tax extraordinary gains or losses;
- 1.10.1.4 excluding non-cash items in relation to write-ups, write-downs or write-offs of assets of the Group, together with any related provisions for taxes on such non-cash items;
- 1.10.1.5 excluding debt and equity raising costs, together with any related provisions for taxes on such debt and equity raising costs; and
- 1.10.1.6 excluding any interest accrued on subordinated, unsecured loans, if any;
- 1.11 **Covenants** means the covenants referred to in Condition 25;
- 1.12 "**Disinterested Director**" means, with respect to any transaction or series of related transactions, a member of the Issuer's Board of Directors who does not have any material direct or indirect financial interest in or with respect to such transaction or series of related transactions or is not an Affiliate, or an officer, director or employee of any Person (other than the Issuer) who has any direct or indirect financial interest in or with respect to such transaction or series of related transactions;
- 1.13 **Distribution** means, in relation to the Issuer or a Restricted Group Company, to:
- 1.13.1 declare, make or pay any dividend, charge, fee or other distribution (whether in cash or in kind) on or in respect of its shares or share capital (or any class of its share capital);
- 1.13.2 repay or distribute any share premium account;
- 1.13.3 pay any management, advisory or other fee or royalty to or to the order of its shareholders;
- 1.13.4 pay any principal or interest in respect of amounts due (whether in respect of an inter-company loan, subordinated loan or otherwise) to or to the order of its shareholders; or
- 1.13.5 redeem, purchase or repay any of its shares or share capital (or any instrument convertible into shares or share capital) or resolve to do so;
- 1.14 **Extraordinary Resolution of the Group 1 Noteholders** means a resolution passed at a properly constituted meeting of the Group 1 Noteholders, by a majority consisting of not less than 66,67% of the votes cast at a poll by members of the Group 1 Noteholders, present in person or by proxy;
- 1.15 **Finance Costs** means, for any Measurement Period, the aggregate amount, without double counting, of the accrued interest, dividends on redeemable preference shares, commission,

fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Financial Indebtedness (excluding any such charges on any derivative transaction, protecting against or benefiting from fluctuations in any rate or price), but taking no account of any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis) which is reported through the income statement;

1.16 **Finance Documents** means collectively and individually any of:

- 1.16.1 The Trust Deed;
- 1.16.2 the Terms and Conditions of the Group 1 Notes;
- 1.16.3 the Security Documents; and
- 1.16.4 any other document which is from time to time designated by the Trustee (on behalf of the Group 1 Noteholders), as a Finance Document;

1.17 **Financial Indebtedness** means, without double counting, any indebtedness for or in respect of:

- 1.17.1 moneys borrowed or credit provided;
- 1.17.2 any acceptance credit facility (including any dematerialised equivalent);
- 1.17.3 any note purchase facility, bond, note, debenture, loan stock or other similar instrument;
- 1.17.4 any suspensive sale or instalment credit transaction;
- 1.17.5 any agreement treated as a finance or capital lease in accordance with IFRS;
- 1.17.6 receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- 1.17.7 any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark to market value of the derivative transaction will be used to calculate its amount other than in respect of the Esor share incentive scheme);
- 1.17.8 any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution;
- 1.17.9 any redeemable preference share;
- 1.17.10 any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing; or

- 1.17.11 any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in the above clauses;
- 1.18 **Fixed Charge Cover Ratio** means, in respect of a Measurement Period, the historical ratio of pro-forma Consolidated EBITDA to pro forma Consolidated Net Finance Costs, at the end of that relevant Measurement Period;
- 1.19 **GBF Agreement** means a general banking facility agreement entered into between a GBF Lender, the Issuer and/or its Subsidiaries, in terms of which the GBF Lender grants to the Issuer and/or its Subsidiaries, a revolving working capital facility and ancillary facilities, in aggregate up to R180 000 000 (of which R150 000 000 relates to performance bank guarantees in respect of the obligations of Group Companies under contracts with customers), to fund the Issuer's (and/or such Subsidiaries') working capital, overdraft, letters of credit and foreign exchange contract requirements from time to time, including the issuing of guarantees, on the terms and conditions set out therein, as amended, novated and/or substituted from time to time in accordance with its terms;
- 1.20 **GBF Lender** means a lender under a GBF Agreement from time to time;
- 1.21 **Group** means the Issuer and its Subsidiaries;
- 1.22 **Group 1 Noteholders** means the holders of the Group 1 Notes;
- 1.23 **Group 1 Notes** means:
- 1.23.1 the Initial Notes; and
- 1.23.2 the Additional Notes, if any,
- and designated as such in the Applicable Pricing Supplement;
- 1.24 **Holding Company** means a holding company within the meaning of the Companies Act;
- 1.25 **IFRS** means International Financial Reporting Standards and the interpretation of those standards as adopted by the International Accounting Standards Board;
- 1.26 **Indemnity** means the indemnity agreement between the Issuer and the Security SPV, pursuant to which the Issuer indemnifies and holds the Security SPV harmless in respect of claims made against the Security SPV under, amongst others, the Security SPV Guarantee, as amended, novated and/or substituted from time to time in accordance with its terms;
- 1.27 **Initial Notes** means all Tranches of Notes issued in terms of the Programme on the same date as Tranche 1 of Series 1 of the Notes;
- 1.28 **Interest Receivable** means, for any Measurement Period, the aggregate amount, without double counting, of all interest and other financing charges received or receivable;

- 1.29 **Issuer Security Cession** means the cession in security by the Issuer of its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book granted to the Security SPV, as security for the obligations of the Issuer to the Security SPV under the Indemnity;
- 1.30 **Leverage Ratio** means, in respect of a Measurement Period, the ratio of Net Debt to the historical ratio of pro-forma Consolidated EBITDA, at the end of that relevant Measurement Period;
- 1.31 **Material Subsidiary** means a direct or indirect Subsidiary of the Issuer whose total assets or EBITDA exceed 5% of the consolidated total assets or consolidated EBITDA of the Group as a whole, calculated by reference to the last audited (consolidated or, as the case may be, unconsolidated) annual or unaudited semi-annual accounts of the Subsidiary, whichever is the latest, and the latest audited annual or unaudited semi-annual consolidated accounts of the Issuer, whichever is the latest. For the purposes of this definition, intangible assets, deferred tax assets, investments in Subsidiaries of the Issuer and loans to Subsidiaries of the Issuer are excluded from the calculation of total assets;
- 1.32 **Mauritian Fixed and Floating Charge** means the fixed and floating charge agreement in terms of which each Frankipile Mauritius International Limited and Frankipile International Projects Limited grants a fixed and floating charge over its bank accounts, trade receivables and intra-group claims to the Security SPV;
- 1.33 **Mauritian Pledge** means the pledge of its shares by Esorfranki Plant (Pty) Ltd in Frankipile Mauritius International Limited and Frankipile International Projects Limited to the Security SPV;
- 1.34 **Measurement Period** means a period of 12 months ending on the last day of the month preceding the date on which the relevant ratio is calculated;
- 1.35 **Minority Investment** means, in relation to the Issuer or a Restricted Group Company, the acquisition of, or subscription for, shares or other ownership interests in or securities of, any company or other person, which is not, or does not become, a Subsidiary;
- 1.36 **Net Debt** means, at any time, in respect of the Group, on a consolidated basis, the sum of all Financial Indebtedness of the Group less any Cash and Cash Equivalents held by the Group;
- 1.37 **Ordinary Resolution of the Group 1 Noteholders** means a resolution passed at a properly constituted meeting of the Group 1 Noteholders, by a majority of the votes cast at a poll by the members of the Group 1 Noteholders, present in person or by proxy;
- 1.38 **Permitted Treasury Transaction** means:
- 1.38.1 any Treasury Transaction entered into to hedge the Group 1 Notes up to a maximum of 100% of the Outstanding Principal Amount of the Group 1 Notes;

- 1.38.2 any Treasury Transaction entered into with a GBF Lender under the terms of any GBF Agreement; and
- 1.38.3 any Treasury Transaction entered into in the ordinary course of business (and not for investment or speculative purposes) on arm's length terms where used as a hedge to protect against an actual exposure or risk incurred or to be incurred by a Restricted Group Company as a result of:
- 1.38.3.1 interest rate exposure in relation to any payment obligations on interest bearing Financial Indebtedness in the ordinary course of business; or
- 1.38.3.2 currency exposure in respect of payments due under import contracts;
- provided that in respect of any Treasury Transaction permitted pursuant to this Condition 1.38:
- 1.38.4 other than the Treasury Transaction permitted under Condition 1.38.1, any restructure, refinancing or amendment of such Treasury Transaction which results in the extension of the due date for payment of any amount payable under such Treasury Transaction or any increase of the indebtedness of a Restricted Group Company shall only be permitted if the Conditions set out in Condition 25.1.1 have been complied with; or
- 1.38.5 if such Treasury Transaction is concluded on the basis, or with the result, that at the time at which such Treasury Transaction is concluded or becomes effective (the **Relevant Date**), it results in the incurrence of Financial Indebtedness by any Restricted Group Company on the Relevant Date, it shall only be permitted if the Conditions set out in Condition 25.1.1 have been complied with;
- 1.39 **Person** means any individual, company, partnership, joint venture, association, trust, unincorporated organisation or government or any agency or political subdivision thereof;
- 1.40 **Potential Event of Default** means any event or circumstance specified in Condition 12.1 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under any Finance Document or any combination of any of the foregoing) be an Event of Default;
- 1.41 **Pro Rata Share** means, in relation to a Group 1 Note, the ratio which the Outstanding Principal Amount of that Group 1 Note bears to the Outstanding Principal Amount of all the Group 1 Notes;
- 1.42 **Restricted Payment** means, in relation to the Issuer or any other Restricted Group Company:
- 1.42.1 a Distribution; or
- 1.42.2 a Minority Investment;

- 1.43 **Restricted Subsidiary** means any Subsidiary of the Issuer that is not an Unrestricted Subsidiary;
- 1.44 **Restricted Group Company** means the Issuer and each Restricted Subsidiary;
- 1.45 **Security** means the security granted in favour of the Security SPV by the Issuer and other Group Companies, created pursuant to the Security Documents;
- 1.46 **Security Documents** means:
- 1.46.1 the Security SPV Guarantee;
  - 1.46.2 the Indemnity;
  - 1.46.3 the Issuer Security Cession;
  - 1.46.4 the Subsidiary Guarantee;
  - 1.46.5 the Subsidiary Guarantor Security Cession(s);
  - 1.46.6 Mauritian Pledge;
  - 1.46.7 Mauritian Fixed and Floating Charge;
  - 1.46.8 Botswanan Pledge;
  - 1.46.9 Botswanan Security Cession;
  - 1.46.10 the Special Notarial Bonds; and
  - 1.46.11 any other document which is from time to time designated by the Group 1 Noteholders as a Security Document;
- 1.47 **Security Provider** means the Security SPV, Esorfranki Construction (Pty) Ltd, Esorfranki Plant (Pty) Ltd, Esorfranki Property Developments (Pty) Ltd, Frankipile Mauritius International Limited, Frankipile International Projects Ltd, Frankipile Botswana (Pty) Ltd and each other Restricted Group Company that guarantees or otherwise directly or indirectly provides credit support for the obligations of the Issuer to Group 1 Noteholders;
- 1.48 **Security SPV** means Tizabuzz (RF) Proprietary Limited (Registration number 2012/061270/07), a company duly registered and incorporated in accordance with the company laws of South Africa;
- 1.49 **Security SPV Guarantee** means the guarantee issued by the Security SPV in favour of the Trustee for the benefit of the Group 1 Noteholders for the obligations of the Issuer under the Group 1 Notes, as amended, novated and/or substituted from time to time in accordance with its terms;

- 1.50 **Secured Creditors** means, for purposes of the Security Documents, the Group 1 Noteholders;
- 1.51 **South African Group** means a member of the Group incorporated in South Africa;
- 1.52 **Special Notarial Bond** means each first ranking special notarial bond granted by each of Esorfranki Construction (Pty) Ltd and Esorfranki Plant (Pty) Ltd, over specified plant and equipment of each such Subsidiary, in favour of the Security SPV, as security for its obligations to the Security SPV under the Subsidiary Guarantee;
- 1.53 **Subsidiary** means a subsidiary within the meaning of the Companies Act;
- 1.54 **Subsidiary Guarantee** the unconditional and irrevocable guarantee given by each Subsidiary Guarantor to the Security SPV, jointly and severally guaranteeing the obligations of the Issuer to the Security SPV under the Indemnity;
- 1.55 **Subsidiary Guarantor** means each of Esorfranki Construction (Pty) Ltd, Esorfranki Plant (Pty) Ltd, Esorfranki Property Developments (Pty) Ltd, Frankipile Mauritius International Limited, Frankipile International Projects Ltd, Frankipile Botswana (Pty) Ltd and any additional Subsidiary of the Issuer that accedes to the Subsidiary Guarantee, if and for so long as each such company is a party to the Subsidiary Guarantee in accordance with the provisions of the Terms and Conditions of the Group 1 Notes;
- 1.56 **Subsidiary Guarantor Security Cession** means the cession in security by each Subsidiary Guarantor, if applicable, of its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book granted to the Security SPV, as security for its obligations to the Security SPV under the Subsidiary Guarantee;
- 1.57 **Transaction Documents** means, for the purposes of Condition 12.1.8 (Events of Default), the Security Documents and the Trust Deed;
- 1.58 **Trust Deed** means the trust deed constituting the Esorfranki Note Trust;
- 1.59 **Trustee** means the trustee for the time being of the Esorfranki Note Trust, which shall initially be Maitland Trust Limited (Registration number 1981/009543/06), a company duly registered and incorporated in accordance with the company laws of South Africa;
- 1.60 **Treasury Transaction** means any currency or interest purchase, cap or collar agreement, forward rate agreements, interest rates or currency future or option contracts, foreign exchange or currency purchase or sale agreement, interest rate swap, currency swap or combined interest rate and currency swap agreement and any other similar agreement in each case entered into in connection with any fluctuation in any rate or price; and
- 1.61 **Unrestricted Subsidiary** means any Subsidiary of the Issuer that has not guaranteed, on an unlimited basis, or otherwise directly or indirectly provided credit support for the obligations of the Issuer to Group 1 Noteholders.

2. For purposes of Condition 25, an Event of Default is "continuing" if it has not been remedied to the satisfaction of the Trustee or waived in writing by the Trustee (in each case, acting on the instructions of an Extraordinary Resolution of the Group 1 Noteholders).

## DOCUMENTS INCORPORATED BY REFERENCE

For so long as the Group 1 Notes are outstanding, the following documents listed below are deemed to be incorporated into, and to form part of, the Programme Memorandum in addition to the documents listed in the Programme Memorandum and will be available for inspection by Group 1 Noteholders at the Specified Office of the Issuer:

- (a) the Trust Deed; and
- (b) the Security Documents;

## TRUSTEE

Mailland Trust Limited (Registration number 1981/009543/06) has been appointed in terms of a trust deed between the Trustee and the Issuer, to act as trustee for the benefit of Group 1 Noteholders.

Pursuant to the Trust Deed, the Trustee is entitled to exercise the rights conferred on the Trustee and is obliged to perform the duties imposed on the Trustee in terms of the Conditions of the Group 1 Notes, including the rights and duties in terms of Condition 12.2 (Steps following an Event of Default relating to the Group 1 Notes), Condition 23 (Meetings of the Group 1 Noteholders) and Condition 25 (Covenants).

The Trust Deed sets out provisions relating to the replacement of the Trustee, including following a resolution to this effect by the Noteholders, by a majority consisting of not less than 75% of the votes cast on a poll by the Noteholders, present in person or by proxy at a meeting convened in terms of the Terms and Conditions of the Notes.

The Trust Deed contains provisions for the indemnification of the Trustee and for its relief from responsibility, including relieving it from taking proceedings unless indemnified and/or secured and/or prefunded to its satisfaction. The Trustee is entitled to enter into business transactions with the Issuer and any entity related to the Issuer without accounting for any profit. The Trustee may rely without liability to Group 1 Noteholders on a report, confirmation or certificate or any advice of any accountants, financial advisers or investment bank, whether or not addressed to it and whether their liability in relation thereto is limited (by its terms or by any engagement letter relating thereto entered into by the Trustee or in any other manner) by reference to a monetary cap, methodology or otherwise. The Trustee shall be obliged to accept and be entitled to rely on any such report, confirmation or certificate or advice where the Issuer procures delivery of the same pursuant to its obligation to do so under any provision of these Conditions or the Trust Deed and such report, confirmation or certificate or advice shall be binding on the Issuer, the Trustee and the Group 1 Noteholders in the absence of manifest error.

In connection with the exercise of its functions the Trustee shall have regard to the interests of the Group Noteholders as a class and, in particular but without limitation, shall not have regard to the consequences of the exercise of its trusts, powers or discretions for individual Group 1 Noteholders resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory, and the Trustee shall not be entitled to require, nor shall any Group 1 Noteholder be entitled to claim, from the Issuer or any other person any indemnification or payment in respect of any tax consequences of any such exercise upon individual Group 1 Noteholders.



**APPLICABLE PRICING SUPPLEMENT**

**Esorfranki Limited**

(the "Issuer")

*(Incorporated with limited liability in South Africa under registration number 1994/000732/06)*

**Issue of R15 000 000 Senior Secured Floating Rate Notes with a Stock Code EFC04**

**Under its R1 000 000 000 Domestic Medium Term Note Programme**

This document constitutes the Applicable Pricing Supplement relating to the issue of Notes described in this Applicable Pricing Supplement.

This Applicable Pricing Supplement must be read in conjunction with the Programme Memorandum issued by the Issuer dated 25 July 2012, as may be amended or supplemented from time to time. To the extent that there is any conflict or inconsistency between the contents of this Applicable Pricing Supplement and the Programme Memorandum, the provisions of this Applicable Pricing Supplement shall prevail.

Any capitalised terms not defined in this Applicable Pricing Supplement shall have the meanings ascribed to them in the Terms and Conditions. References in this Applicable Pricing Supplement to the Terms and Conditions are to the section of the Programme Memorandum headed "*Terms and Conditions of the Notes*". References to any Condition in this Applicable Pricing Supplement are to that Condition of the Terms and Conditions.

**The Group 1 Notes do not have a credit rating and are of a speculative nature. Prior to investing in Group 1 Notes prospective investors should seek independent professional advice.** See the sections of the Programme Memorandum titled "Description of the Group" and "Risk Factors" and all the Schedules to this Applicable Pricing Supplement, for some of the investment considerations to be taken into account by prospective investors in the Group 1 Notes.

The Issuer and each Subsidiary Guarantor certifies that to the best of its knowledge and belief there are no facts that have been omitted from the Programme Memorandum which would make any statement false or misleading and that all reasonable enquiries to ascertain such facts have been made and that the Programme Memorandum contains all information required by Applicable Law and, in relation to any Tranche of Notes listed on the Interest Rate Market of the JSE, the JSE Debt Listings Requirements. The Issuer and each Subsidiary Guarantor accepts full responsibility for the information contained in the Programme Memorandum, the Applicable Pricing Supplements and the annual financial report and any amendments to the annual financial report or any supplements from time to time, except as otherwise stated therein.

The JSE assumes no responsibility or liability of whatsoever nature for the contents of the Programme Memorandum or this Applicable Pricing Supplement or the annual financial statements or any other information incorporated by reference into the Programme Memorandum (as amended or restated from time to time), and the JSE makes no representation as to the accuracy or completeness of the Programme Memorandum or this Applicable Pricing Supplement, the annual financial statements or any other

information incorporated by reference into the Programme Memorandum (as amended or restated from time to time). The JSE expressly disclaims any liability for any loss arising from or in reliance upon the whole or any part of this Programme Memorandum or this Applicable Pricing Supplement or the annual financial report or any other information incorporated by reference into this Programme Memorandum (as amended or restated from time to time).

#### **DESCRIPTION OF THE NOTES**

1. Issuer	Esorfranki Limited
2. Status of the Notes	Senior Notes
3. Security	Secured. These Notes are Group 1 Notes. See Appendix "B" for a description of the security structure
4. Listed/Unlisted	Listed
5. Series number	4
6. Tranche number	1
7. Aggregate Principal Amount of this Tranche	R15 000 000
8. Interest/Payment Basis	Floating Rate
9. Issue Date and first settlement date	24 August 2012
10. Minimum Denomination per Note	R1 000 000
11. Specified Denomination (Principal Amount per Note)	R1 000 000
12. Issue Price(s)	100% of the Principal Amount of each Note
13. Applicable Business Day Convention, if different to that specified in the Terms and Conditions	Following Business Day
14. Interest Commencement Date(s)	24 August 2012
15. Step-Up Date	N/A
16. Final Redemption Date	24 August 2017
17. Specified Currency	ZAR

18. Additional Business Centre	N/A
19. Maturity Amount	100% of the Principal Amount of each Note
20. Set out the relevant description of any additional/amended Terms and Conditions relating to the Notes (including additional covenants, if any)	See Appendix "C" for additional/amended Terms and Conditions relating to the Notes.

#### **FIXED RATE NOTES**

21. Fixed Interest Rate	N/A
22. Interest Payment Date(s)	N/A
23. Interest Period(s)	N/A
24. Initial Broken Amount	N/A
25. Final Broken Amount	N/A
26. Step-Up Rate	N/A
27. Any other items relating to the particular method of calculating interest	N/A

#### **FLOATING RATE NOTES**

28. Interest Payment Date(s)	the last day of August, November, February and May of each year, or if such day is not a Business Day then in accordance with the Following Business Day convention
29. Interest Period(s)	From (and including) each Interest Payment Date to (but excluding) the following Interest Payment Date, provided that the first Interest Period shall be from (and including) the Interest Commencement Date to (but excluding) 30 November 2012 and the last Interest Period shall be from (and including) 31 May 2017 to (but excluding) the Final Redemption Date
30. Manner in which the Interest Rate is to be	Screen Rate Determination

determined	
31. Margin/Spread for the Interest Rate	5.50% per annum to be added to the relevant Reference Rate
32. Margin/Spread for the Step-Up Rate	N/A
33. If Screen Determination	
(a) Reference Rate (including relevant period by reference to which the Interest Rate is to be calculated)	An interpolated rate between 3 month JIBAR and 6 month JIBAR for the first Interest Period, 3 month JIBAR for each Interest Period thereafter and an interpolated rate between 1 month JIBAR and 3 month JIBAR for the last Interest Period.
(b) Rate Determination Date(s)	The first day of each Interest Period, namely the last day of August, November, February and May of each year, or if such day is not a Business Day then in accordance with the Following Business day convention
(c) Relevant Screen page and Reference Code	SAFEY Page (or the SAFEX nominated successor screen for JIBAR) under the caption "SFX 3M YIELD
34. If Interest Rate to be calculated otherwise than by reference to Screen Rate Determination, insert basis for determining Interest Rate/Margin/Fall back provisions	N/A
35. Any other terms relating to the particular method of calculating interest	N/A
<b>ZERO COUPON NOTES</b>	
36. (a) Implied Yield	N/A
(b) Reference Price	N/A
(c) Equivalent Discount Rate	N/A
(d) Spread to Reference Rate	N/A
(e) Maturity Date	N/A
(f) Day Count	N/A

- (g) Any other formula or basis for determining N/A  
amount payable

#### **INDEXED NOTES**

37. (a) Type of Indexed Notes N/A
- (b) Index/Formula by reference to which N/A  
Interest Amount/Final Redemption  
Amount is to be determined
- (c) Manner in which the Interest N/A  
Amount/Final Redemption Amount is to  
be determined
- (d) Interest Period N/A
- (e) Interest Payment Date(s) N/A
- (f) If different from the Calculation Agent, N/A  
agent responsible for calculating amount  
of principal and interest
- (g) Provisions where calculation by reference N/A  
to Index and/or Formula is impossible or  
impracticable

#### **OTHER NOTES**

38. If the Notes are not Fixed Rate Notes or N/A  
Floating Rate Notes, or if the Notes are a  
combination of the above and some other  
Note, set out the relevant description of any  
additional Terms and Conditions relating to  
such Notes

#### **PROVISIONS REGARDING REDEMPTION/ MATURITY**

39. Redemption at the option of the Issuer in Yes  
terms of Condition 8.4: if yes:

(a) Optional Redemption Date(s)	Any Interest Payment Date after 28 February 2015 (ie 2.5 year no call period)
(c) Optional Redemption Amount(s) and method, if any, of calculation of such amount(s)	The Principal Amount of the Note being redeemed, multiplied by the following percentages in each of the following periods (in each period, both dates inclusive):  1 March 2015 to 28 February 2016 (ie year 2.5 - 3.5) – 103%; 1 March 2016 to 31 August 2016 (ie year 3.5- 4.0) – 102%; 1 September 2016 to 28 February 2017 (ie year 4.0 -4.5) – 101%; 1 March 2017 to 24 August 2017 (ie year 4.5 -5.0) – 100%.
(d) Minimum period of notice	30 days
(e) If redeemable in part:	
Minimum Redemption Amount(s)	N/A
Higher Redemption Amount(s)	N/A
(f) Other terms applicable on Redemption	N/A
40. Redemption at the option of the holders of the Senior Notes (Put Option) in terms of Condition 8.5: if yes	No
(a) Optional Redemption Date(s) (Put)	N/A
(b) Optional Redemption Amount(s) (Put) and method, if any, of calculation of such amount(s)	N/A
(c) Minimum period of notice	N/A
(d) If redeemable in part:	N/A
Minimum Redemption Amount(s)	N/A
Higher Redemption Amount(s)	N/A

	(e) Other terms applicable on Redemption	N/A
41.	Redemption at the option of the holders of the Notes upon the occurrence of a Put Event in terms of Condition 8.6:	
(a)	Delisting of the Notes of this Tranche/the ordinary shares of the Issuer from the JSE	Yes
(b)	Change of Control	Yes
(c)	Issuer disposing of the whole or the greater part of its undertaking or assets	Yes
42.	Early Redemption Amount(s) payable on redemption for Taxation reasons in terms of Condition 8.3 or Optional Redemption following a Put Event in terms of Condition 8.6 or early redemption following an Event of Default in terms of Condition 12 : if yes	Yes
	Early Redemption Amount and method, if any, of calculation of such amount	<p>i) In the case of Redemption for Taxation reasons in terms of Condition 8.3 - Early Redemption Amount calculated as per Condition 8.7.</p> <p>ii) In the case of early redemption following an Event of Default in terms of Condition 12 - Early Redemption Amount calculated as per Condition 8.7</p> <p>iii) In the case of Optional Redemption following a Put Event in terms of Condition 8.6 - Early Redemption Amount shall be calculated as set out below:</p> <p>For the Interest Payment Dates from the Issue Date to 28 February 2015 (both dates inclusive) (ie year 0 - 2.5): the Principal Amount of the Note being redeemed, plus the Present Value of the Margin (as defined below).</p> <p>For the Interest Payment Dates from 1 March 2015 to 24 August 2017 (both dates inclusive) (ie year 2.5 - 5): the Principal Amount of the Note being</p>

redeemed multiplied by 101%.

For the purposes of this Condition 8.6:

Present Value of Margin = Sum (Margin x Discount Factor)

Where

Margin = the Margin element (as referred to in paragraph 31) of each interest payment from the Put Date to the Final Redemption Date

Discount Factor =  $1/(1+i)^t$

Where

i = the nominal annual compound annual rate from a South African Bank's swap curve relating to the period from the Put Date to each relevant Interest Payment Date

$t = (\text{future Interest Payment Date} - \text{Put Date})/ 365$

Put Date = the date on which the Notes are to be redeemed following exercise by a Noteholder of its right of redemption following a Put Event in terms of Condition 8.6

## GENERAL

43. Additional selling restrictions	N/A
44. International Securities Numbering (ISIN)	ZAG000097874
45. Stock Code	EFC04
46. Financial Exchange	JSE
47. Dealer(s)	Absa Capital
48. If syndicated, names of Lead Manager(s)	N/A
49. Method of distribution	Private placement
50. Rating assigned to this Tranche of Notes (if	N/A

any)

51.	Rating Agency, if any	N/A
52.	Governing Law	South Africa
53.	Last Day to Register	by 17h00 on the Business Day preceding the Books Closed Period
54.	Books Closed Period	the 10 days prior to each Interest Payment Date and Redemption Date
55.	Calculation Agent	Absa Capital
56.	Specified Office of the Calculation Agent	15 Alice Lane, Sandton, 2196
57.	Transfer Agent	Absa Capital
58.	Specified Office of the Transfer Agent	15 Alice Lane, Sandton, 2196
59.	Debt Sponsor	Absa Capital
60.	Issuer's Settlement Agent	Absa Investor Services, a division of Absa Bank Limited
61.	Specified Office of the Issuer's Settlement Agent	15 Alice Lane, Sandton, 2196
62.	Stabilisation Manager, if any	N/A
63.	Programme Amount	R1 000 000 000
64.	Aggregate Outstanding Principal Amount of Notes in issue on the Issue Date of this Tranche	R0, excluding this Tranche of Notes and any other Tranche(s) of Group to be issued on the Issue Date
65.	Aggregate Outstanding Principal Amount of Notes in issue in respect of the Series on the Issue Date of this Tranche	R0, excluding this Tranche of Notes and any other Tranche(s) of Notes to be issued in respect of the Series on the Issue Date
66.	Aggregate Outstanding Principal Amount of Group 1 Notes in issue on the Issue Date of this Tranche	R0, excluding this Tranche of Notes and any other Tranche(s) of Group to be issued on the Issue Date
67.	Additional Events of Default	See Appendix "C"
68.	Trustee	Maitland Trust Limited

69. Specified Office of the Trustee	32 Fricker Road, Illovo Boulevard, Sandton, 2196
70. Other provisions	N/A

DISCLOSURE REQUIREMENTS IN TERMS OF PARAGRAPH 3 (5) OF THE COMMERCIAL PAPER REGULATIONS – SEE APPENDIX "A"

SECURITY STRUCTURE - SEE APPENDIX "B"

ADDITIONAL/AMENDED TERMS AND CONDITIONS RELATING TO THE NOTES – SEE APPENDIX "C"

This Pricing Supplement amends, restates and replaces the pricing supplement date 1 August 2012 in respect of the Notes of this Tranche with effect from the date of signature of this pricing supplement.

Application is hereby made to list this Tranche of the Notes, as from 24 August 2012, pursuant to the Esorfranki Limited Domestic Medium Term Note Programme. The Programme was registered with the JSE on 26 July 2012.

ESORFRANKI LIMITED

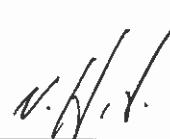
By: \_\_\_\_\_



Director, duly authorised

Date: 22 AUGUST 2012

By: \_\_\_\_\_



Director, duly authorised

Date: 22 AUGUST 2012

## APPENDIX "A"

### Disclosure Requirements in terms of paragraph 3(5) of the Commercial Paper Regulations

At the date of this Applicable Pricing Supplement:

#### Paragraph 3(5)(a)

The ultimate borrower is the Issuer.

#### Paragraph 3(5)(b)

The Issuer is a going concern and can in all circumstances be reasonably expected to meet its commitments under the Notes.

#### Paragraph 3(5)(c)

The auditor of the Issuer is KPMG Inc.

#### Paragraph 3(5)(d)

As at the date of this issue:

- (a) the Issuer has not issued any Notes; and
- (b) [it is not anticipated that the Issuer will issue additional Notes during the remainder of its current financial year, in addition to the Notes issued on the Issue Date of this Tranche of Notes.

#### Paragraph 3(5)(e)

Prospective investors in the Notes are to consider this Applicable Pricing Supplement, the Programme Memorandum and the documentation incorporated therein by reference in order to ascertain the nature of the financial and commercial risks of an investment in the Notes. In addition, prospective investors in the Notes are to consider the latest audited financial statements of the Issuer which are incorporated into the Programme Memorandum by reference and which may be requested from the Issuer.

#### Paragraph 3(5)(f)

There has been no material adverse change in the Issuer's financial position since the date of its last audited financial statements.

#### Paragraph 3(5)(g)

The Notes issued will be listed, as stated in the Applicable Pricing Supplement.

#### Paragraph 3(5)(h)

The funds to be raised through the issue of the Notes are to be used by the Issuer to refinance existing debt and incur capital expenditure.

Paragraph 3(5)(i)

The Notes are secured.

Paragraph 3(5)(i)

KPMG Inc, the auditors of the Issuer, have confirmed that nothing has come to their attention to indicate that this issue of Notes issued under the Programme will not comply in all respects with the relevant provisions of the Commercial Paper Regulations (Government Notice 2172 in Government Gazette No, 16167 of 14 December 1994) published under Paragraph (cc) of the definition of the "business of a bank" in terms of Section 1 of the Banks Act, 1990).

ESORFRANKI LIMITED

By: B. Kene

Director, duly authorised

Date: 22 AUGUST 2012

By: V.H.Y.

Director, duly authorised

Date: 22 AUGUST 2012

## APPENDIX "B"

### SECURITY STRUCTURE

The Group 1 Notes share in the same Security.

### SECURITY SPV GUARANTEE

The Security SPV will bind itself under a Security SPV Guarantee to the Trustee for the benefit of the Group 1 Noteholders, for the obligations of the Issuer to Group 1 Noteholders. Pursuant to such Security SPV Guarantee, the Security SPV will undertake in favour of the Trustee to pay it the full amount then owing to each Group 1 Noteholder by the Issuer on written demand from the Trustee on behalf of the Group 1 Noteholders. Following an Event of Default under the Group 1 Notes, the Trustee (on behalf of the Group 1 Noteholders), may declare the amounts outstanding under the Group 1 Note to be immediately due and payable. If there is a failure by the Issuer to pay the amount due to a Group 1 Noteholder upon delivery of such an acceleration notice, a decision may be made by the Group 1 Noteholders in terms of the Conditions, requiring the Trustee to make a demand under the Security SPV Guarantee. The liability of the Security SPV pursuant to the Security SPV Guarantee will, however, be limited in the aggregate to the net amount recovered by the Security SPV from the Issuer arising out of the Indemnity and, if necessary, the Security Documents referred to below.

### ISSUER INDEMNITY

The Issuer will give an Indemnity to the Security SPV in respect of claims that may be made against the Security SPV arising out of the Security SPV Guarantee. The Issuer shall not be entitled to refuse to make payment under the Indemnity to the Security SPV by reason of the fact that the Security SPV has not paid the claims of the Group 1 Noteholders under the Security SPV Guarantee nor shall the Issuer be entitled to refuse to make payment by reason of the fact that the liability of the Security SPV in respect of any such Security SPV Guarantee is limited in the manner set out in the Security SPV Guarantee.

### SECURITY DOCUMENTS

In accordance with the Security Documents, the Issuer cedes in security its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, as security for the obligations of the Issuer to the Security SPV under the Indemnity.

In accordance with the Security Documents, Esorfranki Construction (Pty) Ltd (incorporated in South Africa) binds itself under a guarantee to the Security SPV for the obligations of the Issuer to the Security SPV under the Indemnity. As security for its obligations to the Security SPV under the guarantee, Esorfranki Construction (Pty) Ltd (i) grants a special notarial bond over plant and equipment to the Security SPV, and (ii) cedes in security its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, all on the terms and as described in such Security Documents. Esorfranki Construction (Pty) Ltd has granted an irrevocable and unconditional power of attorney in favour of the Security SPV to register such special notarial bond with effect from the Issue Date.

In accordance with the Security Documents, Esorfranki Plant (Pty) Ltd (incorporated in South Africa) binds itself under a guarantee to the Security SPV for the obligations of the Issuer to the Security SPV under the Indemnity. As security for its obligations to the Security SPV under the guarantee, Esorfranki Plant (Pty) Ltd (i) grants a special notarial bond over plant and equipment to the Security SPV, and (ii) cedes in security its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, all on the terms and as described in such Security Documents. Esorfranki Plant (Pty) Ltd has granted an irrevocable and unconditional power of attorney in favour of the Security SPV to register such special notarial bond with effect from the Issue Date.

In accordance with the Security Documents, each of Esorfranki Property Developments (Pty) Ltd (incorporated in South Africa), Frankipile Mauritius International Limited (incorporated in Mauritius), Frankipile International Projects Ltd (incorporated in Mauritius) and Frankipile Botswana (Pty) Ltd (incorporated in Botswana), binds itself under a guarantee to the Security SPV for the obligations of the Issuer to the Security SPV under the Indemnity. As security for its obligations to the Security SPV under the guarantee, each such company cedes in security its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book to the Security SPV, all on the terms and as described in such Security Documents. In terms of the laws of Botswana, the Botswanan Pledge and the Botswanan Security Cession comprise contractual obligations of Frankipile Botswana (Pty) Ltd to the Security SPV. A registered deed of hypothecation granted to a third party would have priority over such contractual security by Frankipile Botswana (Pty) Ltd.

The Issuer will procure that future Subsidiaries incorporated in South Africa that contribute greater than 5% individually to the aggregated EBIDTA or tangible operating assets of the Group become Subsidiary Guarantors and that the Issuer and all Subsidiary Guarantors account for at least 85% of the aggregated EBIDTA or tangible operating assets of the Group.

The obligations of the Subsidiary Guarantors under the Subsidiary Guarantee are joint and several.

## THE SECURITY SPV

### Introduction

The Security SPV was incorporated and registered in South Africa on 29 March 2012, under registration number 2012/061270/07, as a private company with limited liability. The issued share capital of the Security SPV comprises 100 ordinary share of R1,00 par value, held by the Tizabuzz Security SPV Owner Trust, IT Number 2126/2012. The Security SPV has no subsidiaries. The current trustees of the Tizabuzz Security SPV Owner Trust are Maitland Trust Limited. The Security SPV has adopted a new memorandum of incorporation, including ring-fencing provisions, which has been filed with the Companies and Intellectual Property Commission. The issue of a new registration certificate is pending. Until the new registration certificate is issued, all references in the Transaction Documents to Tizabuzz (RF) Proprietary Limited shall be construed as a reference to Tizabuzz Proprietary Limited.

### Directors

The director of the Security SPV is David Towers.

David is a director and trustee on numerous investment vehicles, including securitisation vehicles, structured finance special purpose vehicles and exchange traded funds. David has extensive experience in debt capital markets and structured finance having worked for several major local and international banks and institutions in corporate banking and structured finance roles as well as spending a period as an independent consultant focusing on the debt capital markets. Prior to joining Maitland in 2011 he worked at Moody's Investors Service where he was responsible for assessing various asset-backed structured finance transactions. Prior to that he was Legal Counsel to the Bond Exchange of South Africa. David has B. Com, LLB and LLM degrees from the University of the Witwatersrand.

### Registered office

The registered office of the Security SPV is situated at 1<sup>st</sup> Floor, 32 Fricker Road, Illovo, 2196.

### Auditors

The current auditors of the Security SPV are BDO South Africa Inc.

### Activities

The activities of the Security SPV are to enter into, amend and perform the obligations and exercise the Security SPV's rights under the Security SPV Guarantee, the Indemnity and the Security Documents.

## APPENDIX "C"

### ADDITIONAL/AMENDED TERMS AND CONDITIONS RELATING TO THE NOTES OF THE SERIES

#### EVENTS OF DEFAULT

Condition 12.1 of the Terms and Conditions set out in the Programme Memorandum is amended in relation to the Notes of this Tranche by the insertion of the following new Condition 12.1.12:

*"Condition 12.1.12 Special Notarial Bonds*

Each of Esorfranki Construction (Proprietary) Limited and Esorfranki Plant (Proprietary) Limited fail to lodge a special notarial bond over specified plant and equipment, in form and substance approved by the Dealer on the Issue Date, within 20 Business Days of the Issue Date."

Condition 12.2 (Steps following an Event of Default relating to the Senior Notes) of the Terms and Conditions set out in the Programme Memorandum is amended in relation to the Notes of this Tranche by the deletion of Condition 12.2 and the replacement thereof of the following Condition 12.2:

12.

12.2 **Condition 12.2 Steps following an Event of Default relating to the Group 1 Notes**

12.2.1 If an Event of Default occurs in relation to the Notes of the Series:

12.2.1.1 the Calculation Agent and/or the Issuer will forthwith inform the Trustee thereof; and

12.2.1.2 the Trustee will, as soon as such Event of Default comes to its notice (whether as a result of having been informed by the Calculation Agent and/or the Issuer thereof pursuant to Condition 12.2.1.1 or otherwise), forthwith call a meeting of the Group 1 Noteholders.

12.2.2 The Trustee shall immediately upon becoming aware of the occurrence of an Event of Default set out in Condition 12.1.6 (*Insolvency Events*) and if any other Event of Default has occurred and is continuing at its discretion may, and if so directed by an Extraordinary Resolution of the Group 1 Noteholders shall, give written notice to the Issuer that the Group 1 Notes are, and they shall accordingly become immediately due and payable at their Early Redemption Amount together with accrued interest (if any) thereon to the date of payment.

## MEETINGS OF THE GROUP 1 NOTEHOLDERS

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 23:

### 23. Condition 23 - Meetings of the Group 1 Noteholders

Where a meeting of the Group 1 Noteholders is to be convened, in accordance with these Terms and Conditions, the trust deed of the Esorfranki Group 1 Note Trust or the Security SPV Guarantee, then the provisions of this Condition 23 shall apply.

#### 23.1 Convening of meetings

- 23.1.1 The Issuer or the Trustee may at any time convene a meeting of the Group 1 Noteholders (a "meeting").
- 23.1.2 The Issuer or the Trustee will convene a meeting of the Group 1 Noteholders upon the requisition in writing of Group 1 Noteholders holding not less than 20% of the aggregate Outstanding Principal Amount of the Group 1 Notes (a "requisition notice").
- 23.1.3 Whenever the Issuer wishes to convene a meeting, it will forthwith give notice in writing to the Group 1 Noteholders in the manner prescribed in Condition 16 and to the Trustee in accordance with the provisions of the Trust Deed of the place, day and hour of the meeting, the nature of the business to be transacted at the meeting and the resolutions to be proposed and considered at the meeting.
- 23.1.4 Whenever the Trustee wishes or is obliged to convene a meeting it will forthwith give notice in writing to the Group 1 Noteholders and the Issuer in the manner prescribed in Condition 16, of the place, day and hour of the meeting, the nature of the business to be transacted at the meeting and the resolutions to be proposed and considered at the meeting.
- 23.1.5 All meetings of the Group 1 Noteholders will be held in Johannesburg.

#### 23.2 Requisition

- 23.2.1 A requisition notice will state the nature of the business for which the meeting is to be held and the resolutions to be proposed and considered at the meeting and will be deposited at the Specified Office of the Issuer or the Trustee, as the case may be.
- 23.2.2 A requisition notice may consist of several documents in like form, each signed by one or more requisitionists.

#### 23.3 Convening of meetings by requisitionists

If the Issuer or the Trustee, as the case may be, does not convene a meeting to be held within 20 days of the deposit of a requisition notice, the requisitionists may themselves convene the meeting, but the meeting so convened will be held within 60 days from the date

of such deposit and will be convened as nearly as possible in the same manner as that in which meetings may be convened by the Issuer. Whenever the requisitionists are about to so convene any such meeting, requisitionists shall forthwith give notice of the meeting to the Issuer and the Trustee.

**23.4 Notice of meeting**

- 23.4.1 Unless the holders of at least 90% of the aggregate Outstanding Principal Amount of the Group 1 Notes, agree in writing to a shorter period, at least 15 days' written notice, specifying the place, day and time of the meeting, the nature of the business for which the meeting is to be held and the resolutions to be proposed and considered at the meeting, will be given to each Group 1 Noteholder, to the Issuer and to the Trustee.
- 23.4.2 The accidental omission to give such notice to any Group 1 Noteholder, to the Issuer or to the Trustee, as the case may be, or the non-receipt of any such notice, will not invalidate the proceedings at a meeting.

**23.5 Quorum**

- 23.5.1 A quorum at a meeting shall:
  - 23.5.1.1 for the purposes of considering an Ordinary Resolution, consist of Group 1 Noteholders present in person or by proxy and holding in the aggregate not less than one-third of the aggregate Outstanding Principal Amount of the Group 1 Notes;
  - 23.5.1.2 for the purposes of considering a resolution in respect of the dismissal of the Trustee and approval of the appointment of any new Trustee in accordance with the provisions of the Trust Deed or an Extraordinary Resolution, consist of Group 1 Noteholders present in person or by proxy and holding in the aggregate not less than a clear majority of the aggregate Outstanding Principal Amount of the Group 1 Notes.
- 23.5.2 No business will be transacted at a meeting of the Group 1 Noteholders unless a quorum is present at the time when the meeting proceeds to business.
- 23.5.3 If, within 15 minutes from the time appointed for the meeting, a quorum is not present, the meeting will, if it was convened on the requisition of the Group 1 Noteholders be dissolved. In every other case the meeting will stand adjourned to the same day in the third week thereafter, at the same time and place, or if that day is not a Business Day, the next succeeding Business Day. If at such adjourned meeting a quorum is not present the Group 1 Noteholders present, in person or by proxy, will constitute a quorum for the purpose of considering any resolution, including an Extraordinary Resolution.

**23.6 Chairman**

The chairman of the meeting shall be appointed by the Trustee. If the Trustee or the person appointed by the Trustee to preside as chairman of the meeting is not present within 10 minutes of the time appointed for the holding of the meeting, the Group 1 Noteholders then present will choose one of their own number to preside as chairman.

**23.7 Adjournment**

- 23.7.1 Subject to the provisions of this Condition 23, the chairman may, with the consent of, and will on the direction of, the meeting adjourn the meeting from time to time and from place to place.
- 23.7.2 No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 23.7.3 At least 14 days' written notice of the place, day and time of an adjourned meeting will be given by the Issuer or the Trustee, as the case may be, to the Issuer, the Trustee and each Group 1 Noteholder. In the case of a meeting adjourned in terms of Condition 23.6.3, the notice will state that the Group 1 Noteholders present in person or by proxy at the adjourned meeting will constitute a quorum.

**23.8 How questions are decided**

- 23.8.1 At a meeting, a resolution put to the vote will be decided on a poll.
- 23.8.2 In the case of an equality of votes, the chairman will not be entitled to a casting vote in addition to the vote, if any, to which he is entitled.

**23.9 Votes**

Voting shall only take place on a poll and not on a show of hands. On a poll every Group 1 Noteholder, present in person or by proxy, will be entitled to that proportion of the total votes which the aggregate Outstanding Principal Amount of the Group 1 Notes held by such Group 1 Noteholder bears to the aggregate Outstanding Principal Amount of all the Group 1 Notes. In relation to joint Group 1 Noteholders, the vote may be exercised only by that Group 1 Noteholder whose name appears first on the Register in the event that more than one of such Group 1 Noteholders is present, in person or by proxy, at the meeting. The Group 1 Noteholder in respect of Group 1 Notes held in the Central Securities Depository in uncertificated form shall vote at any such meeting on behalf of the holders of Beneficial Interests in such Group 1 Notes in accordance with the instructions to the Central Securities Depository's Nominee from the holders of Beneficial Interests conveyed through the Participants in accordance with the Applicable Procedures.

**23.10 Proxies and representatives**

- 23.10.1 Group 1 Noteholders, present either in person or by proxy, may vote on a poll. A Group 1 Noteholder, may by an instrument in writing (a "proxy form") signed by the Group 1

Noteholder (or his duly authorised agent) or, in the case of a juristic person, signed on its behalf by a duly authorised officer of the juristic person, appoint any person (a "proxy" or "proxies") to act on his or its behalf in connection with any meeting or proposed meeting.

- 23.10.2 A person appointed to act as proxy need not be a Group 1 Noteholder.
- 23.10.3 The proxy form will be deposited at the Specified Office of the Issuer or at the Specified Office of the Transfer Agent, as the case may be, not less than 24 hours before the time appointed for holding the meeting or adjourned meeting at which the person named in such proxy proposes to vote.
- 23.10.4 No proxy form will be valid after the expiration of 6 months from the date named in it as the date of its execution.
- 23.10.5 Notwithstanding Condition 23.10.4, a proxy form will be valid for any adjourned meeting, unless the contrary is stated thereon.
- 23.10.6 A vote given in accordance with the terms of a proxy form will be valid notwithstanding the previous death or incapacity of the principal or revocation or amendment of the proxy form or of any of the instructions of the Group 1 Noteholder , pursuant to which the proxy form was executed or of the authority under which the proxy form was executed or the transfer of Group 1 Notes or in respect of which the proxy was given, provided that no intimation in writing of such death, incapacity, revocation or amendment shall have been received by the Issuer at its Specified Office or the Transfer Agent at its Specified Office, as the case may be, more than, and that the transfer has been given effect to less than, 12 hours before the commencement of the meeting or adjourned meeting at which the proxy is to be used.
- 23.10.7 Any Group 1 Noteholder which is a juristic person may authorise any person to act as its representative in connection with any meeting or proposed meeting of the Group 1 Noteholders, by resolution of the directors or other governing body of the juristic person. Any reference in the Terms and Conditions to a Group 1 Noteholder or any other member of the Group 1 Noteholders present in person, includes the duly authorised representative of a Group 1 Noteholder or any other member of the Group 1 Noteholders, as the case may be, which is a juristic person.

#### 23.11 Minutes

- 23.11.1 The Issuer will cause minutes of all resolutions and proceedings of meetings to be duly entered in the minute books of the Issuer.
- 23.11.2 Any such minutes as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings held or by the chairman of the next succeeding meeting, will be receivable in evidence without any further proof, and until the contrary is proved, a meeting the Group 1 Noteholders in respect of the proceedings of which minutes have been so made will be deemed to have been duly

held and convened and all resolutions passed thereal, or proceedings held, to have been duly passed and held.

**23.12 Written resolutions**

A resolution in writing submitted to the Group 1 Noteholders entitled to exercise voting rights in relation to the resolution, and signed by the requisite majority of the Group 1 Noteholders Noteholders, shall be as valid and effective as if it had been passed at a meeting duly convened and constituted and shall be deemed (unless a statement to the contrary is made in that resolution) to have been passed on the last day on which that resolution is signed by any one or more of the Group 1 Noteholders. That resolution may consist of two or more documents in the same form each of which is signed by one or more of the Group 1 Noteholders.

### THIRD PARTY RIGHTS AND OBLIGATIONS

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 24 (**Third party rights and obligations**):

#### 24. Condition 24 Third party rights and obligations

- 24.1 Each Group 1 Noteholder, upon its subscription for Group 1 Notes and the issue of Group 1 Notes to it, or upon the transfer of Group 1 Notes to it, as the case may be, shall be bound by those provisions of the Security SPV Guarantee which confer rights and/or impose obligations on the Group 1 Noteholders.
- 24.2 It is recorded that in terms of the Security SPV Guarantee, the Security SPV, upon signing the Security SPV Guarantee, is deemed to have given notice of the Terms and Conditions of the Group 1 Notes, and the Security SPV shall be bound by those provisions of the Terms and Conditions of the Group 1 Notes which confer rights and/or impose obligations on the Security SPV.

## COVENANTS

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 25 (Covenants):

### 25. Condition 25 Covenants

#### 25.1 Financial Indebtedness

25.1.1 There shall be no limitation on the incurrence of any Financial Indebtedness by the Issuer or any other Restricted Group Company:

25.1.1.1 if, immediately after the incurrence of such Financial Indebtedness, (i) the Leverage Ratio is less than 2.50 times; and (ii) the Fixed Charge Cover Ratio is at least 2.50 times, in each case calculated when the Issuer or any other Restricted Group Company wishes to incur additional Financial Indebtedness, after adjusting the relevant ratio giving the pro forma effect of such incurrence of additional Financial Indebtedness; and

25.1.1.2 the Issuer delivers a certificate (signed by 2 directors of the Issuer) to the Trustee at least 10 Business Days prior to the proposed date of incurrence of such Financial Indebtedness, (i) confirming compliance with the Financial Indebtedness Covenant and accompanied by the relevant calculations, and (ii) confirming that as at the date of such certificate there is no Event of Default or Potential Event of Default which is continuing, and immediately after the incurrence of such Financial Indebtedness, no Event of Default or Potential Event of Default will occur or be continuing as a result of the incurrence of the Financial Indebtedness.

25.1.2 If the provisions of Condition 25.1.1 are not satisfied, then the Issuer shall not, and shall procure that such other Restricted Group Company shall not, incur such additional Financial Indebtedness at that time. This restriction does not apply to the incurrence of any additional Financial Indebtedness:

25.1.2.1 under any GBF Agreement; provided that the aggregate outstandings, at any time, under the GBF Agreements do not exceed the lower of (i) R180 000 000 (of which R150 000 000 relates to performance bank guarantees in respect of the obligations of Group Companies under contracts with customers), and (ii) 40% of trade debtors of the Issuer and other Restricted Group Companies that are less than 90 days old;

25.1.2.2 under asset-backed facilities of vehicles, plant, equipment or computers concluded by Restricted Group Companies, provided that the aggregate outstandings under such asset-backed facilities by Restricted Group Companies does not exceed an aggregate amount of R170 000 000 from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;

- 25.1.2.3 to finance the purchase, construction or improvement of property and equipment at fair market value and of a type which is usual for a business of such nature, up to an aggregate amount of R20 000 000 from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;
  - 25.1.2.4 under any Permitted Treasury Transactions;
  - 25.1.2.5 in addition to that referred to in the other sub paragraphs of this Condition 25.1, which in aggregate does not exceed R20 000 000 from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;
  - 25.1.2.6 to refinance any existing debt of the Issuer or any Restricted Group Company in whole or in part;
  - 25.1.2.7 under guarantees granted by the Issuer or financial institutions in respect of the obligations of Group Companies under contracts with customers;
  - 25.1.2.8 between the Issuer and any Restricted Group Company or between or among Restricted Group Companies; or
  - 25.1.2.9 expressly permitted in writing by an Extraordinary Resolution of the Group 1 Noteholders.
- 25.1.3 The Leverage Ratio and Fixed Charge Cover Ratio will be calculated using the audited consolidated annual financial statements of the Issuer, if available, failing which the unaudited consolidated management accounts of the Issuer, for the relevant Measurement Period.

## 25.2 **Restricted Payments**

- 25.2.1 There shall be no limitation on the making of any Restricted Payment by the Issuer or any other Restricted Group Company if:
  - 25.2.1.1 immediately after making such Restricted Payment, (i) the Leverage Ratio is less than 2.50 times; and (ii) the Fixed Charge Cover Ratio is at least 2.50 times, calculated when the Issuer or any other Restricted Group Company wishes to make a Restricted Payment; and
  - 25.2.1.2 the aggregate amount of all Restricted Payments declared or made after the Issue Date of the Initial Notes by the Issuer and each other Restricted Group Company does not exceed 50% of Consolidated PAT plus 100% of the proceeds of share issuances, (or such higher percentage expressly permitted in writing by an Extraordinary Resolution of the Group 1 Noteholders), calculated on a cumulative basis during the period beginning on the first day of the month in which the Initial Notes are issued and ending on the last day of the month ending prior to the date of such proposed Restricted Payment; and

- 25.2.1.3 after the Restricted Payment is made, the Issuer or any other Restricted Group Company could incur at least R1.00 of additional Financial Indebtedness under the provisions of Condition 25.1.1 of the Financial Indebtedness Covenant; and
- 25.2.1.4 the Issuer delivers a certificate (signed by 2 directors of the Issuer) to the Trustee at least 10 Business Days prior to the proposed date of making the Restricted Payment, (i) confirming compliance with the Restricted Payment Covenant and accompanied by the relevant calculations, and (ii) confirming that as at the date of the certificate there is no Event of Default or Potential Event of Default which is continuing, and immediately after the date of making the Restricted Payment, no Event of Default or Potential Event of Default will occur or be continuing as a result of the date of making the Restricted Payment.
- 25.2.2 If the provisions of Condition 25.2.1 are not satisfied, then the Issuer shall not, and shall procure that such other Restricted Group Company shall not, make such Restricted Payment at that time. This restriction does not apply to:
- 25.2.2.1 the payment of any dividend within 60 days of its declaration if at such date of its declaration such payment would have been permitted by the provisions of this covenant;
- 25.2.2.2 Restricted Payments by the Issuer and Restricted Group Companies which in aggregate do not exceed R20 000 000 calculated from the Issue Date until the date that this Tranche of Group 1 Notes is redeemed in full;
- 25.2.2.3 a Restricted Payment by the Issuer or another Restricted Group Company to a Restricted Group Company; or
- 25.2.2.4 any Restricted Payment expressly permitted in writing by an Extraordinary Resolution of the Group 1 Noteholders.
- 25.2.3 The Fixed Charge Cover Ratio and Consolidated PAT will be calculated using the audited consolidated annual financial statements of the Issuer, if available, failing which the unaudited consolidated management accounts of the Issuer, for the relevant Measurement Period.
- 25.3 Limitation on Issuances and Sales of Shares of Restricted Subsidiaries**
- 25.3.1 The Issuer will not sell, pledge, alienate or otherwise dispose of any shares of a Restricted Subsidiary, and will not permit any Restricted Group Company (other than as permitted under the "Negative Pledge" covenant), directly or indirectly, to issue, sell, pledge, alienate or otherwise dispose, any shares of a Restricted Subsidiary (including options, warrants or other rights to purchase such shares). This restriction does not apply to:
- 25.3.1.1 any issuance or sale of shares of a Restricted Subsidiary to the Issuer or a wholly owned Restricted Subsidiary;

- 25.3.1.2 any issuance or sale of shares of a Restricted Subsidiary made in compliance with the "Disposal of Assets" covenant and if, immediately after giving effect to such issuance or sale, such Restricted Subsidiary would no longer constitute a Restricted Subsidiary and any remaining investment in such Person would have been permitted to have been made under the "Restricted Payments" covenant if made on the date of such issuance or sale;
- 25.3.1.3 any issuance or sale of shares of a Restricted Subsidiary made in compliance with the "Disposal of Assets" covenant and if immediately after giving effect to such issuance or sale such Restricted Subsidiary would continue to be a Restricted Subsidiary;
- 25.3.1.4 any issuance of shares of a Restricted Subsidiary, if after giving effect to such issuance, the Issuer directly or indirectly maintains at least the same percentage ownership of such Restricted Subsidiary as it owned immediately prior to such issuance;
- 25.3.1.5 shares issued by a Person prior to the time:
- 25.3.1.5.1 such Person becomes a Restricted Subsidiary,
- 25.3.1.5.2 such Person consolidates or merges with or into a Restricted Subsidiary, or
- 25.3.1.5.3 a Restricted Subsidiary consolidates or merges with or into such Person; but only if such shares were not issued or incurred by such Person in anticipation of it becoming a Restricted Subsidiary.

#### 25.4 **Transactions with Affiliates**

- 25.4.1 The Issuer shall not, and and undertakes to procure that other Restricted Group Companies shall not, enter into any transaction or series of related transactions with, or for the benefit of, any Affiliate of the Issuer or any other Restricted Group Company unless such transaction or series of transactions is entered into in good faith and
- 25.4.1.1 such transaction or series of transactions is on terms that, taken as a whole, are not materially less favourable to the Issuer or such Restricted Group Company, as the case may be, than those that could have been obtained in comparable arm's-length transactions with third parties that are not Affiliates;
- 25.4.1.2 with respect to any transaction or series of related transactions involving aggregate payments or the transfer of assets or provision of services, in each case having a value greater than ZAR 5 000 000, the board of directors of the Issuer shall resolve with the participation of the majority of the Disinterested Directors (or in the event that there is only one Disinterested Director, by the resolution of such Disinterested Director), that such transaction or series of related transactions complies with Condition 25.4.1.1 above (and deliver a copy

- of such resolution to the Truslee under cover of a certificate (signed by 2 directors of the Issuer); and
- 25.4.1.3 with respect to any transaction or series of related transactions involving aggregate payments or the transfer of assets or the provision of services, in each case having a value greater than ZAR 10 000 000, the Restricted Group Company shall obtain a written opinion of an accounting, appraisal or investment banking firm of national standing, stating that the transaction or series of transactions is fair to the such Restricted Group Company from a financial point of view (and deliver a copy of such opinion to the Trustee).
- 25.4.2 The restrictions in Condition 25.4.1 shall not apply to transactions between the Issuer and other Restricted Group Companies and shall not preclude loans to Unrestricted Group Companies made in accordance with Condition 25.11.
- 25.5 Consolidations, Mergers and Acquisitions**
- 25.5.1 The Issuer will not, and will procure that each other Restricted Group Company will not, in a single transaction or a series of related transactions (i) acquire or subscribe for shares or other ownership interests in, or securities of, any Person, or (ii) acquire any business of any Person, or (iii) make any investment (whether debt or equity) in any Person, or (iv) enter into any amalgamation, unbundling, merger, consolidation or reconstruction with or into any other Person.
- 25.5.2 The restriction set out above will not apply (i) to any transaction or series of related transactions expressly permitted in writing by Extraordinary Resolution of the Group 1 Noteholders or (ii) if any payment in respect of such transaction or series of related transactions is made to another Restricted Group Company, or (iii) if :
- 25.5.2.1 immediately after giving effect to any such transaction or series of related transactions, in the case of any amalgamation, unbundling, merger, consolidation or reconstruction, either
- 25.5.2.1.1 the Issuer or the relevant Restricted Group Company, as the case may be, will be the continuing company; or
- 25.5.2.1.2 the Person (if other than the Issuer or the relevant Restricted Group Company, as the case may be) formed by or surviving any such amalgamation, unbundling, merger, consolidation or reconstruction (the **"Surviving Entity"**) (i) will be a company duly incorporated and validly existing under the laws of South Africa, and (ii) will expressly assume the obligations of the Issuer or the relevant Restricted Group Company, as the case may be, under the Group 1 Notes and the Security Documents, in each case in form and substance satisfactory to the Trustee; and
- 25.5.2.1.3 each Restricted Group Company, unless it is the other party to the transactions described above, will confirm in writing that its guarantee will

continue to apply to the obligations of the Issuer, the relevant Restricted Group Company or the Surviving Entity, as the case may be, under the Group 1 Notes;

- 25.5.2.2 immediately after giving effect to such transaction or series of related transactions on a pro forma basis (and treating any obligation of the Issuer or any Restricted Group Company incurred in connection with or as a result of such transaction or series of related transactions as having been incurred by the Issuer or such Restricted Group Company at the time of such transaction) no Event of Default will have occurred and be continuing;
- 25.5.2.3 immediately after giving effect to such transaction or series of related transactions on a pro forma basis (on the assumption that the transaction or series of related transactions occurred on the first day of the Measurement Period prior to the consummation of such transaction or series of related transactions with the appropriate adjustments with respect to the transaction or series of related transactions being included in such pro forma calculation), the Issuer (or the Surviving Entity if the Issuer is not a continuing obligor under the Group 1 Notes) (i) could incur at least R1.00 of additional Financial Indebtedness under the provisions of the "Financial Indebtedness" covenant or (ii) would have a Fixed Charge Cover Ratio no less than it was immediately prior to giving effect to such transaction or series of related transactions;
- 25.5.2.4 immediately after giving effect to any such transaction or series of related transactions, the Consolidated Net Worth is equal to or greater than the Consolidated Net Worth prior to the proposed transaction based on the pro-forma consolidated balance sheet of the Issuer;
- 25.5.2.5 any payment in respect of such transaction or series of related transactions is made utilising funds which could otherwise be distributed as a Restricted Payment in terms of Condition 25.2 (Restricted Payments) at the end of the Measurement Period immediately preceding such transaction or series of related transactions;
- 25.5.2.6 the provisions of the "Negative Pledge" are complied with should any of the Issuer's or any Restricted Group Company's property or assets become subject to any Encumbrance immediately after giving effect to any such transaction or series of related transactions; and
- 25.5.2.7 the Issuer or the Surviving Entity will have delivered to the Trustee, in form and substance satisfactory to the Trustee, at least 10 Business Days prior to the proposed transaction, a certificate (signed by 2 directors of the Issuer) showing the computations to demonstrate compliance with Condition 25.5.2.2, 25.5.2.3, 25.5.2.4 and 25.5.2.5.

25.5.3 Nothing in this Condition 25.5 shall prevent a Restricted Subsidiary from consolidating with, merging into or transferring all or substantially all of its properties and assets to the Issuer or any other Restricted Subsidiary.

**25.6 Dividend Payments and other payments from Restricted Subsidiaries**

25.6.1 The Issuer will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create or otherwise cause or allow to exist or become effective any consensual encumbrance or restriction of any kind on the ability of any Restricted Subsidiary to:

25.6.1.1 pay dividends in cash or otherwise, or make any other distributions on or in respect of its share capital or any other interest or participation in, or measured by, its profits

25.6.1.2 pay any debt owed to the Issuer or any Restricted Group Company;

25.6.1.3 make loans or advances to the Issuer or any Restricted Group Company; or

25.6.1.4 transfer any of its properties or assets to the Issuer or Restricted Group Company.

25.6.2 The restrictions in Condition 25.6.1 shall not apply to encumbrances and restrictions imposed by the Terms and Conditions of the Group 1 Notes or the Security Documents or restrictions imposed by Applicable Law.

**25.7 Impairment of Security Interest**

25.7.1 The Issuer and each Restricted Group Company shall all times maintain in full force and effect (or where appropriate, promptly renew in a timely manner) all Encumbrances created pursuant to the Security Documents to which it is a party and from time to time execute, acknowledge and deliver or cause to be executed, acknowledged and delivered such further documents and/or instruments as may be reasonably requested by the Security SPV for perfecting or maintaining in full force and effect the Encumbrances granted under such Security Documents.

25.7.2 The Issuer will not, and the Issuer will not permit any Restricted Group Company to, take or omit to take any action that would, or would reasonably be expected to, have the result of impairing the Security provided under and pursuant to the Security Documents.

**25.8 Business Activities**

The Issuer will not, and will procure that Restricted Group Companies will not, enter into any new business type which the Issuer or other Restricted Group Companies do not have knowledge and experience in.

25.9 **Disposals of Assets**

- 25.9.1 Subject to the Security Documents and for so long as there is no Event of Default which is continuing, the Issuer and each other Restricted Group Company may, either in a single transaction or a series of transactions and whether related or not and whether voluntarily or involuntarily, dispose of all or any part of its assets, provided that:
- 25.9.1.1 the disposal is at a fair value (ie a value as could reasonably be expected to be obtained in an arm's length transaction. For a transaction or series of transaction exceeding R10, 000,000.00, a board resolution must confirm that the disposal is at fair value); and
- 25.9.1.2 the disposal proceeds, whether in cash or otherwise, must, subject to Condition 25.9.2, be applied, within 6 months of the relevant disposal, in repayment of the Group 1 Notes pursuant to the exercise by the Issuer of its right of Optional Redemption in terms of Condition 8.4, in repayment of the outstandings under any GBF Agreement, for capital expenditure or replacement capital expenditure or for the investment in any other asset comparable or superior as to type, value, quality and title, provided that if investment is made in a business from the disposal proceeds then such entity becomes a Restricted Group Company and Security is provided to the Security SPV.
- 25.9.2 If the disposal proceeds are not applied, within 6 months of the relevant disposal, for the purposes referred to in Condition 25.9.1.2, then the Issuer shall offer to redeem the Group 1 Notes, in an amount equal to so much of the disposal proceeds in respect of the relevant asset disposed of as exceeds R20 000 000, rounded down to the nearest R1 000 000 (the "**Excess Disposal Proceeds**"), in accordance with the remaining provisions of this Condition 25.9.
- 25.9.3 On or before the date of the expiry of the 6 month period referred to in Condition 25.9.2, the Issuer shall, by delivering a written notice (the "**Prepayment Offer Notice**") to each Group 1 Noteholder to that effect, offer to redeem the Group 1 Notes held by each such Group 1 Noteholder, on the date for redemption specified in the Prepayment Offer Notice (which shall not be later 10 Business Days after the expiry of the 6 month period referred to in Condition 25.9.2)(the "**Prepayment Offer Redemption Date**"), in an amount equal to its Pro Rata Share of the Excess Disposal Proceeds.
- 25.9.4 Each Group 1 Noteholder shall, within 10 Business Days of receipt of the Prepayment Offer Notice, notify the Issuer in writing whether it wishes to accept the offer, in whole or in part. If a Group 1 Noteholder fails to notify the Issuer of the acceptance of the offer in accordance with the provisions of this Condition 25.9.4, such Group 1 Noteholder shall be regarded as not having accepted the offer.
- 25.9.5 The Issuer shall, on the Prepayment Offer Redemption Date, redeem the Group 1 Notes of those Group 1 Noteholders who have accepted the offer in accordance with the provisions of Condition 25.9.4. Group 1 Notes redeemed pursuant to this

Condition 25.9.5 will be redeemed at their Early Redemption Amount referred to in Condition 8.7, together with accrued unpaid interest (if any) from (and including) the immediately preceding Interest Payment Date to (but excluding) the date of redemption.

- 25.9.6 The restrictions in Condition 25.9.1 do not apply to any disposal:
- 25.9.6.1 of trading stock made on arm's length terms in the ordinary course of trading;
  - 25.9.6.2 of any asset (not being a business or shares) on arm's length terms in exchange for any other asset comparable or superior as to type, value, quality and title;
  - 25.9.6.3 by the Issuer of the whole or the greater part of its undertaking or assets, which disposal may be made subject to compliance with the provisions of Conditions 8.6;
  - 25.9.6.4 of obsolete or redundant buildings and yards, vehicles, plant and equipment, for cash on arm's length terms; or
  - 25.9.6.5 constituted by a security interest which is permitted under Condition 11 (Negative Pledge).
- 25.9.7 Notwithstanding anything to the contrary contained in this Condition 25.9, if the Issuer exercises its right of Optional Redemption, in whole and not in part only, in terms of Condition 8.4:
- 25.9.7.1 the provisions of this Condition 25.9 shall not apply; and
  - 25.9.7.2 the Issuer and each Restricted Subsidiary, shall be entitled to dispose of all or substantially all of its assets whether in a single transaction or a series of related transactions, without any approval of the Group 1 Noteholders and any Security held in this regard shall be released upon the redemption in full of the Group 1 Notes and repayment in full of the other Group 1 Noteholders.
- 25.10 Sale and Leaseback Transactions**
- 25.10.1 The Issuer shall not, and shall procure that no other Restricted Group Company shall, dispose of any of its assets to a third party on terms where any such asset is or may be required to be leased to or re-acquired or acquired by a Restricted Group Company, in circumstances where the transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset. This restriction does not apply to:
- 25.10.1.1 a transaction in terms of which the Restricted Group Company could have incurred the Financial Indebtedness in terms of the Financial Indebtedness Covenant in Condition 25.1 and the asset could have been given as security in terms of the Condition 11 (Negative Pledge);

- 25.10.1.2 the gross sale proceeds are at least equal to the fair market value of the asset, as determined by the directors acting in good faith; and
- 25.10.1.3 the disposal of the asset is permitted, and the proceeds of such disposal are applied, in accordance with Condition 25.10 (Disposals of Assets).
- 25.10.2 The restrictions in Condition 25.10.1 do not apply to any such disposal of assets by a Restricted Group Company to another Restricted Group Company.

**25.11 Loans to Unrestricted Group Companies**

Except as permitted in terms of Condition 25.5, the Issuer will not, and will not permit any other Restricted Group Company, to make any loans to any Person that is not a Restricted Group Company. This restriction will not apply to loans by a Restricted Group Company to Unrestricted Subsidiaries provided that the sum of all loans by Restricted Group Companies to Unrestricted Subsidiaries does not exceed 15% of the consolidated total assets (excluding intangible assets and deferred tax assets) of the Group.

**25.12 Treasury Transactions**

The Issuer and each Restricted Group Company shall not enter into any Treasury Transaction other than Permitted Treasury Transactions.

**25.13 Hedging**

The Issuer shall ensure that its board considers, on a quarterly basis, the hedging requirements of the Group.

**25.14 Information Undertakings**

- 25.14.1 The Issuer undertakes to deliver to the Trustee:
  - 25.14.1.1 and to the JSE, its audited consolidated annual financial statements and reviewed unaudited interim consolidated financial results, within 90 days of each financial year end of the Issuer and within 60 days of each financial half year end of the Issuer, as the case may be, commencing with the half year ending on 31 August 2012;
  - 25.14.1.2 within 90 days of each financial year end, a broker's letter detailing the insurance policies of the Group, together with a copy of the board resolution approving such insurance cover;
  - 25.14.1.3 upon request by the Trustee, an up to date copy of the register of any Restricted Subsidiary;
  - 25.14.1.4 promptly upon becoming aware of the same, details of any litigation, arbitration, mediation or similar proceedings either commenced, threatened or pending against it or any other Restricted Group Company which, if adversely

determined, would involve a liability in excess of R10 000 000 or its equivalent in any other currency.

- 25.14.2 The Issuer shall deliver to the Trustee, together with the financial statements delivered to the Trustee in terms of Condition 25.14.1.1, a certificate, signed by 2 directors of the Issuer, confirming compliance with the Covenants and with the provisions of Condition 26.3 and Condition 26.4 during the 6 months prior to the relevant financial year end or financial half year end, as the case may be.
- 25.14.3 Each compliance certificate delivered with the audited consolidated annual financial statements shall be accompanied by a certificate from the Issuer's auditors confirming the calculations and satisfaction of the provisions of Condition 26.3 and Condition 26.4 in the compliance certificates delivered by the Issuer to the Trustee during the previous year.
- 25.14.4 If there is a change in the IFRS accounting principles from that applicable at the Issue Date, then the Issuer may convene a meeting of the Group 1 Noteholders to approve, by Extraordinary Resolution, any changes required to the financial ratios referred to in the relevant Covenants so as to put the Issuer in the same position that it would have been in had a change in the IFRS accounting principles not occurred. Until such amendments are approved by Extraordinary Resolution of the Group 1 Noteholders, the Issuer will provide a description of any changes necessary for the financial statements delivered in terms of Condition 25.14.3 to reflect the IFRS accounting principles applicable at the Issue Date, and the financial ratios referred to in the relevant Covenants will be calculated on the basis of pro forma financial statements reflecting the IFRS accounting principles applicable at the Issue Date.

**25.15      Amendments to Transaction Documents and Security Documents**

The Issuer will not, and will not allow any Restricted Group Company, to agree to any amendment to, cancellation of, waiver in respect of, or discharge or release from, the Security Documents or Transaction Documents, without the prior authorisation of an Extraordinary Resolution of the Group 1 Noteholders.

## GUARANTEES

The Terms and Conditions set out in the Programme Memorandum are amended in relation to the Notes of this Tranche by the insertion of the following additional Condition 26 (Guarantees):

### 26. Condition 26 Guarantees

- 26.1 The Issuer has procured that the obligations of the Issuer to the Security SPV under the Indemnity are guaranteed by the Subsidiary Guarantors on the terms and conditions as contained in the Subsidiary Guarantee. Additional Subsidiary Guarantors may accede to the Subsidiary Guarantee from time to time. The Issuer shall notify the Noteholders in writing of such accession in accordance with Condition 16.
- 26.2 If a Subsidiary Guarantor ceases to be a Material Subsidiary, the Issuer is entitled to remove such Subsidiary as a Subsidiary Guarantor, provided that no amount is then due under the Subsidiary Guarantee and provided that the provisions of Condition 26.5 have been satisfied. The Issuer shall notify the Noteholders in writing of such cessation in accordance with Condition 16.
- 26.3 If, after the Issue Date, any member of the South African Group is a Material Subsidiary, the Issuer must promptly procure that that Material Subsidiary becomes a Subsidiary Guarantor.
- 26.4 If at any time after the Issue Date:
  - the aggregate contribution of the Issuer and all the Subsidiary Guarantors to the consolidated total assets (excluding intangible assets, deferred tax assets, investments in Subsidiaries of the Issuer and loans to Subsidiaries of the Issuer) of the Group or the consolidated EBITDA of the Group,
  - is less than
    - 85% of the consolidated total assets (excluding intangible assets, deferred tax assets, investments in Subsidiaries of the Issuer and loans to Subsidiaries of the Issuer) of the Group or the consolidated EBITDA of the Group (such shortfall being the **Financial Support Deficit**),
  - then the Issuer must procure, within 90 days of the end of each financial year end and financial half year end of the Issuer, that so many additional members of the South African Group become Subsidiary Guarantors as is necessary to ensure that there is no Financial Support Deficit.
- 26.5 The Issuer is not required to comply with Conditions 26.4 and 26.5 to the extent that it is unlawful for the relevant person to become a Subsidiary Guarantor or that person becoming a Subsidiary Guarantor would result in personal liability for its directors, officers or other management.

## ADDITIONAL DEFINITIONS IN RESPECT OF THE GROUP 1 NOTES

1. Terms and expressions set out below will have the meanings set out below in the Terms and Conditions of the Group 1 Notes of the Tranche referred to in this Applicable Pricing Supplement:
  - 1.1 **"Additional Notes"** means every Tranche of Notes issued in terms of the Programme in addition to the Initial Notes, which participate in the same Security as that granted in favour of the holders of the Initial Notes (and thus identified in the Applicable Pricing Supplement as Group 1 Notes) and are issued on the same Terms and Conditions as the Initial Notes, except for their respective Issue Dates, Interest Commencement Dates, Issue Price, Interest Rate, Interest Payment Dates, early redemption penalties or fees and Final Redemption Dates;
  - 1.2 **Affiliate** means, in relation to any Person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company or any Person that owns, directly or indirectly, 20% or more of such Person's ordinary share capital;
  - 1.3 **Botswanan Pledge** means the pledge by Frankipile International Projects Limited of its shares in Frankipile Botswana (Pty) Ltd to the Security SPV;
  - 1.4 **Botswanan Security Cession** means the cession in security by Frankipile Botswana (Pty) Ltd of its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries (if any) and its reversionary interest in its debtors book granted to the Security SPV, as security for its obligations to the Security SPV under the Subsidiary Guarantee;
  - 1.5 **Cash and Cash Equivalents** means cash on hand and on demand deposit, deposits held on call with financial institutions and other short-term highly liquid investments that are readily convertible to a known amount of cash and are subject to an insignificant risk of changes in value and bank overdrafts, in each case, which is freely available to the Group at that time and which is capable of being applied against Financial Indebtedness of the Group;
  - 1.6 **Consolidated EBIT** means, in relation to a Measurement Period, the aggregate of:
    - 1.6.1 the consolidated operating profits (excluding the results from discontinued operations) of the Group before Consolidated Net Finance Costs and tax for that Measurement Period;

adjusted by:

    - 1.6.1.1 excluding any items which represent gains or losses arising on:
      - 1.6.1.1.1 restructurings of the activities of an entity and reversals of any provisions for the costs of restructuring;
      - 1.6.1.1.2 disposals of non-current assets;
      - 1.6.1.1.3 the disposal of assets associated with discontinued operations;

- 1.6.1.1.4 movements of any provision;
- 1.6.1.2 excluding any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis) which is reported through the income statement;
- 1.6.1.3 excluding extraordinary gains or losses;
- 1.6.1.4 excluding non-cash items; and
- 1.6.1.5 excluding debt raising costs;
- 1.7 **Consolidated EBITDA** means, in relation to a Measurement Period, Consolidated EBIT for that Measurement Period after adding back any depreciation and amortisation and excluding any charge for impairment or any reversal of any previous charge made in the period;
- 1.8 **Consolidated Net Finance Costs** means, in relation to a Measurement Period, all Finance Costs (whether paid, payable or added to principal) incurred by the Group during that period calculated on a consolidated basis less Interest Receivable by the Group during that period calculated on a consolidated basis;
- 1.9 **Consolidated Net Worth** means at any time the aggregate of:
  - 1.9.1 the amount paid up or credited as paid up on the issued share capital of Restricted Group Companies; and
  - 1.9.2 the net amount standing to the credit (or debit) of the consolidated reserves of Restricted Group Companies;
- 1.10 **Consolidated PAT** means, in relation to a Measurement Period, the aggregate of:
  - 1.10.1 the consolidated operating profits (excluding the results from discontinued operations) of the Group after Consolidated Net Finance Costs and tax for that Measurement Period;

adjusted by:

  - 1.10.1.1 excluding any items which represent gains or losses, together with any related provisions for taxes on such gains or losses, arising on:
    - 1.10.1.1.1 restructurings of the activities of an entity and reversals of any provisions for the costs of restructuring;
    - 1.10.1.1.2 disposals of non-current assets;
    - 1.10.1.1.3 the disposal of assets associated with discontinued operations;
    - 1.10.1.1.4 reversals of any provision;

- 1.10.1.2 excluding any unrealised gains or losses, together with any related provisions for taxes on such gains or losses, on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis) which is reported through the income statement;
- 1.10.1.3 excluding any net after tax extraordinary gains or losses;
- 1.10.1.4 excluding non-cash items in relation to write-ups, write-downs or write-offs of assets of the Group, together with any related provisions for taxes on such non-cash items;
- 1.10.1.5 excluding debt and equity raising costs, together with any related provisions for taxes on such debt and equity raising costs; and
- 1.10.1.6 excluding any interest accrued on subordinated, unsecured loans, if any;
- 1.11 **Covenants** means the covenants referred to in Condition 25;
- 1.12 "**Disinterested Director**" means, with respect to any transaction or series of related transactions, a member of the Issuer's Board of Directors who does not have any material direct or indirect financial interest in or with respect to such transaction or series of related transactions or is not an Affiliate, or an officer, director or employee of any Person (other than the Issuer) who has any direct or indirect financial interest in or with respect to such transaction or series of related transactions;
- 1.13 **Distribution** means, in relation to the Issuer or a Restricted Group Company, to:
- 1.13.1 declare, make or pay any dividend, charge, fee or other distribution (whether in cash or in kind) on or in respect of its shares or share capital (or any class of its share capital);
- 1.13.2 repay or distribute any share premium account;
- 1.13.3 pay any management, advisory or other fee or royalty to or to the order of its shareholders;
- 1.13.4 pay any principal or interest in respect of amounts due (whether in respect of an inter-company loan, subordinated loan or otherwise) to or to the order of its shareholders; or
- 1.13.5 redeem, purchase or repay any of its shares or share capital (or any instrument convertible into shares or share capital) or resolve to do so;
- 1.14 **Extraordinary Resolution of the Group 1 Noteholders** means a resolution passed at a properly constituted meeting of the Group 1 Noteholders, by a majority consisting of not less than 66,67% of the votes cast at a poll by members of the Group 1 Noteholders, present in person or by proxy;
- 1.15 **Finance Costs** means, for any Measurement Period, the aggregate amount, without double counting, of the accrued interest, dividends on redeemable preference shares, commission,

fees, discounts, prepayment fees, premiums or charges and other finance payments in respect of Financial Indebtedness (excluding any such charges on any derivative transaction, protecting against or benefiting from fluctuations in any rate or price), but taking no account of any unrealised gains or losses on any derivative instrument (other than any derivative instrument which is accounted for on a hedge accounting basis) which is reported through the income statement;

- 1.16 **Finance Documents** means collectively and individually any of:
- 1.16.1 The Trust Deed;
  - 1.16.2 the Terms and Conditions of the Group 1 Notes;
  - 1.16.3 the Security Documents; and
  - 1.16.4 any other document which is from time to time designated by the Trustee (on behalf of the Group 1 Noteholders), as a Finance Document;
- 1.17 **Financial Indebtedness** means, without double counting, any indebtedness for or in respect of:
- 1.17.1 moneys borrowed or credit provided;
  - 1.17.2 any acceptance credit facility (including any dematerialised equivalent);
  - 1.17.3 any note purchase facility, bond, note, debenture, loan stock or other similar instrument;
  - 1.17.4 any suspensive sale or instalment credit transaction;
  - 1.17.5 any agreement treated as a finance or capital lease in accordance with IFRS;
  - 1.17.6 receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
  - 1.17.7 any derivative transaction protecting against or benefiting from fluctuations in any rate or price (and, except for non-payment of an amount, the then mark to market value of the derivative transaction will be used to calculate its amount other than in respect of the Esor share incentive scheme);
  - 1.17.8 any counter-indemnity obligation in respect of any guarantee, indemnity, bond, letter of credit or any other instrument issued by a bank or financial institution;
  - 1.17.9 any redeemable preference share;
  - 1.17.10 any other transaction (including any forward sale or purchase agreement) which has the commercial effect of a borrowing; or

- 1.17.11 any guarantee, indemnity or similar assurance against financial loss of any person in respect of any item referred to in the above clauses;
- 1.18 **Fixed Charge Cover Ratio** means, in respect of a Measurement Period, the historical ratio of pro-forma Consolidated EBITDA to pro forma Consolidated Net Finance Costs, at the end of that relevant Measurement Period;
- 1.19 **GBF Agreement** means a general banking facility agreement entered into between a GBF Lender, the Issuer and/or its Subsidiaries, in terms of which the GBF Lender grants to the Issuer and/or its Subsidiaries, a revolving working capital facility and ancillary facilities, in aggregate up to R180 000 000 (of which R150 000 000 relates to performance bank guarantees in respect of the obligations of Group Companies under contracts with customers), to fund the Issuer's (and/or such Subsidiaries') working capital, overdraft, letters of credit and foreign exchange contract requirements from time to time, including the issuing of guarantees, on the terms and conditions set out therein, as amended, novated and/or substituted from time to time in accordance with its terms;
- 1.20 **GBF Lender** means a lender under a GBF Agreement from time to time;
- 1.21 **Group** means the Issuer and its Subsidiaries;
- 1.22 **Group 1 Noteholders** means the holders of the Group 1 Notes;
- 1.23 **Group 1 Notes** means:
- 1.23.1 the Initial Notes; and
- 1.23.2 the Additional Notes, if any,
- and designated as such in the Applicable Pricing Supplement;
- 1.24 **Holding Company** means a holding company within the meaning of the Companies Act;
- 1.25 **IFRS** means International Financial Reporting Standards and the interpretation of those standards as adopted by the International Accounting Standards Board;
- 1.26 **Indemnity** means the indemnity agreement between the Issuer and the Security SPV, pursuant to which the Issuer indemnifies and holds the Security SPV harmless in respect of claims made against the Security SPV under, amongst others, the Security SPV Guarantee, as amended, novated and/or substituted from time to time in accordance with its terms;
- 1.27 **Initial Notes** means all Tranches of Notes issued in terms of the Programme on the same date as Tranche 1 of Series 1 of the Notes;
- 1.28 **Interest Receivable** means, for any Measurement Period, the aggregate amount, without double counting, of all interest and other financing charges received or receivable;

- 1.29 **Issuer Security Cession** means the cession in security by the Issuer of its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book granted to the Security SPV, as security for the obligations of the Issuer to the Security SPV under the Indemnity;
- 1.30 **Leverage Ratio** means, in respect of a Measurement Period, the ratio of Net Debt to the historical ratio of pro-forma Consolidated EBITDA, at the end of that relevant Measurement Period;
- 1.31 **Material Subsidiary** means a direct or indirect Subsidiary of the Issuer whose total assets or EBITDA exceed 5% of the consolidated total assets or consolidated EBITDA of the Group as a whole, calculated by reference to the last audited (consolidated or, as the case may be, unconsolidated) annual or unaudited semi-annual accounts of the Subsidiary, whichever is the latest, and the latest audited annual or unaudited semi-annual consolidated accounts of the Issuer, whichever is the latest. For the purposes of this definition, intangible assets, deferred tax assets, investments in Subsidiaries of the Issuer and loans to Subsidiaries of the Issuer are excluded from the calculation of total assets;
- 1.32 **Mauritian Fixed and Floating Charge** means the fixed and floating charge agreement in terms of which each Frankipile Mauritius International Limited and Frankipile International Projects Limited grants a fixed and floating charge over its bank accounts, trade receivables and intra-group claims to the Security SPV;
- 1.33 **Mauritian Pledge** means the pledge of its shares by Esorfranki Plant (Pty) Ltd in Frankipile Mauritius International Limited and Frankipile International Projects Limited to the Security SPV;
- 1.34 **Measurement Period** means a period of 12 months ending on the last day of the month preceding the date on which the relevant ratio is calculated;
- 1.35 **Minority Investment** means, in relation to the Issuer or a Restricted Group Company, the acquisition of, or subscription for, shares or other ownership interests in or securities of, any company or other person, which is not, or does not become, a Subsidiary;
- 1.36 **Net Debt** means, at any time, in respect of the Group, on a consolidated basis, the sum of all Financial Indebtedness of the Group less any Cash and Cash Equivalents held by the Group;
- 1.37 **Ordinary Resolution of the Group 1 Noteholders** means a resolution passed at a properly constituted meeting of the Group 1 Noteholders, by a majority of the votes cast at a poll by the members of the Group 1 Noteholders, present in person or by proxy;
- 1.38 **Permitted Treasury Transaction** means:
- 1.38.1 any Treasury Transaction entered into to hedge the Group 1 Notes up to a maximum of 100% of the Outstanding Principal Amount of the Group 1 Notes;

- 1.38.2 any Treasury Transaction entered into with a GBF Lender under the terms of any GBF Agreement; and
- 1.38.3 any Treasury Transaction entered into in the ordinary course of business (and not for investment or speculative purposes) on arm's length terms where used as a hedge to protect against an actual exposure or risk incurred or to be incurred by a Restricted Group Company as a result of:
- 1.38.3.1 interest rate exposure in relation to any payment obligations on interest bearing Financial Indebtedness in the ordinary course of business; or
- 1.38.3.2 currency exposure in respect of payments due under import contracts;
- provided that in respect of any Treasury Transaction permitted pursuant to this Condition 1.38:
- 1.38.4 other than the Treasury Transaction permitted under Condition 1.38.1, any restructure, refinancing or amendment of such Treasury Transaction which results in the extension of the due date for payment of any amount payable under such Treasury Transaction or any increase of the indebtedness of a Restricted Group Company shall only be permitted if the Conditions set out in Condition 25.1.1 have been complied with; or
- 1.38.5 if such Treasury Transaction is concluded on the basis, or with the result, that at the time at which such Treasury Transaction is concluded or becomes effective (the **Relevant Date**), it results in the incurrence of Financial Indebtedness by any Restricted Group Company on the Relevant Date, it shall only be permitted if the Conditions set out in Condition 25.1.1 have been complied with;
- 1.39 **Person** means any individual, company, partnership, joint venture, association, trust, unincorporated organisation or government or any agency or political subdivision thereof;
- 1.40 **Potential Event of Default** means any event or circumstance specified in Condition 12.1 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under any Finance Document or any combination of any of the foregoing) be an Event of Default;
- 1.41 **Pro Rata Share** means, in relation to a Group 1 Note, the ratio which the Outstanding Principal Amount of that Group 1 Note bears to the Outstanding Principal Amount of all the Group 1 Notes;
- 1.42 **Restricted Payment** means, in relation to the Issuer or any other Restricted Group Company:
- 1.42.1 a Distribution; or
- 1.42.2 a Minority Investment;

- 1.43 **Restricted Subsidiary** means any Subsidiary of the Issuer that is not an Unrestricted Subsidiary;
- 1.44 **Restricted Group Company** means the Issuer and each Restricted Subsidiary;
- 1.45 **Security** means the security granted in favour of the Security SPV by the Issuer and other Group Companies, created pursuant to the Security Documents;
- 1.46 **Security Documents** means:
- 1.46.1 the Security SPV Guarantee;
  - 1.46.2 the Indemnity;
  - 1.46.3 the Issuer Security Cession;
  - 1.46.4 the Subsidiary Guarantee;
  - 1.46.5 the Subsidiary Guarantor Security Cession(s);
  - 1.46.6 Mauritian Pledge;
  - 1.46.7 Mauritian Fixed and Floating Charge;
  - 1.46.8 Botswanan Pledge;
  - 1.46.9 Botswanan Security Cession;
  - 1.46.10 the Special Notarial Bonds; and
  - 1.46.11 any other document which is from time to time designated by the Group 1 Noteholders as a Security Document;
- 1.47 **Security Provider** means the Security SPV, Esorfranki Construction (Pty) Ltd, Esorfranki Plant (Pty) Ltd, Esorfranki Property Developments (Pty) Ltd, Frankipile Mauritius International Limited, Frankipile International Projects Ltd, Frankipile Botswana (Pty) Ltd and each other Restricted Group Company that guarantees or otherwise directly or indirectly provides credit support for the obligations of the Issuer to Group 1 Noteholders;
- 1.48 **Security SPV** means Tizabuzz (RF) Proprietary Limited (Registration number 2012/061270/07), a company duly registered and incorporated in accordance with the company laws of South Africa;
- 1.49 **Security SPV Guarantee** means the guarantee issued by the Security SPV in favour of the Trustee for the benefit of the Group 1 Noteholders for the obligations of the Issuer under the Group 1 Notes, as amended, novated and/or substituted from time to time in accordance with its terms;

- 1.50 **Secured Creditors** means, for purposes of the Security Documents, the Group 1 Noteholders;
- 1.51 **South African Group** means a member of the Group incorporated in South Africa;
- 1.52 **Special Notarial Bond** means each first ranking special notarial bond granted by each of Esorfranki Construction (Pty) Ltd and Esorfranki Plant (Pty) Ltd, over specified plant and equipment of each such Subsidiary, in favour of the Security SPV, as security for its obligations to the Security SPV under the Subsidiary Guarantee;
- 1.53 **Subsidiary** means a subsidiary within the meaning of the Companies Act;
- 1.54 **Subsidiary Guarantee** the unconditional and irrevocable guarantee given by each Subsidiary Guarantor to the Security SPV, jointly and severally guaranteeing the obligations of the Issuer to the Security SPV under the Indemnity;
- 1.55 **Subsidiary Guarantor** means each of Esorfranki Construction (Pty) Ltd, Esorfranki Plant (Pty) Ltd, Esorfranki Property Developments (Pty) Ltd, Frankipile Mauritius International Limited, Frankipile International Projects Ltd, Frankipile Botswana (Pty) Ltd and any additional Subsidiary of the Issuer that accedes to the Subsidiary Guarantee, if and for so long as each such company is a party to the Subsidiary Guarantee in accordance with the provisions of the Terms and Conditions of the Group 1 Notes;
- 1.56 **Subsidiary Guarantor Security Cession** means the cession in security by each Subsidiary Guarantor, if applicable, of its right, title and interest in and to its bank accounts, its shares in and claims against Material Subsidiaries and its reversionary interest in its debtors book granted to the Security SPV, as security for its obligations to the Security SPV under the Subsidiary Guarantee;
- 1.57 **Transaction Documents** means, for the purposes of Condition 12.1.8 (Events of Default), the Security Documents and the Trust Deed;
- 1.58 **Trust Deed** means the trust deed constituting the Esorfranki Note Trust;
- 1.59 **Trustee** means the trustee for the time being of the Esorfranki Note Trust, which shall initially be Maitland Trust Limited (Registration number 1981/009543/06), a company duly registered and incorporated in accordance with the company laws of South Africa;
- 1.60 **Treasury Transaction** means any currency or interest purchase, cap or collar agreement, forward rate agreements, interest rates or currency future or option contracts, foreign exchange or currency purchase or sale agreement, interest rate swap, currency swap or combined interest rate and currency swap agreement and any other similar agreement in each case entered into in connection with any fluctuation in any rate or price; and
- 1.61 **Unrestricted Subsidiary** means any Subsidiary of the Issuer that has not guaranteed, on an unlimited basis, or otherwise directly or indirectly provided credit support for the obligations of the Issuer to Group 1 Noteholders.

2. For purposes of Condition 25, an Event of Default is "continuing" if it has not been remedied to the satisfaction of the Trustee or waived in writing by the Trustee (in each case, acting on the instructions of an Extraordinary Resolution of the Group 1 Noteholders).

## DOCUMENTS INCORPORATED BY REFERENCE

For so long as the Group 1 Notes are outstanding, the following documents listed below are deemed to be incorporated into, and to form part of, the Programme Memorandum in addition to the documents listed in the Programme Memorandum and will be available for inspection by Group 1 Noteholders at the Specified Office of the Issuer:

- (a) the Trust Deed; and
- (b) the Security Documents;

## TRUSTEE

Maitland Trust Limited (Registration number 1981/009543/06) has been appointed in terms of a trust deed between the Truslee and the Issuer, to act as trustee for the benefit of Group 1 Noteholders.

Pursuant to the Trust Deed, the Trustee is entitled to exercise the rights conferred on the Trustee and is obliged to perform the duties imposed on the Trustee in terms of the Conditions of the Group 1 Notes, including the rights and duties in terms of Condition 12.2 (Steps following an Event of Default relating to the Group 1 Notes), Condition 23 (Meetings of the Group 1 Noteholders) and Condition 25 (Covenants).

The Trust Deed sets out provisions relating to the replacement of the Trustee, including following a resolution to this effect by the Noteholders, by a majority consisting of not less than 75% of the votes cast on a poll by the Noteholders, present in person or by proxy at a meeting convened in terms of the Terms and Conditions of the Notes.

The Trust Deed contains provisions for the indemnification of the Trustee and for its relief from responsibility, including relieving it from taking proceedings unless indemnified and/or secured and/or prefunded to its satisfaction. The Trustee is entitled to enter into business transactions with the Issuer and any entity related to the Issuer without accounting for any profit. The Trustee may rely without liability to Group 1 Noteholders on a report, confirmation or certificate or any advice of any accountants, financial advisers or investment bank, whether or not addressed to it and whether their liability in relation thereto is limited (by its terms or by any engagement letter relating thereto entered into by the Trustee or in any other manner) by reference to a monetary cap, methodology or otherwise. The Trustee shall be obliged to accept and be entitled to rely on any such report, confirmation or certificate or advice where the Issuer procures delivery of the same pursuant to its obligation to do so under any provision of these Conditions or the Trust Deed and such report, confirmation or certificate or advice shall be binding on the Issuer, the Trustee and the Group 1 Noteholders in the absence of manifest error.

In connection with the exercise of its functions the Trustee shall have regard to the interests of the Group Noteholders as a class and, in particular but without limitation, shall not have regard to the consequences of the exercise of its trusts, powers or discretions for individual Group 1 Noteholders resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any particular territory, and the Trustee shall not be entitled to require, nor shall any Group 1 Noteholder be entitled to claim, from the Issuer or any other person any indemnification or payment in respect of any tax consequences of any such exercise upon individual Group 1 Noteholders.