

**STANDARD TERMS AND CONDITIONS OF CONTRACT**

**between**

**TRANSNET SOC LTD**

trading through its operating division, **TRANSNET NATIONAL PORTS AUTHORITY**

[Registration No. 1990/000900/30]

[hereinafter referred to as **TNPA**]

**And**

.....

Registration Number .....

**FOR THE APPOINTMENT OF A SERVICE PROVIDER FOR THE PROVISION OF THE  
CERTIFICATE OF COMPLIANCE (COC) FOR ELECTRICAL INSTALLATION IN HAZARDOUS  
AREAS IN THE PORT OF DURBAN FOR THE PERIOD OF THREE (3) MONTHS**

**CONTRACT NUMBER**                      **PD21/20**

**DURATION**                                      **Three (3) Months**

**EXPIRY DATE**                                **.....**

**TABLE OF CONTENTS**

1	SOLE AGREEMENT .....	3
2	CONFORMITY WITH ORDER .....	3
3	DELIVERY AND TITLE .....	3
6	PROPRIETARY RIGHTS LIABILITY .....	4
7	PROPRIETARY INFORMATION.....	4
8	PUBLICITY .....	5
9	ACCESS.....	6
10	WARRANTY .....	6
11	INSOLVENCY .....	6
12	subcontracting .....	6
13	PAYMENT TO SUB-CONTRACTORS .....	7
14	ASSIGNMENT.....	7
15	supplier integrity pact .....	7
16	DATABASE OF RESTRICTED SUPPLIERS.....	7
17	NOTICES .....	8
18	LAW.....	8
19	GENERAL.....	8
20	COUNTERPARTS .....	8

**Schedule 1 – SCHEDULE OF REQUIREMENTS**

## **1 SOLE AGREEMENT**

Unless otherwise agreed in writing, these terms [**Terms** and each **Term**] and Transnet's purchase order(s) [**Order** or **Orders**] represent the only conditions upon which Transnet SOC Ltd [**Transnet**] procures Goods/Services [**the Services**] specified in the Order from the person to whom the Order is addressed [**the Service Provider**]. Transnet does not accept any other conditions which the Supplier/Service Provider may specify, unless otherwise agreed to by Transnet in writing. In the event of any inconsistency between these Terms and any Order, these Terms shall take precedence.

## **2 CONFORMITY WITH ORDER**

Services shall conform strictly with the Order. The Service Provider shall not vary the quantities specified and/or the specification, if any, stipulated in the Order, without the prior written consent of Transnet. The Service Provider warrants that the Services shall be fit for their purpose and of satisfactory quality.

## **3 DELIVERY AND TITLE**

3.1 The delivery dates and addresses are those in the Order. Time shall be of the essence in respect of the Service Provider's obligations under the Order.

3.2 The Service Provider will not be excused for delay in delivery or performance except due to circumstances outside its control and then only subject to the Service Provider having notified Transnet in writing on becoming aware of such circumstances. Transnet may terminate an Order, in whole or in part, without incurring any liability to the Service Provider if such a delay becomes, in Transnet's absolute opinion, significant.

**4** If on delivery, the services do not conform to the Order, Transnet may reject the Services and the Service Provider shall promptly rectify any defects or in Transnet's opinion, supply appropriate replacement Services at the Service Provider's expense within the specified delivery times, without any liability due by Transnet.

## **5 PRICE AND PAYMENT**

5.1 Prices specified in an Order cannot be increased. Payment for the Goods/Services shall be made by Transnet against an original undisputed invoice(s) [a Tax Invoice], supporting documentation and month-end statement from the Service Provider. Tax Invoices plus supporting documentation shall be posted to the address shown in the Order.

5.2 Payment of the Service Provider's valid Tax Invoice(s) will be made by Transnet in the South African currency and on the terms stated in the Order, the standard payment terms being 30 [thirty] days from date of receipt by Transnet of a month-end statement, unless otherwise agreed to in writing. Transnet shall arrange for payment of such Tax Invoices and any pre-authorised additional expenses incurred, provided that the authorised

expenses are supported by acceptable documentary proof of expenditure incurred [where this is available]. Any amounts due in terms of these Terms shall be paid to the Supplier/Service Provider, taking into account any deduction or set-off and bank charges.

## **6 PROPRIETARY RIGHTS LIABILITY**

If any allegations should be made or any claim asserted against Transnet that ownership of, or any act or omission by Transnet in relation to Goods/Services or any written material provided to Transnet relating to any Goods/Services or pursuant to an Order being a violation or infringement of any third party's contractual, industrial, commercial or intellectual property rights including but not limited to any patent, registered design, design right, trade mark, copyright or service mark on any application thereof, the Supplier/Service Provider hereby indemnifies Transnet against and hold it harmless from any and all losses, liabilities, costs, claims, damages and expenses [including any legal fees] arising directly or indirectly from such allegation or claim provided that this indemnity shall not apply where the allegation or claim arises solely as a result of the Supplier/Service Provider following a design or process originated and furnished by Transnet. The Supplier/Service Provider shall either

- a) procure for Transnet the right to continue using the infringing Goods/Services; or
- b) modify or replace the Goods/services so that they become non-infringing,

provided that in both cases the Goods/services shall continue to meet Transnet's requirements and any specifications stipulated in the Order. Should neither option be possible, the Supplier/Service Provider may remove, with Transnet's prior written consent, such Goods/services and will pay to Transnet a sum equivalent to the purchase price. If Transnet refuses to give such consent, the Supplier/Service Provider shall have no liability in respect of any continued use of the infringing Goods/services after Supplier/Service Provider's prior written request to remove the same.

## **7 PROPRIETARY INFORMATION**

All information which Transnet has divulged or may divulge to the Supplier/Service Provider and any information relating to Transnet's business which may have come into the Supplier/Service Provider's possession whilst carrying out an Order, and the existence of the Order, shall be treated by the Supplier/Service Provider as confidential information and shall not, without Transnet's prior written consent, be disclosed to any third party, or be used or copied for any purposes other than to perform the Order. This clause does not apply to information which is public knowledge or available from other sources other than by breach of this Term. Upon request by Transnet, the Supplier/Service Provider shall return all materials issued pursuant to the Order and, pending this, shall protect Transnet's rights in any such materials. Such confidential information shall at all material times be the property of Transnet.

## 8 PUBLICITY

The Supplier/Service Provider shall not name Transnet or use its trademarks, service marks [whether registered or not] or Goods in connection with any publicity without Transnet's prior written consent.

- 8.1 Notwithstanding the date of signature hereof, the commencement date of this Order is ..... and will expire on ..... , unless:
- this Order is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or
  - this Order is extended at Transnet's option for a further period to be agreed by the Parties; or
  - the allocated maximum contract value is depleted before the contract expiry date.
- 8.2 Transnet may cancel this Order in whole or in part at any time upon at least 30 [thirty] days' written notice to the Service Provider, or when there is a change in control of the Service Provider or the Service Provider commits any serious breach or any repeated or continued material breach of its obligations under these Terms and/or Order or shall have been guilty of conduct tending to bring itself into disrepute, on written notice to the Service Provider when such work on the Order shall stop.
- 8.3 Transnet shall pay the Service Provider a fair and reasonable price for justified work in progress, where such price reflects only those costs not otherwise recoverable by the Service Provider, at the time of termination, and the Service Provider shall give Transnet full assistance to check the extent of such work in progress. Payment of such price shall be in full and final satisfaction of any claims arising out of such termination and upon such payment the Service Provider shall deliver to Transnet all work, including any materials, completed or in progress. The sum payable to the Supplier/Service Provider under this clause will not in any event exceed the total amount that would have been payable to the Service Provider had the Order not been terminated.
- 8.4 In the event of termination the Service Provider must submit all claims within 2 [two] months of termination after which time claims will only be met in what Transnet considers exceptional circumstances.
- 8.5 If the Goods/services are not provided in accordance with an Order, the Order shall be deemed terminated and the Service Provider shall compensate Transnet for any costs incurred in obtaining substitute services or any damage caused due to the failure or delay in the delivery.
- 8.6 Both parties to this agreement reserve the right to terminate this agreement:
- 8.6.1. If the other commits a material breach of this contracts and fails to remedy such breach within a stipulated time frame or within a reasonable time;

8.6.2. There is non-performance from either of the parties; or

8.6.3. If the other party is unable to perform its obligations under this agreement.

## **9 ACCESS**

The Service Provider shall be liable for the acts, omissions and defaults of its personnel or agents who, for the purposes of the Order, shall be treated as if they are the Supplier/Service Provider's employees. The Service Provider shall ensure that any such personnel or agents, whilst on Transnet's premises, shall comply with Transnet's health and safety, security and system security rules and procedures as and where required.

## **10 WARRANTY**

The Supplier/Service Provider warrants that it is competent to supply the Goods/services in accordance with these Terms to the reasonable satisfaction of Transnet and that all Goods/services delivered under the Order: (a) conform and comply in all relevant legislation, standards, directives and orders related to *[inter alia]* the Goods/services in force at the time of delivery, and to any specifications referred to in the Order; (b) will not cause any deterioration in the functionality of any Transnet equipment; and (c) do not infringe any third party rights of any kind. The Service Provider hereby indemnifies Transnet against all losses, liabilities, costs, claims, damages, expenses and awards of any kinds incurred or made against Transnet in connection with any breach of this warranty.

## **11 INSOLVENCY**

If the Service Provider shall have a receiver, manager, administrator, liquidator or like person appointed over all or any part of its assets or if the Service Provider compounds with its creditors or passes a resolution for the winding up or administration of the Supplier/Service Provider, Transnet is at liberty to terminate the Order or Orders forthwith, or at its option, to seek performance by any such appointed person.

## **12 SUBCONTRACTING**

12.1 The Service Provider may only enter into a subcontracting arrangement with the approval of Transnet. If the Supplier subcontracts a portion of the contract to another person without declaring it to Transnet, Transnet must penalise the Supplier up to 10% of the value of the contract.

12.2 Should Transnet approve the Service Provider's subcontracting arrangement, the Service Provider and not the sub-contractor will at all times be held liable for performance in terms of its contractual obligations.

12.3 The Service Provider may not subcontract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

12.4 The Supplier/Service Provider may not subcontract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status

level of contributor than the Supplier, unless the contract is subcontracted to an Exempted Micro Enterprise (EME) that has the capability and ability to execute the subcontract.

### **13 PAYMENT TO SUB-CONTRACTORS**

13.1 Transnet reserves the right, in its sole discretion, to make payment directly to the sub-contractor of the Service Provider, subject to the following conditions:

- a) Receipt of an undisputed invoice from the sub-contractor; and
- b) Receipt of written confirmation from the Service Provider that the amounts claimed by the sub-contractor are correct and that the services for which the sub-contractor has requested payment were rendered to the satisfaction of the Service Provider, against the required standards.

13.2 Nothing contained in this clause must be interpreted as bestowing on any sub-contractor a right or legitimate expectation to be paid directly by Transnet. Furthermore, this clause does not bestow any right or legitimate expectation on the Service provider to demand that Transnet pay its sub-contractor directly. The decision to pay any sub-contractor directly, remains that of Transnet alone.

13.3 The Service Provider remains liable for its contractual obligations under the Agreement, including all services rendered by the sub-contractor.

13.4 This clause does not establish any contractual relationship between Transnet and any sub-contractor of the Service Provider, whatsoever.

### **14 ASSIGNMENT**

The Service Provider shall not assign its obligations under an Order without Transnet's prior written consent, which consent shall not be unreasonably withheld or delayed.

### **15 SUPPLIER INTEGRITY PACT**

The Service Provider shall observe and ensure compliance with all requirements and objectives of the Transnet Supplier Integrity Pact as agreed to in response to the RFQ. The general purpose of the Supplier Integrity Pact is to agree to avoid all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of the procurement event leading to this Agreement and this Agreement itself;

### **16 DATABASE OF RESTRICTED SUPPLIERS**

The process of restriction is used to exclude a company/person from conducting future business with Transnet and other organs of state for a specified period. No Bid shall be awarded to a Bidder whose name (or any of its members, directors, partners or trustees) appear on the Register of Tender Defaulters kept by National Treasury, or who have been placed on National Treasury's List of Restricted Suppliers. Transnet reserves the right to withdraw an award, or

cancel a contract concluded with a Bidder should it be established, at any time, that a bidder has been restricted with National Treasury by another government institution.

## **17 NOTICES**

Notices under these Terms shall be delivered by hand to the relevant addresses of the parties in the Order or may be served by facsimile or by email, in which event notice shall be deemed served on acknowledgement of receipt by the recipient.

## **18 LAW**

Orders shall be governed by and interpreted in accordance with South African law and any disputes arising herein shall be subject to South African arbitration under the rules of the Arbitration Foundation of South Africa, which rules are deemed incorporated by reference in this clause. The reference to arbitration shall not prevent Transnet referring the matter to any South African courts, having jurisdiction, to which the Supplier/Service Provider hereby irrevocably submits but without prejudice to Transnet's right to take proceedings against the Supplier/Service Provider in other jurisdictions and/or obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision in other courts or from instituting in any court of competent jurisdiction any proceedings for an interdict or any other injunctive relief. If the Supplier/Service Provider does not have a registered office in the South Africa it will at all times maintain an agent for service of process in South Africa and shall give Transnet the name and address of such agent as such may be amended, in writing, from time to time.

## **19 GENERAL**

Completion or termination of an Order shall be without prejudice to any Term herein which by its nature would be deemed to continue after completion or termination, including but not limited to clauses 5, 6, 7, 8 and 10. Headings are included herein for convenience only. If any Term herein be held illegal or unenforceable, the validity or enforceability of the remaining Terms shall not be affected. No failure or delay by Transnet to enforce any rights under these Terms will operate as a waiver thereof by Transnet. All rights and remedies available to either party under these Terms shall be in addition to, not to the exclusion of, rights otherwise available at law.

## **20 COUNTERPARTS**

These Terms and conditions may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any party may enter into this agreement by signing any such counterpart.



**Thus signed by the Parties and witnessed on the following dates and at the following places:**

SIGNED for and on behalf of  <b>Transnet SOC Ltd</b>  duly authorised hereto	SIGNED for and on behalf of  .....  duly authorised hereto
Registration Number 1990/000900/30	Registration Number .....
Signature .....	Signature .....
Name: .....	Name:
Position: .....	Position:
Date:	Date:
Place: .....	Place:
AS WITNESS:    Signature .....	AS WITNESS:    Signature .....
Name .....	Name .....