

SHERQ Manual			 Proficiency Testing - Reference Materials
Title	QOTHO MINERALS - TERMS & CONDITIONS	Doc No.	QM-POL-016

STANDARD TERMS AND CONDITIONS FOR THE EXECUTION OF PROFICIENCY TESTING SCHEMES AND SALE OF REFERENCE MATERIALS

These terms and conditions govern the provision by Qotho Minerals (Pty) Limited (“Qotho”) of proficiency testing schemes, reference materials and related services to the Customer identified in the application form (the “Customer”). These terms and conditions apply to the application form, each Order accepted by Qotho, and each proficiency testing scheme, reference material or related service supplied by Qotho, unless the parties have entered into a separate written agreement signed by both parties that expressly overrides these terms and conditions in whole or in part. The Customer submits an offer to purchase by submitting an application form or placing an Order. No application or Order is binding on Qotho unless and until accepted by Qotho in writing, which acceptance may include confirmation by email.

1 DEFINITIONS

The definitions and rules of interpretation contained in Schedule 1 (Definitions And Interpretation) apply to this Agreement.

2 PERFORMANCE

- 2.1 In consideration of receipt of the Price, Qotho agrees to provide Reference materials and/or PT Schemes to the Customer in accordance with the terms of this Agreement.
- 2.2 No Order is binding on Qotho unless it has been accepted in writing.
- 2.3 Nothing in this Agreement gives the Customer any right to the exclusive provision of any Reference materials, PT Schemes or related services by Qotho.
- 2.4 Unless expressly stated otherwise in writing, any stated delivery time is an estimate only and, subject to the other provisions of this Agreement, Qotho shall not be liable for any Claim in respect of Loss arising solely from delay in the delivery of Proficiency Test Items or Reference Materials. Any such delay shall not entitle the Customer to terminate or rescind this Agreement in whole or in part, and time is not of the essence in relation to delivery by Qotho.

3 APPLICATION

These terms and conditions apply to the exclusion of any terms and conditions supplied by the Customer, and no variation to these terms and conditions is effective unless acknowledged in writing by Qotho.

- 3.1 Order, Cancellation and Delivery
 - 3.1.1 Following receipt of an official Purchase Order or full upfront payment of the Price, the Customer shall be entitled to participate in the PT(s) detailed in, and/or receive the Reference Materials listed in, that Order and Qotho shall use its reasonable endeavours to dispatch Proficiency Test Items or Reference Materials to the Customer on the date specified in the Order.
 - 3.1.2 Customer may cancel Orders by email to: accounts@qotho.co.za & admin@qotho.co.za.
 - 3.1.3 Cancellation of any Order will not be effective until confirmation of such is received from Qotho (not including an automated response to any email).

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Cancellation date	Dispatch date	Payment due
Less than 14 calendar days since Order placed	N/A	Customer will pay nothing
More than 14 calendar days since Order placed	More than 30 calendar days before dispatch of the Order	Customer will pay 50% of the Fee
More than 14 calendar days since Order placed	Less than 30 calendar days before dispatch of the Order	Customer will pay 100% of the Fee

3.1.4 Where the Customer has paid in advance and is entitled to a refund in accordance with this clause 4, Qotho will pay the refund within thirty (30) calendar days.

3.1.5 Any request for additional Proficiency Test programs or Items must be made by the Customer by completing a further application form. Qotho shall use its reasonable endeavours to dispatch such additional copies and/or any additional Reference Materials ordered by the Customer within seven (7) calendar days after receipt of the relevant Order.

4 RISK

4.1 Property in Reference Materials shall pass to the Customer on receipt of payment in full of the Price relating thereto.

4.2 Risk in Reference Materials shall pass to the Customer upon delivery of such Reference Material(s) to the Customer at the delivery address specified in the relevant Order.

5 LOST, DELAYED OR DAMAGED REFERENCE MATERIALS OR PROFICIENCY TEST ITEMS

5.1 Subject to clauses 5.3 and 5.4 below, where Proficiency Test Items or Reference Materials received by the Customer are unusable due to the negligence of Qotho, the postal system or the courier, Qotho will promptly replace such Reference materials or Test items at its cost. Qotho may inspect such Reference materials or Test Items. The Customer shall not dispose of such Reference materials or Test Items without the written permission of Qotho and shall (upon request) return such materials to Qotho at its reasonable expense which Qotho shall reimburse.

5.2 Qotho will use its reasonable efforts to label samples and attach relevant documentation at the Customer's request.

5.3 Qotho is not liable for damage to Reference materials or Test Items resulting from delays at border crossings or due to customs procedures (howsoever arising).

5.4 Similarly, Qotho is not liable for any loss (whether direct or indirect including loss of profit) if a Customer cannot return the results of their analysis by the deadline specified in the Instructions, which arises as a result of the Proficiency Test Items being delayed in customs and excise.

5.5 Qotho shall have no liability to replace any Proficiency Test Items or Reference material where:

5.5.1 Customer has not informed Qotho of missing Items within ten (10) Working Days of the due date for delivery; or

5.5.2 Customer has not informed Qotho that delivered Test Items are unusable within three (3) calendar days of receipt.

5.6 The Customer shall be deemed to have accepted the Qotho Reference materials or Test Items in usable condition after such time.

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6 PAYMENT

- 6.1 All sums due are exclusive of VAT or any other applicable indirect tax.
- 6.2 All sums due under this Agreement shall be paid in United States Dollars (\$) or South African Rands (ZAR) (as applicable) except as otherwise expressly agreed by Qotho to the contrary.
- 6.3 Qotho will invoice the Customer for Orders at the times set out in clauses 7.4 and 7.5.
- 6.4 Reference Materials will be invoiced on release for dispatch unless the Customer is a cash Customer, in which case full payment is required prior to dispatch of the materials.
- 6.5 Proficiency Test rounds will be invoiced on release of the Proficiency Test Report unless the Customer is a cash Customer, in which case full payment is required prior to dispatch of the Proficiency Test Items.
- 6.6 Unless otherwise agreed in writing, payment terms are 30 (thirty) calendar days from the date of invoice.
- 6.7 Once Proficiency Test Items are dispatched, the Customer becomes liable for the relevant invoice even if it does not submit its results and is therefore not included in the Proficiency Test Report.
- 6.8 Each payment shall be made in full, without set-off, counterclaim or deduction, except as required by applicable law.
- 6.9 If a Customer decides at any time to withdraw an order for a Proficiency Test, then the charge for cancellation shall be as detailed in Qotho's current Price List.
- 6.10 Qotho may (in addition to its other rights and remedies) withhold future deliveries if any sum(s) due remain outstanding past the due date for payment.
- 6.11 If any amount payable under this Agreement is not paid on the due date, Qotho may charge interest on the overdue amount from the due date until payment in full, whether before or after judgment, at a rate equal to 4% (four per cent) per annum above the prime overdraft rate publicly quoted by Nedbank First National Bank Limited from time to time, calculated daily and compounded monthly.
- 6.12 Failure to pay invoices promptly may result in the Customer's account being changed from 30-day credit terms to cash terms. Qotho will notify the Customer of any such change by email.
- 6.13 Bank charges associated with payments made to Qotho (such as charges levied on payments from overseas) are payable by Customer.

7 OTHER COSTS

- 7.1 The Customer is responsible for paying any local customs duties or excise duties where applicable.
- 7.2 The Customer is responsible for obtaining the necessary documentation and populating the relevant information for export.
- 7.3 Unless agreed otherwise, Reference materials will be delivered by courier. These costs will be borne by the Customer in line with Qotho's current Price List.
- 7.4 In the event that the Customers' Country of Origin, employs withholding taxes (levies) on foreign services and supplies, Qotho will increase its standard listing prices by a percentile, equal to the withholding tax enforced in the foreign country.
- 7.5 Should Customers opt to use their own courier (for export items), a 10% surcharge will be levied by Qotho, to assist with the completion of the export documentation. Obtaining the documentation and populating the relevant information for export, however, remains the responsibility of the Customer.
- 7.6 The Customer will bear the costs of delivery of Reference materials or Test Items in line with Qotho's current Price List. This includes any costs associated with the insurance of the stability of the material, whilst in transit.
- 7.7 The Price for a PT includes the provision of Test Reports in electronic format only.
- 7.8 Qotho may send the Customer service-related electronic communications associated with the PT Scheme, which may include Customer satisfaction surveys or news of developments in the PT Scheme, in accordance with the Data Protection Legislation. The Customer may object to receiving such communications at any time by emailing accounts@qotho.co.za and admin@qotho.co.za (with the word 'unsubscribe' in the title) requesting to be removed from the circulation list.

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8 VALUE ADDED TAX

- 8.1 Where applicable, the Customer shall pay to Qotho, in addition to the Price, an amount equal to VAT chargeable at the prevailing rate under applicable law.
- 8.2 Any invoice or other request for payment of monies due to Qotho under the Contract shall, where required by applicable law, contain the information required for a valid tax invoice.

9 CUSTOMER OBLIGATIONS

- 9.1 The Customer, participating in a PT Scheme, will return their results to Qotho by the date specified in the Instruction Letter.
- 9.2 For each PT Scheme, the Customer must use the test methods routinely employed in their day-to-day operations. Customers are encouraged to report on additional methods beyond their routine practices. They are further required to state the methodology and the metrological traceability employed in their procedures, unless internal policies restrict the disclosure of such information.
- 9.3 The Customer shall track deliveries of Reference materials and/or Proficiency Test Items made via courier.
- 9.4 The Customer shall respond to requests from couriers in relation to the delivery of Reference materials. Customer acknowledges and agrees that failure to respond to a courier request in order to enable the courier to make a delivery could lead to the disposal and/or destruction of the Reference materials.
- 9.5 The Customer shall not (unless agreed otherwise by Qotho in writing) alter, modify, enhance or change any Reference materials and shall warrant that they shall only use Reference materials to complete and undertake internal quality assurance activities.
- 9.6 For each PT Scheme, the Customer will perform the analysis of the Test Items received and return its results to Qotho by the date specified in the Instructions.
- 9.7 For each PT Scheme, the Customer shall report duplicate results. Failure to adhere to instruction may lead to raising of non-conformances and/or exclusion from future rounds.
- 9.8 A Customer will not use any Qotho PT report for any purpose other than internal measurement assurance or accreditation/recognition activities (no sales, marketing, or advertising of the results of any PT Participating Customer), without the written consent of Qotho.
- 9.9 For each PT Scheme, the Customer will not falsify any results submitted to Qotho or collude with any other Customer within the PT Round prior to submitting results.

10 QOTHO OBLIGATIONS

- 10.1 Qotho will operate its PT Rounds in accordance with its Proficiency Testing Guidelines and Annual Events Calendar.
- 10.2 For each PT for which the Customer returns its results, Qotho will issue a Test Report containing an advisory assessment or commentary on the overall performance in the PT Round. The assessment may not be in the form of a z-score.
- 10.3 If Qotho is unable to distribute the advertised Test Item for a given PT, Qotho may distribute a suitable replacement Test Item.
- 10.4 If Qotho cannot distribute a scheduled PT due to circumstances beyond its control, the Customer shall (at its election):
 - (a) receive a refund of the Fee paid for that PT; or
 - (b) receive a credit equivalent to one PT to be used within twelve (12) months of the delayed PT.
- 10.5 If no positive response has been received from Customer within one (1) month from the end of the Programme Year in which PT arose, Customer will be deemed to have selected the option under clause (b).
- 10.6 The remedy provided by Qotho in accordance with clause 11.4 shall be the Customer's sole and exclusive remedy in respect thereof.

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- 10.7 The Customer will have access to the Test Report for each PT it has ordered whether or not it has returned results in respect thereof.

11 INDEMNITIES & WARRANTIES

- 11.1 Nothing in this Agreement shall limit or exclude the liability of either Party for: (a) death or personal injury caused by its negligence; (b) fraud or fraudulent misrepresentation; or (c) any other matter for which it would be unlawful to limit or exclude liability.
- 11.2 Subject to clause 12.1, Qotho shall not be liable for any Claim in respect of Loss arising out of or in connection with:
- the preparation of any report;
 - any information, findings contained in the Test Report issued as a result of the Proficiency Test; and/or
 - the Customer's use of the results and/or Data.
- 11.3 Subject to clause 12.1, Qotho shall not be liable for any indirect, consequential or special Loss, or for any loss of profit, loss of revenue, loss of anticipated savings, loss of opportunity or loss of goodwill.
- 11.4 Subject to clause 12.1, the maximum aggregate liability of Qotho to the Customer arising under or in connection with this Agreement, whether arising under contract, delict, negligence (including negligent breach of contract), by way of indemnity or under any other legal theory, shall not exceed 100% (one hundred per cent) of the Price paid or payable under the relevant Order giving rise to the claim.
- 11.5 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, QOTHO EXCLUDES ALL REPRESENTATIONS, WARRANTIES, CONDITIONS, UNDERTAKINGS AND OTHER TERMS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING AS TO QUALITY, PERFORMANCE OR FITNESS FOR PURPOSE.
- 11.6 Any Customer placing any order involving any third party in relation to Reference materials, analytical services or Proficiency Tests warrants to Qotho that it has the permission and full authorisation so to act on behalf of the said third party in regard of that order.

12 FORCE MAJEURE

- 12.1 Neither Party shall be considered in breach of this Agreement for any failure or delay in performance (except in relation to an obligation to make payment) resulting from circumstances beyond its reasonable control.

13 INTELLECTUAL PROPERTY

- 13.1 Except as expressly stated to the contrary, nothing in this Agreement shall purport or effect to transfer ownership of Intellectual Property Rights between the Parties.
- 13.2 Foreground IPR in the Test Reports and Protocols shall vest in Qotho. All analysis results submitted to Qotho, and the statistical outputs created from the Proficiency Testing Schemes shall at all times remain the property of Qotho.
- 13.3 Foreground IPR in the Certificates of Analysis and Reference Material Reports, and Protocols shall vest in Qotho. All analysis results submitted to Qotho (whether commercial or via PTs), and the statistical outputs created to generate the Certificate of Analysis or Reference Material Report, shall at all times remain the property of Qotho.

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14 TERMINATION

14.1 Qotho may terminate this Agreement immediately on written notice if:

- 14.1.1 Customer suffers an Insolvency Event;
- 14.1.2 Customer is impacted by a Force Majeure event that prevailed beyond 30 (thirty) Working Days;
- 14.1.3 Qotho reasonably believes that the Customer's financial position has materially deteriorated so that the Customer's ability to perform its payment obligations under this Agreement is placed at material risk;
- 14.1.4 Customer commits a material breach of these Terms and Conditions and, if that breach is capable of remedy, fails to remedy it within 10 (ten) Working Days after receiving written notice requiring it to do so.

15 CONFIDENTIALITY AND DATA PROTECTION

15.1 Confidentiality

- 15.1.1 Qotho PT programs are confidential programs, and all participants will be issued a new participation code at the beginning of each calendar year, unless they waive the option to have a new code issued or alternatively, if they request a new code at an earlier date.
- 15.1.2 The Receiving Party will hold the Disclosing Party's Confidential Information in confidence and will not disclose or permit the disclosure of any part of the Confidential Information to any third party except (a) to any Group members, consultants and advisors (including accountants and lawyers) bound by, or otherwise protected by legal privilege or confidentiality and non-disclosure commitments substantially similar to those contained in the Agreement ("**Authorised Recipients**"); (and/or (b) to the extent required to comply with Applicable Law, provided that the Receiving Party (i) provides prompt notice (if legally permissible) to the Disclosing Party so that the Disclosing Party can seek a protective order or other appropriate remedy; and (ii) limits any such disclosure to the extent of the legal requirement and the disclosed information will remain Confidential Information despite such disclosure.
- 15.1.3 Clause 16.1.2 can be waived, should the Customer sign a confidentiality waiver, stipulating the third parties that their selected information can be shared with.
- 15.1.4 The Receiving Party shall be liable for the actions or omissions of its Authorised Recipients in relation to the Confidential Information as if they were the actions or omissions of the Receiving Party.
- 15.1.5 These obligations of confidentiality do not apply to information which:
 - a) is or becomes generally available to the public (without breach by the Receiving Party) or a receiving Party's Group;
 - b) becomes known to the Receiving Party or Group members on a non-confidential basis via a third party;
 - c) was lawfully in the prior possession of the Receiving Party or its Group;
 - d) was independently developed by the Receiving Party or its Group without use or reference to Confidential Information; or
 - e) the Disclosing Party agrees is not confidential.
- 15.1.6 Upon termination of the Agreement, the Receiving Party and its Authorised Recipients will cease all use of the Disclosing Party's Confidential Information and return, delete, or destroy it pursuant to Clause 16.1.6.
- 15.1.7 The Receiving Party's obligations of confidentiality shall apply to any Confidential Information of the Disclosing Party while any copy of it remains in the Receiving Party's possession or control, and thereafter for a period of two years.

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15.1.8 Each Party will, upon written request of the other Party, promptly return or destroy (and certify such destruction) the Confidential Information of the other Party in its possession, save to the extent that it is required to retain a copy of such Confidential Information in accordance with Applicable Law and/or to support the enforcement or defence of a Party's rights under the Agreement.

15.1.9 Nothing in this Clause 15.1.(Confidentiality) shall prevent either Party from using, in the course of its normal business, any techniques, ideas or know-how gained during the performance of the Agreement provided that such use will not result in a disclosure of the other Party's Confidential Information or an infringement of its IPR.

15.2 Data Protection

15.2.1 The Parties shall comply with their respective obligations under the Data Protection Legislation, and Qotho shall process the Customer's personal information in accordance with the Customer's written instructions or as otherwise required by applicable law. Qotho shall implement and maintain appropriate technical and organisational measures when carrying out any such processing.

15.2.2 Where Qotho processes the Customer's personal information under or in connection with this Agreement, Qotho shall comply with its obligations under the Data Protection Legislation, including providing reasonable assistance to the Customer in responding to requests from data subjects and requests for information to the extent relating to personal information processed by Qotho and within Qotho's control.

15.2.3 The Customer agrees that Qotho may process personal information in accordance with its privacy notice available at www.qotho.co.za, subject always to the Data Protection Legislation.

15.2.4 Qotho shall be entitled to engage operators and/or use its network of agents, and the Customer consents to Qotho transferring the Customer's personal information outside South Africa where necessary for the delivery of the Services, provided that Qotho shall do so in accordance with the Data Protection Legislation.

15.2.5 To the extent permitted by applicable law, Qotho shall not be liable for any third-party claim to the extent arising from Qotho acting on the Customer's lawful instructions or from any breach by the Customer of this clause 16, and the Customer shall indemnify Qotho against any loss, damage and expenses arising from such breach or instructions.

16 GENERAL

16.1 Assignment and Sub-Contracting

16.1.1 The Customer shall not assign or sub-contract this Agreement or any part of it without the prior written consent of Qotho. Any attempted or purported assignment in contravention of this clause 16.1 shall be void.

16.1.2 Qotho may at any time, on reasonable notice in writing to Customer, transfer or assign all or any rights and/or obligations under this Agreement to a third party within its Group.

16.1.3 Qotho shall be free to subcontract the whole or any part of the Deliverables, other than those expressly prohibited by the applicable ISO standards that Qotho complies with.

16.1.4 Customers will be informed in writing, either during project planning phase or within the PT Report, of the services that had been sub-contracted.

16.1.5 Customers, participating in PT Rounds, acknowledge that Qotho may use the data submitted in a PT round, for potential future certification of the test material represented during the PT round.

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16.2 Waiver and variation

- 16.2.1 No amendment or variation of this Agreement shall be effective unless it is in writing and signed by a duly authorised Representative of each Party.
- 16.2.2 A waiver of any right or remedy under this Agreement or by operation of Law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default.
- 16.2.3 A failure or delay to exercise any right or remedy provided under this Agreement or by operation of Law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy.
- 16.2.4 No single or partial exercise of any right or remedy provided under this Agreement or by Law shall prevent or restrict the further exercise of that or any other right or remedy.

16.3 Legal Relationship

- 16.3.1 Nothing in this Agreement shall create a partnership or joint venture between the Parties or have the effect of making any Representative of Customer an employee or servant of Qotho or of making any Representative of Qotho an employee or servant of Customer.
- 16.3.2 Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.
- 16.3.3 Where Customer consists of more than one person, the obligations of those persons in respect of this Agreement shall be joint and several.

16.4 Severability. If a provision of this Agreement is found to be unenforceable by a court that provision shall be deemed to be amended to the minimum extent necessary to make it enforceable. The unenforceability of a provision of this Agreement shall not affect its continuance in force or any of its other provisions.

16.5 Notices. Notices shall be given by hand, courier or electronic mail to the other Party at its registered address or notified email address. A notice shall be deemed to have been received on delivery if delivered by hand or courier, or 4 (four) hours after transmission if sent by electronic mail on a Working Day before 17:00, and otherwise at 09:00 on the next Working Day, unless the contrary is proved.

16.6 Third Party Rights. No person who is not a party to this Agreement shall have any right to enforce any term of this Agreement, except to the extent expressly provided otherwise in this Agreement.

16.7 Non-Solicitation

- 16.7.1 During the term of this Agreement and for 12 (twelve) months thereafter, neither Party shall, without the prior written consent of the other Party, directly solicit for engagement as an agent, contractor or employee any Representative of the other Party with whom it has had material dealings in connection with this Agreement, whether for itself or on behalf of a third party.
- 16.7.2 Nothing in this Agreement shall limit the right of either Party to employ any person who has approached it in response to any public advertisement.

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17 ENTIRE AGREEMENT

- 17.1 This Agreement constitutes the whole agreement between the Parties in relation to its subject matter.
- 17.2 Each Party acknowledges that, in entering into this Agreement, it has not relied on any representation, warranty or undertaking not expressly set out in this Agreement, provided that nothing in this Agreement limits or excludes liability for fraud or fraudulent misrepresentation.
- 17.3 Publicity. Neither Party shall make any announcement or publicise this Agreement without the prior written consent of the other Party, save that Qotho shall be entitled to refer to Customer as its Customer generally.

18 GOVERNING LAW AND JURISDICTION

- 18.1 This Agreement shall be governed by and construed in accordance with the laws of South Africa.
- 18.2 The Parties irrevocably submit to the exclusive jurisdiction of the courts of South Africa.
- 18.3 The authentic language of the Agreement is English.

Rules of interpretation

Within this Agreement, the terms "complaint", "consent", "data subject", "operator", "personal information", "process" ("processing" and "processed" to be construed accordingly), "record", "responsible party" and "security compromise" shall have the same meanings as in the Data Protection Legislation.

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SCHEDULE 1 (DEFINITIONS AND INTERPRETATION)

As used in this Agreement, the following terms and expressions have the meanings set out below:

“Agreement” means these terms and conditions for the participation in a Qotho Proficiency Testing Programs and for the supply of Reference materials, together with such other terms and conditions which are expressly included by reference herein;

“Applicable Law” means any law, statute, bye law, regulation, order, regulatory policy (including any requirement or notice of any regulatory body), guidance or industry code of practice, rule of court or directive applicable to the performance of the Agreement;

“Certified Reference Material” means a reference material supplied by Qotho, which is characterized by a metrologically valid procedure for one or more specified properties, accompanied by a reference material certificate that provides the value of the specified property, its associated uncertainty, and a statement of metrological traceability;

“Charges” means the charges payable by Customer (in addition to the Fee) for additional expenses, including agent fees, carriage and transportation charges, charges for obtaining certificates, import and export licenses, and permits;

“Claim” means any action, assertion of right, claim, demand, or request;

“Confidential Information” means all information and personal data which is confidential or proprietary in nature; relates to the Disclosing Party's business affairs (including any financial or technical data, trade secrets, know-how, IPR and/or derivative data or output) which the Disclosing Party directly or indirectly discloses, or makes available to the Receiving Party by whatever means before, on or after the date of the Agreement; and/or any other information clearly identified as being, or which ought reasonably be considered to be, confidential;

“Customer” means the person or persons to whom the Agreement is issued;

“Disclosing Party” means a party or Group member that discloses Confidential Information to the Receiving Party;

“Data” means data derived from PTs or from Reference Material Value Assigning or Certification;

“Data Protection Legislation” means the Protection of Personal Information Act 4 of 2013, the Electronic Communications and Transactions Act 25 of 2002 to the extent applicable, and any other applicable Laws relating to the Processing of Personal Information;

“Dispatch Date” means the Working Day those Qotho dispatches Proficiency Test Items or Reference materials to Customer;

“Protocols” means the documents produced by Qotho from time to time, that address the requirements, organisation and statistical analyses employed in PT Schemes and Reference Material Certification;

“Fee” means the fees for a PT or Reference material as detailed in the Price List;

“Group” means, in relation to a company, that company, any holding company or subsidiary of that company from time to time, and any subsidiary of any such holding company from time to time, and for this purpose “holding company” and “subsidiary” have the meanings given to those terms in the Companies Act 71 of 2008;

“Guidelines” means the Qotho quality manual published by Qotho from time to time in compliance with ISO/IEC 17043, ISO 17034, ISO 13528 and the IUPAC International Harmonised Protocol for the Proficiency Testing of Analytical Chemistry Laboratories;

“Instruction Letter” means the instructions provided with Test Material, including details of the analysis to be performed, units to be used and the date by which results must be returned to Qotho;

“Intellectual Property Rights” or **“IPR”** means all intellectual and industrial property rights, including copyright, database rights, registered and unregistered design rights, know-how, models, patents, topography rights, registered and unregistered trademarks, rights in confidential information and any rights in any discovery, invention or process, and applications for and rights to apply for each of these in any country;

“Insolvency Event” means, in relation to a person, that the person is unable to pay its debts as they fall due, enters into business rescue, liquidation, winding-up, administration or any analogous insolvency process, or has any step taken in relation to any of those events;

“Loss” means any loss, cost, charge, damages, or expense of any kind including interest, expenses fines, legal and other professional expenses, and disbursements;

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SHERQ Manual			 Proficiency Testing - Reference Materials
Title	QOTHO MINERALS - TERMS & CONDITIONS	Doc No.	QM-POL-016

“**Order**” means an order from Customer for the provision of PT Schemes and/or Reference materials;

“**Participant**” means a Customer that is taking part in a PT Round.

“**Price**” means collectively the Fees and Charges;

“**Price List**” means the list of Fees and Charges as shown and documented on the website www.qotho.co.za/pt-schemes/ as part of the ordering process;

“**Proficiency Test Items**” or “**Test Items**” means items distributed to participants in selected PT Rounds, which should be analysed and reported on, as per the instruction letters distributed with each round;

“**Proficiency Test**” or “**PT**” means the distribution of Proficiency Test Items by Qotho for Customer’s analysis of one or more analytes as part of a PT Scheme;

“**PT Round**” means a particular round, cycle or event within a PT Scheme in which Proficiency Test Items are distributed to participants for analysis and reporting;

“**PT Scheme**” means a system for the objective verification of laboratory results by an external agency, including comparison of that laboratory’s results at intervals with other laboratories, establishing trueness and assessing accuracy (with the phrase Proficiency Testing construed accordingly);

“**Proficiency Test Report**” means the report prepared by Qotho that describes the outcome of a Proficiency Test Programme or Round;

“**Programme Year**” means the Proficiency Testing programme year, which runs from 1 January to 31 December;

“**Purchase Order**” means the Customer’s written purchase order, order form or other written instruction requesting the supply of PT Schemes, Reference Materials and/or related services;

“**Qotho PT Programmes**” means any of the mineral or agricultural programmes that Qotho advertises on an annual basis, or develops - on demand - for a Customer;

“**Reference Materials**” means materials supplied by Qotho that are sufficiently homogeneous and stable with respect to one or more specified properties and have been established to be fit for their intended use in a measurement process, together with any supporting information supplied within the Reference Material Reports; per

“**Qotho**” means Qotho Minerals (Pty) Limited (a company incorporated in the Republic of South Africa with registered number 2013/001430/07) whose registered office is at 36 Pelindaba Road, Broederstroom, 0240, Madibeng Northwest Province, South Africa;

“**Receiving Party**” means a party or Group member that receives Confidential Information from the Disclosing Party;

“**Representative**” means, in respect of a Party, an agent, contractor, director, employee, officer, professional advisor, representative, servant or member of staff; and

“**South Africa**” means the Republic of South Africa;

“**Working Day**” means a day other than a Saturday, Sunday or public holiday in South Africa.

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