



## CONSTITUTION OF THE OEM MINING SUPPLIER FORUM

### 1. Name

- 1.1. The organisation hereby constituted will be called: OEM Mining Supplier Forum.
- 1.2. Its shortened name will be OEM Forum.
- 1.3. The offices of the organization will be located at the Secretariat's offices.

### 2. Body corporate

The organization shall:

- Exist separately from its members.
- Continue to exist even when its membership changes and there are different office bearers.

### 3. Definition and terms

'Applicant' means a company or organization that is applying or has been invited to become a member of the OEM Forum.

'Company' means a registered limited liability company, close corporation, partnership or sole proprietor.

"Organization" means an industry body representing complimentary objectives to those of the OEM Forum.

'DMRE' means Department of Mineral Resources and Energy.

'the dtic' means Department of Trade, Industry and Competition.

'Member' means an OEM company and/or organization represented by a nominated employee or member of such OEM company or organization respectively.

MINCOSA" means the Minerals Council of South Africa.

'OEM' means Original Equipment Manufacturer.

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### 4. Objectives

- 4.1. To identify challenges and ambiguities from the relevant prescriptions of the Mining Charter and Implementation Guidelines, in terms of the local content requirements and certification on content for all suppliers to the mines.
- 4.2. To identify and develop possible holistic solutions to the challenges that will benefit the industry, create employment and enhance investment in the South African mining industry.
- 4.3. To engage all the relevant stakeholders in finding solutions to the challenges.
- 4.4. To participate in stakeholder forums and government stakeholder working groups that seek to make the mining industry a reality for investment and growth.
- 4.5. To train, advise and prepare OEMs as a collective industry focus group, to develop and submit local content, employment creation and value addition reports in terms of measurement, codification and certification.
- 4.6. To be a repository for OEM local content information, for dissemination to Mining customers of the OEM suppliers.



- 4.7. To act as a communication channel between the OEM's, their shareholders, the dtic, DMRE, industry bodies and stakeholders, MINCOSA, and the Competition Commission.
- 4.8. To identify common industry threats and business imperatives whilst collectively engage with stakeholders in the mining industry to develop solutions and create opportunities that impacts on OEM Suppliers, communities and mining customers.
- 4.9. To respond to legislation, position papers and terms of reference which impact on the OEM mining supply industry and/or when requested by Government, a Forum member or other industry stakeholder.
- 4.10. To display the logos and names of its members on its website and documentation.

## 5. Membership

- 5.1. Will consist of any Original Equipment Manufacturing company whose legal ownership and main intellectual property base is controlled inside and/or outside the Republic of South Africa and is manufacturing, supplying, remanufacturing and servicing the mining industry as a supplier.
- 5.2. May also consist of Industry bodies and stakeholders that have identified the same challenges as the OEM Forum and wish to collaborate and coordinate on a non-competitive basis to seek solutions that will benefit the industry.
- 5.3. Valid Membership will be in the form of an annual subscription by members. Subscription fees will be determined by the Secretariat in consultation with and approval by the members on an annual basis, payable 6 months in advance.
- 5.4. Members of the OEM Forum and the Secretariat do not accept any liability on behalf of the OEM Forum and the total liability arising out of the membership or Secretariat services shall be limited to the total fees paid to the OEM Forum by any member and the Secretariat in respect of the calendar year in which the cause of action arose.
- 5.5. Members that are up to date with their membership fees will be allowed to recommend, motivate and vote, when required, for the development and submission of position papers, administrative and industry comment documents or industry processes to be compiled by the Secretariat of the OEM Forum, which documents, processes or discussions will not be anti-competitive in behaviour, or will result in an form of collusion between any, or all members. No pro rata refunds of subscriptions shall be repaid on resignation.
- 5.6. Five types of Membership are considered to determine membership fees:
  - OEM suppliers with a turnover exceeding R3Bn – an annual fee - payable 6 monthly in advance will apply.
  - OEM suppliers with a turnover more than R1Bn, but less than R3BN - an annual fee - payable 6 months in advance will apply.
  - OEM suppliers with a turnover more than R500m, but less than R1BN - an annual fee - payable 6 months in advance will apply.
  - OEM suppliers with a turnover more than R250m, but less than R500m - an annual fee - payable 6 months in advance will apply.
  - OEM suppliers with a turnover less than R250m and/or OEM's with mining sales exposure less than R100m per annum - an annual fee - payable 6 months in advance will apply.

Industry bodies and stakeholder organizations that support and compliment the objectives of the OEM Forum may be invited to join the OEM Forum at no cost but will have no voting rights. Such bodies and/or organizations will be invited on annual basis.

## **6. Management oversight board**

- 6.1. The OEM Forum will have a management oversight board consisting of five (5) elected members.
- 6.2. The function of the management oversight board will be to oversee and measure the activities of the Secretariat in terms of its performance during the last year, have oversight of the finance and institute good governance and protocols to support and protect all members.
- 6.3. The management oversight board will define the criteria for the acceptance of new members to ensure the objectives of the forum are not diluted, provided such criteria will not conflict with the Constitution.
- 6.4. The management oversight board will meet at least once a year to monitor the progress of the OEM Forum and Secretariat.
- 6.5. Office bearers will serve for one (1) year. They will be allowed to stand for re-election for another term in office. A chairman will be elected by the management oversight board to direct their meetings. Each board member will have one (1) vote related to the functions defined in 6.2.
- 6.6. Three (3) or more members of the management oversight board, will constitute a quorum of the management oversight board.

## **7. Secretariat Office**

- 7.1. The OEM Forum will establish and appoint a Secretariat office to advance the objectives listed in section 4. The Secretariat office will be manned by suitably qualified and independent personnel in an administrative capacity.
- 7.2. There will be an office, website and contact number. The Secretariat will invoice the OEM Forum on a monthly basis.
- 7.3. The Secretariat will act as a representative for the OEM Forum at relevant platforms, taking into consideration the challenges identified, solutions agreed, and decisions made at OEM Forum meetings, workshops and the general acceptable viewpoints of individual members, that represent the views of the majority of members.
- 7.4. The Secretariat will give quarterly progress reports to the members on advancing the interests of the OEM Forum.
- 7.5. The Secretariat will communicate and manage requests for comments or participation from members, the South African government and other industry stakeholders which may have an impact on the operations, exclusion allowances, products, suppliers and raw material of the mining supply industry and will attend such meetings, workshops and discussions and will collate a response that represent the majority of Forum members.
- 7.6. The Secretariat, its associates and/or any service provider or employee associated with the Secretariat will maintain a strict confidential protocol with all members of the OEM Forum and may need to enter into non-disclosure agreements with any OEM member.

- 7.7. The Secretariat will not disclose any information of any individual member of the OEM Forum to any other OEM Forum member, any third party or in any manner which may harm or cause any reputational or operational risk to any OEM Forum member.
- 7.8. The Secretariat will restrict the dissemination and collation of information obtained from OEM Forum members in such a manner that it will not breach any Competition legislation or regulations, or which may demonstrate collusion amongst OEM Members.
- 7.9. The Secretariat and its office bearers will be mandated to evaluate all comments, requests, documents and responses and will apply its industry expertise and discretion if a formal response, document or meeting attendance is relevant to the objectives of the OEM Forum.

## **8. Meetings**

- 8.1. The OEM Forum will hold a minimum of two (2) ordinary meetings per year.
- 8.2. An annual general meeting will be held once a year, to table the financial reports and review the need for the Forum to continue as a body.
- 8.3. A special meeting can be called by any member of the OEM Forum, with the backing of two other members.
- 8.4. Every member company of the OEM Forum, who is in good standing, shall be entitled to exercise one (1) vote at meetings of the OEM Forum.
- 8.5. The meetings of the OEM Forum do not conform to, or do not have the intention to have any anti-competitive or collusion intentions or activities amongst the OEM's, multinationals and competitors. No discussion of product, price, distribution or availability will be entertained.

## **9. Annual general meetings**

The AGM should deal with the following business, amongst others:

- Financial report
- Secretariat report
- Changes to the constitution
- Elect new office bearers
- Changes to the Secretariat
- General matters

## **10. Finances**

- 10.1. An accounting officer will be appointed at each AGM. The main function of the accounting officer is to verify and check the finances of the OEM Forum.
- 10.2. The Secretariat must appoint a treasurer to control the day to day finances and proper financial records must be kept.
- 10.3. The bank account of the OEM Forum must have two signatories from the Secretariat, one must request the transaction and the other must approve the transaction.
- 10.4. The Secretariat will issue an invoice made out to the OEM forum on a monthly basis for its expenses for approval by any two members of the oversight board.



- 10.5. The accounting officer will submit the relevant reports to the authorities within six months after the AGM.

## 11. Removal of Members

A member may be removed if he or she infringes any provision of this constitution or acts in a manner that is detrimental to the interests of the OEM Forum or its members.

## 12. Discipline

Members, at a meeting of the members of the OEM Forum, may vote to expel a member if the member:

- Has committed any breach of the Constitution of the OEM Forum.
- Has brought the name of the OEM Forum into disrepute.
- Is more than three (3) months in arrear of subscriptions.
- Has not attended three or more consecutive meetings.

## 13. Amendments to the Constitution

The Constitution of the OEM Forum may be amended with the approval of more than 50% of the valid OEM voting members.

## 14. Dissolvment of the OEM Forum

The OEM Forum may be dissolved with the consent of more than 75% of the valid members. The remaining funds, after liabilities will be distributed to the remaining valid members in proportion to their class of membership fee.

## 15. Dispute resolution

If any dispute arises out of or in connection with the objectives of the OEM Forum, or between members, or between the Secretariat and the OEM Forum or its members, or between the OEM Forum with an external party, the parties must endeavour to resolve the dispute firstly by way of negotiation and in the event of that failing, by way of mediation and in the event of that failing, by way of Arbitration.

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