

**TRANSNET FREIGHT RAIL**an Operating Division of **TRANSNET SOC LTD**

[Registration No. 1990/000900/30]

[hereinafter referred to as **Transnet**]**REQUEST FOR QUOTATION [RFQ] No CRAC-STQ-38036**

**FOR THE SUPPLY OF:** RFQ FOR THE SUPPLY AND DELIVERY OF ELECTRICAL OHTE COMPONENTS.

**FOR DELIVERY TO:** TO TRANSNET FREIGHT RAIL NATIONAL INFRA DEPOT, SENTRA RAND ON A ONCE-OFF REQUIREMENT.

**ISSUE DATE:** TUESDAY 05 JULY 2022

**CLOSING DATE:** TUESDAY 19 JULY 2022

**CLOSING TIME:** 10:00 AM

**Note to the bidders:**

*Bidders are required to ensure that electronic bid submissions are done at least a day before the closing date to prevent issues which they may encounter due to their internet speed, bandwidth or the size of the number of uploads they are submitting. Please do not wait for the last hour to submit. A Bidder can upload 30mb per upload and multiple uploads are permitted.*

**PREFERENTIAL PROCUREMENT PREQUALIFICATION CRITERIA - ONLY THE FOLLOWING RESPONDENTS MAY RESPOND TO THIS RFQ:**

- ONLY EXEMPTED MICRO ENTERPRISES AND QUALIFYING SMALL ENTERPRISES WITH A B-BBEE STATUS OF LEVEL 1 ONLY MAY PARTICIPATE IN THIS RFQ PROCESS. A BID THAT FAILS TO MEET THIS PRE-QUALIFYING CRITERIA WILL BE REGARDED AS AN UNACCEPTABLE BID.

**NOTE TO THE BIDDER****THE MEMORANDUM OF UNDERSTANDING/AUTHORIZATION LETTER SHALL:**

- BE ON MANUFACTURER'S LETTERHEAD
- STATE THE BIDDERS COMPANY NAME
- BE SIGNED BY BOTH THE MANUFACTURER AND BIDDER
- BE DATED BY BOTH THE MANUFACTURER AND BIDDER
- MAKE REFERENCE TO THE RFQ NUMBER
- LIST THE ITEMS TO BE MANUFACTURED

**OR****THE CONFIRMATION LETTER SHALL:**

- BE ON MANUFACTURER'S LETTERHEAD
- CONFIRM THAT THE BIDDER IS A MANUFACTURER OF THE ITEMS
- BE SIGNED BY THE MANUFACTURER
- BE DATED BY THE MANUFACTURER
- MAKE REFERENCE TO THE RFQ NUMBER
- LIST THE ITEMS TO BE MANUFACTURED

**FAILURE TO ADHERE TO THE ABOVE SHALL LEAD TO A DISQUALIFICATION**

**SECTION 1: SBD1 FORM****PART A****INVITATION TO BID**

<b>YOU ARE HEREBY INVITED TO BID FOR REQUIREMENTS OF TFR, A DIVISION TRANSNET SOC LTD</b>							
BID NUMBER:	<b>CRAC-STQ-38036</b>	ISSUE DATE:	<b>05/07/2022</b>	CLOSING DATE:	<b>19/07/2022</b>	CLOSING TIME:	<b>10:00AM</b>
DESCRIPTION	<b>RFQ FOR THE SUPPLY AND DELIVERY OF ELECTRICAL OHTE COMPONENTS TO TRANSNET FREIGHT RAIL NATIONAL INFRA DEPOT, SENTRA RAND ON A ONCE-OFF REQUIREMENT.</b>						
<b>BID RESPONSE DOCUMENTS SUBMISSION</b>							
<p>Transnet has implemented a new electronic tender submission system, the e-Tender Submission Portal, in line with the overall Transnet digitalization strategy where suppliers can view advertised tenders, register their information, log their intent to respond to bids and upload their bid proposals/responses on to the system.</p> <p><b>RESPONDENTS ARE TO UPLOAD THEIR BID RESPONSE PROPOSALS ONTO THE TRANSNET SYSTEM AGAINST EACH TENDER/RFQ SELECTED.</b></p> <p>The Transnet e-Tender Submission Portal can be accessed as follows:</p> <ul style="list-style-type: none"> <li>Log on to the Transnet e-Tenders management platform website (<a href="https://www.transnet.net">https://www.transnet.net</a>);</li> <li>Click on "TENDERS";</li> <li>Scroll towards the bottom right hand side of the page;</li> <li>Click on "register on our new eTender Portal";</li> <li>Click on "ADVERTISED TENDERS" to view advertised tenders;</li> <li>Click on "SIGN IN/REGISTER – for bidder to register their information (must fill in all mandatory information);</li> <li>Click on "SIGN IN/REGISTER" - to sign in if already registered;</li> <li>Toggle (click to switch) the "Log an Intent" button to submit a bid;</li> <li>Submit bid documents by uploading them into the system against each tender selected.</li> <li>No late submissions will be accepted. The bidder guide can be found on the Transnet Portal <a href="https://transnetetenders.azurewebsites.net">transnetetenders.azurewebsites.net</a></li> </ul>							
<b>BIDDING PROCEDURE ENQUIRIES MAY BE DIRECTED TO</b>				<b>TECHNICAL ENQUIRIES MAY BE DIRECTED TO:</b>			
CONTACT PERSON	<b>Lucky Molefe</b>			CONTACT PERSON	.....		
TELEPHONE NUMBER	<b>011 584 0685</b>			TELEPHONE NUMBER	.....		
FACSIMILE NUMBER	<b>N/A</b>			FACSIMILE NUMBER	.....		
E-MAIL ADDRESS	<a href="mailto:Lucky.Molefe@Transnet.net">Lucky.Molefe@Transnet.net</a>			E-MAIL ADDRESS	.....		
<b>SUPPLIER INFORMATION</b>							
NAME OF BIDDER							
POSTAL ADDRESS							
STREET ADDRESS							
TELEPHONE NUMBER	CODE			NUMBER			
CELLPHONE NUMBER							
FACSIMILE NUMBER	CODE			NUMBER			
E-MAIL ADDRESS							
VAT REGISTRATION NUMBER							
SUPPLIER COMPLIANCE STATUS	TAX COMPLIANCE SYSTEM PIN:			<b>OR</b>	CENTRAL SUPPLIER DATABASE	UNIQUE REGISTRATION REFERENCE NUMBER: MAAA	

B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE	TICK APPLICABLE BOX]  <input type="checkbox"/> Yes <input type="checkbox"/> No	B-BBEE STATUS LEVEL SWORN AFFIDAVIT	[TICK APPLICABLE BOX]  <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>[A B-BBEE STATUS LEVEL VERIFICATION CERTIFICATE/ SWORN AFFIDAVIT (FOR EMES &amp; QSEs) MUST BE SUBMITTED IN ORDER TO QUALIFY FOR PREFERENCE POINTS FOR B-BBEE]</b>			
<b>1</b> ARE YOU THE ACCREDITED REPRESENTATIVE IN SOUTH AFRICA FOR THE GOODS /SERVICES /WORKS OFFERED?	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES ENCLOSE PROOF]	<b>2</b> ARE YOU A FOREIGN BASED SUPPLIER FOR <b>THE GOODS /SERVICES /WORKS OFFERED?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No [IF YES, ANSWER QUESTIONNAIRE BELOW ]
<b>QUESTIONNAIRE TO BIDDING FOREIGN SUPPLIERS</b>			
IS THE ENTITY A RESIDENT OF THE REPUBLIC OF SOUTH AFRICA (RSA)? NO			<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A BRANCH IN THE RSA? NO			<input type="checkbox"/> YES <input type="checkbox"/> NO
DOES THE ENTITY HAVE A PERMANENT ESTABLISHMENT IN THE RSA? <input type="checkbox"/> NO			<input type="checkbox"/> YES
DOES THE ENTITY HAVE ANY SOURCE OF INCOME IN THE RSA? <input type="checkbox"/> NO			<input type="checkbox"/> YES
IS THE ENTITY LIABLE IN THE RSA FOR ANY FORM OF TAXATION? NO			<input type="checkbox"/> YES <input type="checkbox"/> NO
<b>IF THE ANSWER IS "NO" TO ALL OF THE ABOVE, THEN IT IS NOT A REQUIREMENT TO REGISTER FOR A TAX COMPLIANCE STATUS SYSTEM PIN CODE FROM THE SOUTH AFRICAN REVENUE SERVICE (SARS) AND IF NOT REGISTER AS PER 1.3 BELOW.</b>			

**PART B  
TERMS AND CONDITIONS FOR BIDDING**

<b>1. TAX COMPLIANCE REQUIREMENTS</b>
1.1 BIDDERS MUST ENSURE COMPLIANCE WITH THEIR TAX OBLIGATIONS.
1.2 BIDDERS ARE REQUIRED TO SUBMIT THEIR UNIQUE PERSONAL IDENTIFICATION NUMBER (PIN) ISSUED BY SARS TO ENABLE THE ORGAN OF STATE TO VERIFY THE TAXPAYER'S PROFILE AND TAX STATUS.
1.3 APPLICATION FOR TAX COMPLIANCE STATUS (TCS) PIN MAY BE MADE VIA E-FILING THROUGH THE SARS WEBSITE WWW.SARS.GOV.ZA.
1.4 BIDDERS MAY ALSO SUBMIT A PRINTED TCS CERTIFICATE TOGETHER WITH THE BID.
1.5 IN BIDS WHERE UNINCORPORATED CONSORTIA / JOINT VENTURES / SUB-CONTRACTORS ARE INVOLVED, EACH PARTY MUST SUBMIT A SEPARATE TCS CERTIFICATE / PIN / CSD NUMBER.
1.6 WHERE NO TCS IS AVAILABLE BUT THE BIDDER IS REGISTERED ON THE CENTRAL SUPPLIER DATABASE (CSD), A CSD NUMBER MUST BE PROVIDED.

**NB: FAILURE TO PROVIDE / OR COMPLY WITH ANY OF THE ABOVE PARTICULARS MAY RENDER THE BID INVALID.**

SIGNATURE OF BIDDER: .....

CAPACITY UNDER WHICH THIS BID IS SIGNED: .....

(Proof of authority must be submitted e.g. company resolution)

DATE: \_\_\_\_\_

## SECTION 2: NOTICE TO BIDDERS

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### 1 Responses to RFQ

Responses to this RFQ [**Quotations**] must not include documents or reference relating to any other quotation or proposal. Any additional conditions must be embodied in an accompanying letter.

### 2 Formal Briefing

A formal briefing session will not be held but should Respondents have specific queries they should email these to the Transnet employee(s) indicated in paragraph 5 [*Communication*] below:

### 3 Compulsory Local Content Threshold

In terms of section 8(1) of the Preferential Procurement Regulations, 2017, and the Instruction Note issued by National Treasury on the "Invitation and Evaluation of Bids based on a stipulated minimum threshold for local content and production for the **POWERLINE HARDWARE** Sector," Transnet is required to set a stipulated minimum threshold be set for this RFQ.

#### 3.1 Local Content Threshold

A Local Content threshold of **100%** [**One hundred** percent] will be required for the goods specified in SBD 6.2 to be manufactured by a successful Respondent **from month the award of the contract and throughout the contract period.**

Only locally produced or locally manufactured **Powerline hardware** with a minimum threshold for local production and content will be considered. If the quantity of materials and/or products required cannot be wholly sourced from South African based manufacturers and/or at the designated local content threshold at any particular time, a bidders should obtain written approval from the dtic to supply the remaining portion at a lower local content threshold. Such approval application should be submitted and obtained prior to the closing of the bid. The dtic, in consultation with Transnet, will grant such approval on a case-by-case basis and will consider the following:

- required volumes in the particular bid;
- available collective South African industry manufacturing capacity at that time;
- delivery times;
- availability of input materials and components;
- technical considerations including operating conditions;
- materials of construction; and
- Security of supply and emergencies.

#### 3.2 Local Content Notes

- 3.2.1. The exchange rate to be used for the calculation of local production and content must be the exchange rate published by the South African Reserve Bank (SARB) on the date of the advertisement of the tender;
- 3.2.2. Only the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 must be used to calculate local content;
- 3.2.3. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the following formula which must be disclosed in the bid documentation:

$$LC = [1 - x/y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by the SARB at 12:00 on the date of advertisement of the bid.

- 3.2.4. The SABS approved technical specification number SATS 1286:2011 and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)] are accessible to all potential tenderers on the DTI's official website; <http://www.the dti.gov.za/industrial development/ip.jsp> at no cost.
- 3.2.5. The rates of exchange quoted by the tenderer in paragraph 4.1 of Returnable Schedule (the Declaration Certificate for Local Production and Content for Designated Sectors) will be verified for accuracy.
- 3.2.6. Declaration Certificate for Local Production and Content (SBD 6.2) together with the Annex C (Local Content Declaration: Summary Schedule) must be completed, duly signed and submitted at the closing date and time of the bid;
- 3.2.7. Tenderers must familiarise themselves with all the information provided in the Local Content instruction notes with particular reference to paragraph 4 of the instruction notes.
- 3.2.8. Respondents are to ensure that they complete the local content annexures in line with the provisions made in the Guidance Document for the calculation of Local Content. Failure to comply will lead to disqualification.

### 3.3 **Mandatory RFQ Annexures**

The regulatory and mandatory RFQ Annexures, which must be completed by all Respondents in order to declare Local Content, are as follows:

- Annexure B – Declaration Certificate for Local Production and Content [SBD 6.2]
- Annexure C – Local Content Declaration: Summary Schedule
- Annexure B and C must be completed and submitted even if a complete Local Content exemption letter from DTI has been obtained.
- To the extent that an exemption from Local Content has been granted by the DTI, the exemption letter from DTI will be a mandatory returnable document.
- Annexures D and E are Supporting Schedules to Annexure C. They are named as follows:
  - Annexure D – Imported Content Declaration: Supporting Schedule to Annexure C
  - Annexure E – Local Content Declaration: Supporting Schedule to Annexure C
- Annexure F - Guidance Document for the calculation of Local Content

After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. Declaration C should be submitted with the bid documentation at the closing date and time of the bid. Declarations D and E should be kept by Respondents for verification purposes for a period of at least 5 years. The successful Respondent is required to continuously update Declarations C, D and E with the actual values for the duration of the contract. In addition to what is stated above regarding Annexures D and E, please note that these declarations are to be submitted as part of the Essential Returnable Documents - See Section 3 of RFQ.

### 3.4 **Challenges meeting the Local Content Threshold**

Should, after the award of a Bid, the Supplier experience challenges in meeting the stipulated minimum threshold for Local Content, Transnet is required to inform the DTI accordingly in order for the DTI to verify the circumstances and provide directives in this regard.

### 3.5 **Exchange Rate Verification**

The rate of exchange quoted by the Respondent in the declaration certificates (Annexure B – Declaration Certificate for Local Production & Content [SBD 6.2] and Annexure C – Local Content Declaration: Summary Schedule) will be verified for accuracy as per the requirement of National Treasury Instruction Notes and Circulars.

### 3.6 **Local Content Obligations**

Respondents are to note that the Local Content commitments made by the successful Respondent(s) will be incorporated as a term of the contract and monitored for compliance. Should the successful Respondent fail to meet its Local obligations, non-compliance penalties shall be applicable as per the contract or Standard RFQ Terms and Conditions for the Supply of Goods and Services. Breach of Local Content obligations also provide Transnet cause to terminate the contract in certain cases where material non-compliance with Local Content requirements are not achieved.

## 4 **Preferential Procurement Prequalification Criteria**

### 4.1 **Minimum B-BBEE and Exempted Micro Enterprises & Qualifying Small Enterprises**

- Only Exempted Micro Enterprises, Qualifying Small Enterprises and Generic enterprises With A B-BBEE Status of Level 1 Only May Participate In This RFQ Process. A Bid That Fails to Meet This Pre-Qualifying Criteria Will Be Regarded As An Unacceptable Bid.

**A bid that fails to meet this Pre-qualifying criteria will be regarded as an unacceptable bid.**

## 5 **Communication**

- 5.1 Specific queries relating to this RFQ before the closing date of the RFQ should be submitted onto the system and to [**Lucky Molefe@Transnet.net**] before **12:00 pm on Friday 14 July 2022**. In the interest of fairness and transparency Transnet's response to such a query will then be made available to other bidders.
- 5.2 It is prohibited for Respondents to attempt, either directly or indirectly, to canvass any officer or employee of Transnet in respect of this RFQ between the closing date and the date of the award of the business.
- 5.3 Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with organs of state for a specified period.
- 5.4 Respondents may also, at any time after the closing date of the RFQ, communicate with, the secretariat of Council on any matter relating to its RFQ response:

Telephone 011 584 0821

Email: Prudence Nkabinde

## 6 **Legal Compliance**

The successful Respondent shall be in full and complete compliance with any and all applicable national and local laws and regulations.

## **7 Employment Equity Act**

Respondents must comply with the requirements of the Employment Equity Act 55 of 1998 applicable to it including (but not limited to) Section 53 of the Employment Equity Act.

## **8 Changes to Quotations**

Changes by the Respondent to its submission will not be considered after the closing date and time.

## **9 Binding Offer**

Any Quotation furnished pursuant to this Request shall be deemed to be an offer. Any exceptions to this statement must be clearly and specifically indicated.

## **10 Disclaimers**

10.1 Respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFQ and/or its receipt of a Quotation in response to it. Please note that Transnet reserves the right to:

- modify the RFQ's goods / service(s) and request Respondents to re-bid on any changes;
- reject any Quotation which does not conform to instructions and specifications which are detailed herein;
- disqualify Quotations submitted after the stated submission deadline;
- not necessarily accept the lowest priced Quotation or an alternative bid;
- place an order in connection with this Quotation at any time after the RFQ's closing date;
- award only a portion of the proposed goods which are reflected in the scope of this RFQ;
- split the award of the order/s between more than one Supplier/Service Provider should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
- cancel the quotation process;
- validate any information submitted by Respondents in response to this bid. This would include, but is not limited to, requesting the Respondents to provide supporting evidence. By submitting a bid, Respondents hereby irrevocably grant the necessary consent to Transnet to do so;
- request audited financial statements or other documentation for the purposes of a due diligence exercise;
- **Upon approval of preferred bidder status, the preferred bidder will be provided with a Letter of Award (LOA) and will be requested to provide a sample of the materials in the bid submission in line with the specification of the tender, to be inspected by Transnet Freight Rail end-user; Should the sample not be in line with the technical specification, TFR reserves the right to revoke or rescind the letter of intent and to proceed with the next ranked bidder.**
- not accept any changes or purported changes by the Respondent to the bid rates after the closing date and/or after the award of the business, unless the contract specifically provides for it;
- to cancel the contract and/request that National Treasury place the Respondent on its Database of Restricted Suppliers for a period not exceeding 10 years, on the basis that a contract was awarded on the strength of incorrect information furnished by the Respondent or on any other basis recognised in law;

award the business to the next ranked bidder, provided that he/she is still prepared to provide the required Goods/Services at the quoted price, should the preferred bidder fail to sign or commence with

the contract within a reasonable period after being requested to do so. Under such circumstances, the validity of the bids of the next ranked bidder(s) will be deemed to remain valid, irrespective of whether the next ranked bidder(s) were issued with a Letter of Regret. Bidders may therefore be requested to advise whether they would still be prepared to provide the required Goods/Services at their quoted price, even after they have been issued with a Letter of Regret.



**11 Short Texts**

<b>SUPPLY OF CONTACT SPLICES –( BBH2139)</b>
<b>SUPPLY OF CONTACT CLIPS – (CEE-TND-0022)</b>
<b>SUPPLY OF CROSBY CLAMPS (M12) –</b>
<b>SUPPLY OF DROPPER SADDLES – ( CEE-TND-005)</b>
<b>SUPPLY OF SWIL CLIPS -</b>
<b>SUPPLY OF 161 X 160MM CLAMPS – ( BBH2142)</b>
<b>SUPPLY OF 160 X 160 CLAMPS – (BBG 7987)</b>
<b>SUPPLY OF STEADY ARM WITH SOCKET – CEE-TMF-0152</b>
<b>SUPPLY OF 3KV DC TRACK SWITCH – BBC 8741</b>
<b>SUPPLY OF 3KV DC SUSPENSION INSULATOR – BBB 1158</b>
<b>SUPPLY OF 3KV DC CLIMBING ANGLE</b>
<b>SUPPLY OF 3KV SECTION INSULATOR –</b>

**12 Respondent's Samples**

In this RFQ, Respondents are required to submit samples of the Goods tendered for. The sample(s) must be endorsed with the RFQ number and description and forwarded on or before the deadline date to the following addressee:

Infra National Depot  
Sentra Rand

**13 Legal review**

A Proposal submitted by a Respondent will be subjected to review and acceptance or rejection of its proposed contractual terms and conditions by Transnet's Legal Counsel, prior to consideration for an award of business.

**14 Security clearance**

Acceptance of this bid could be subject to the condition that the Successful Respondent, its personnel providing the goods and its subcontractor(s) must obtain security clearance from the appropriate authorities to the level of CONFIDENTIAL/ SECRET/TOP SECRET. Obtaining the required clearance is the responsibility of the Successful Respondent. Acceptance of the bid is also subject to the condition that the Successful Respondent will implement all such security measures as the safe performance of the contract may require.

**15 National Treasury's Central Supplier Database**

Respondents are required to self-register on National Treasury's Central Supplier Database (CSD) which has been established to centrally administer supplier information for all organs of state and facilitate the verification of certain key supplier information. Transnet is required to ensure that price quotations are invited and accepted from prospective bidders listed on the CSD. Business may not be awarded to a respondent who has failed to register on the CSD. Only foreign suppliers with no local registered entity need not register on the CSD. The CSD can be accessed at <https://secure.csd.gov.za/>.

**For this purpose, the attached SBD 1 form must be completed and submitted as a mandatory returnable document by the closing date and time of the bid.**

**16 Tax Compliance**

Respondents must be compliant when submitting a proposal to Transnet and remain compliant for the entire contract term with all applicable tax legislation, including but not limited to the Income Tax Act, 1962 (Act No. 58 of 1962) and Value Added Tax Act, 1991 (Act No. 89 of 1991).

It is a condition of this bid that the tax matters of the successful Respondents be in order, or that satisfactory arrangements have been made with South African Revenue Service (SARS) to meet the Respondents tax obligations.

The Tax Compliance status requirements are also applicable to foreign Respondents/ individuals who wish to submit bids.

Where Consortia / Joint Ventures / Sub-contractors are involved, each party must be registered on the Central Supplier Database and their tax compliance status will be verified through the Central Supplier Database.

**Transnet urges its clients, suppliers and the general public to report any fraud or corruption to**

**TIP-OFFS ANONYMOUS:**



**Ethics Helpdesk** (Pty) Ltd.  
Ethics Management System™

**You can choose to be Anonymous or Non-Anonymous on ANY of the platforms**  
**PLEASE RETAIN YOUR REFERENCE NUMBER**



**AI Voice BoT "Jack"**  
Speak to our AI Voice Chat Bot "JACK", you converse with him like chatting to a human, with the option to record a message and speak to an agent at anytime.



**What's App**  
Speak to an Agent via What's App.



**Speak to an Agent**  
Speak to an Agent via the platform with no call or data charge



**Telegram**  
Speak to an Agent via Telegram



**0800 003 056**



**086 551 4153**



**reportit@ethicshelpdesk.com**

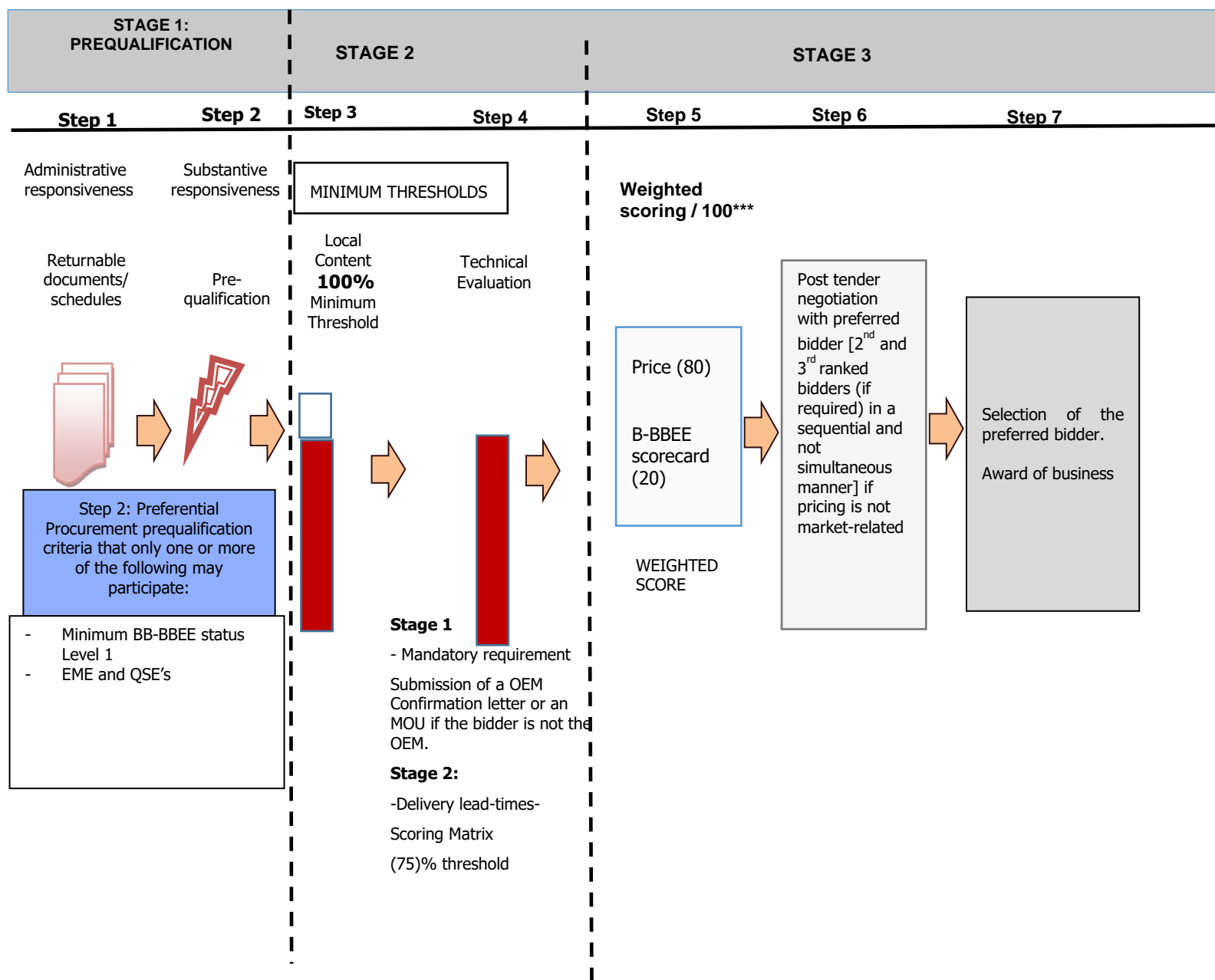


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### SECTION 3

#### EVALUATION METHODOLOGY, CRITERIA AND RETURNABLE DOCUMENTS

#### 17 Evaluation Criteria



**1.1 STEP ONE: Test for Administrative Responsiveness**

The test for administrative responsiveness will include the following:

<b>Administrative responsiveness check</b>	<b>RFQ Reference</b>
<ul style="list-style-type: none"> <li>Whether the Bid has been lodged on time.</li> </ul>	
<ul style="list-style-type: none"> <li>Whether all Essential, mandatory, Local Content and technical Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time.</li> </ul>	<i>Section 3</i>
<ul style="list-style-type: none"> <li>Verify the validity of all returnable documents.</li> </ul>	<i>Section 3</i>
<ul style="list-style-type: none"> <li>Verify if the Bid document has been duly signed by the authorised respondent.</li> </ul>	<i>All sections</i>

***The test for administrative responsiveness [Step One] must be passed for a Respondent's Proposal to progress to Step Two for further pre-qualification***

**1.2 STEP TWO: Test for Substantive Responsiveness to RFQ**

The test for substantive responsiveness to this RFQ will include the following:

<b>Check for substantive responsiveness</b>	<b>RFQ Reference</b>
<ul style="list-style-type: none"> <li>Whether any general pre-qualification criteria set by Transnet, have been met</li> </ul>	<i>All sections including: Section 2 paragraphs 2.2, 4</i>
<ul style="list-style-type: none"> <li>Whether the Bid contains a 100% Completed priced offer. (The pricing schedule has been provided in the RFQ, bidders to complete the provided pricing schedule failure to complete and submit the provided pricing schedule will result in a bid disqualification).</li> </ul>	<i>Section 4 - Quotation Form</i>
<ul style="list-style-type: none"> <li>Whether the Bid materially complies with the scope and/or specification given</li> </ul>	<i>All Sections</i>
<ul style="list-style-type: none"> <li>Whether any set prequalification criteria for preferential procurement have been met:               <ul style="list-style-type: none"> <li>Indicate the minimum B-BBEE threshold (if applicable).</li> <li>Indicate whether only EMEs and/or QSEs may participate in this RFQ (if applicable);</li> <li>Indicate any subcontracting prequalification criterion/criteria to designated groups as per Section 2, paragraph 3</li> </ul> </li> </ul>	<i>Section 2 - Paragraph 4</i>

***The test for substantive responsiveness [Step Two] must be passed for a Respondent's proposal to progress to Step Three for further evaluation***

**1.3 STEP THREE: Minimum Threshold for Local Content**

<b>Local Production and Content Threshold</b>	<b>RFQ REFERENCE</b>
<ul style="list-style-type: none"> <li>A minimum threshold of 100% is required for Local Content of Goods offered</li> </ul>	<i>Section 2, paragraph 3 Annexures B and C</i>
ANNEXURE B – Declaration Certificate for Local Production and Content	<i>Annexure B Local content</i>

[SBD6.2] • (SBD6.2 must be completed and submitted even if a complete Local Content exemption letter from DTI has been obtained)	<i>annexures</i>
ANNEXURE C – Local Content Declaration: Summary Schedule • (Annexure C must be completed and submitted even if a complete Local Content exemption letter from DTI has been obtained)	<i>Annexure C Local content annexures</i>

***The test for meeting the Local Content threshold [Step Three] must be passed for a Respondent's proposal to progress to Step Four for further evaluation***

- **Respondents are to note that Transnet will not round off final Local Content scores for the purposes of determining whether the Local Content threshold has been met.**
- **A bid that fails to meet the minimum stipulated threshold for local production and content will be regarded as an unacceptable bid.**

#### **1.4 STEP FOUR: Technical Evaluation Criteria**

The test for the Technical and Functional threshold will include the following:

##### **Stage 1:**

- **Whether any Technical Pre-qualification set by Transnet have been met as follows**  
If a Bidder is an Original Equipment Manufacturer (OEM)/Manufacturer, the Bidder must submit a letter on their company's letterhead, signed or stamped. The letter shall be dated and confirming that they are the OEM/Manufacturer and shall state the items that they will produce/manufacture that are required in the RFQ OR the letter must quote the RFQ number.
- If a Bidder is not an Original Equipment Manufacturer (OEM)/Manufacturer, the Bidder must submit a Memorandum of Understanding (MOU) between the Bidder and the OEM/Manufacturer, which must be on the OEM's/Manufacturer's letterhead stating that they are the OEM/Manufacturer and will supply the bidder with the items stated in the RFQ if successful. The letter should contain the Bidder's company name, it must be signed or stamped by both the Bidder and OEM/Manufacturer. The MOU shall be dated by the OEM/Manufacturer and shall make reference to the RFQ number OR list all the items to be manufactured by the OEM/Manufacturer. TFR reserves the right to confirm the authenticity of the MOU/letter with the OEM/Manufacturer.  
**Failure to submit the MOU/Authorization letter between the Bidder and the OEM/Manufacturer or an OEM/Manufacturer confirmation letter in the case of where a bidder is a manufacturer will result in a bid being disqualified.**

##### **Stage 2: Technical functionality Questionnaire**

Assessment of Delivery lead-times. (Annexure G)

**Bidders will be allocated a score of zero (0) should they not submit this technical functionality questionnaire. Only bidders that meet the minimum threshold of 60% for will proceed to the next phase of evaluations.**

Respondents are to note that Transnet will round off final technical scores to the nearest 2 (two) decimal places for the purposes of determining whether the technical threshold has been met.

Technical Evaluation Criteria	Points Weightings
• Submission of an MOU or an OEM letter if the bidder is not the OEM.	100%
• Annexure G: Delivery lead-time scoring matrix	75%

Respondents must complete and submit **Annexure G which include a Technical Questionnaire**. A Respondent's compliance with the minimum functionality/technical threshold will be measured by their responses to Annexure G.

Respondents are to note that Transnet will round off final technical scores to the nearest 2 (two) decimal places for the purposes of determining whether the technical threshold has been met.

***The minimum threshold for technical/functionality [Step Four] must be met or exceeded for a Respondent's Proposal to progress to Step Five for final evaluation for final evaluation***

### 1.5 STEP FIVE: Evaluation and Final Weighted Scoring

#### a) **Price Criteria** [Weighted score 80 points]:

Transnet will utilise the following formula in its evaluation of Price:

$$PS = 80 \left( 1 - \frac{Pt - Pmin}{Pmin} \right)$$

Where:

$Ps$  = Score for the Bid under consideration

$Pt$  = Price of Bid under consideration

$Pmin$  = Price of lowest acceptable Bid

#### b) **Broad-Based Black Economic Empowerment criteria** [Weighted score 20 points]

- B-BBEE - current scorecard / B-BBEE Preference Points Claims Form
- Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table indicated in Section 4.1 of the B-BBEE Preference Points Claim Form.

### 1.6 STEP SIX: Post Tender Negotiations (if applicable)

- Respondents are to note that Transnet may not award a contract if the price offered is not market-related. In this regard, Transnet reserves the right to engage in PTN with the view to achieving a market-related price or to cancel the tender. Negotiations will be done in a sequential manner i.e.:
  - first negotiate with the highest ranked bidder or cancel the bid, should such negotiations fail,
  - negotiate with the 2nd and 3rd ranked bidders (if required) in a sequential manner.
- In the event of any Respondent being notified of such short-listed/preferred bidder status, his/her bid, as well as any subsequent negotiated best and final offers (BAFO), will automatically be deemed to remain valid during the negotiation period and until the ultimate award of business.
- Should Transnet conduct post tender negotiations, Respondents will be requested to provide their best and final offers to Transnet based on such negotiations. Where a market related price has been achieved through negotiation, the contract will be awarded to the successful Respondent(s).

**1.7 STEP SEVEN: Award of business and conclusion of contract**

- Immediately after approval to award the contract has been received, the successful or preferred bidder(s) will be informed of the acceptance of his/their Quotation by way of a Letter of Award. Thereafter the final contract will be concluded with the successful Respondent(s).
- Otherwise, a final contract will be concluded and entered into with the successful Bidder at the acceptance of a letter of award by the Respondent.

**18 Validity Period**

Transnet requires a validity period of 180 [One Hundred and Eighty] Business Days from the closing date of this RFQ, excluding the first day and including the last day.

Bidders are to note that they may be requested to extend the validity period of their bid, on the same terms and conditions, if the internal evaluation process has not been finalised within the validity period. However, once the adjudication body has approved the process and award of the business to the successful bidder(s), the validity of the successful bidder(s)' bid will be deemed to remain valid until a final contract has been concluded.

**19 Disclosure of contract information****Prices Quoted**

Respondents are to note that, on award of business, Transnet is required to publish the tendered prices and preferences claimed of the successful and unsuccessful Respondents *inter alia* on the National Treasury e-Tender Publication Portal, ([www.etenders.gov.za](http://www.etenders.gov.za)), as required per National Treasury Instruction Note 01 of 2015/2016.

**Johannesburg Stock Exchange Debt Listing Requirements**

Transnet may also be required to disclose information relating to the subsequent contract i.e. the name of the company, goods/services provided by the company, the value and duration of the contract, etc. in compliance with the Johannesburg Stock Exchange (JSE) Debt Listing Requirements.

**Domestic Prominent Influential Persons (DPIP) OR Foreign Prominent Public Officials (FPPO)**

Transnet is free to procure the services of any person within or outside the Republic of South Africa in accordance with applicable legislation. Transnet shall not conduct or conclude business transactions, with any Respondents without having:

- Considered relevant governance protocols;
- Determined the DPIP or FPPO status of that counterparty; and
- Conducted a risk assessment and due diligence to assess the potential risks that may be posed by the business relationship.

As per the Transnet Domestic Prominent Influential Persons (DPIP) and Foreign Prominent Public Officials (FPPO) and Related Individuals Policy available on Transnet website <https://www.transnet.net/search/pages/results.aspx?k=FPIDP#k=DPIP>, Respondents are required to disclose any commercial relationship with a DPIP or FPPO (as defined in the Policy) by completing the following section:

The below form contains personal information as defined in the Protection of Personal Information Act,



2013 (the "Act"). By completing the form, the signatory consents to the processing of her/his personal information in accordance with the requirements of the Act. Consent cannot unreasonably be withheld.						
<b>Is the Respondent</b> (Complete with a "Yes" or "No")						
<b>A DPIP/FPPO</b>		<b>Closely Related to a DPIP/FPPO</b>		<b>Closely Associated to a DPIP/FPPO</b>		
<b>List all known business interests, in which a DPIP/FPPO may have a direct/indirect interest or significant participation or involvement.</b>						
No	Name of Entity / Business	Role in the Entity / Business (Nature of interest/ Participation)	Shareholding %	Registration Number	Status (Mark the applicable option with an X)	
					Active	Non-Active
1						
2						
3						

Respondents declaring a commercial relationship with a DPIP or FPPO are to note that Transnet is required to annually publish on its website a list of all business contracts entered into with DPIP or FPPO. This list will include successful Respondents, if applicable.

## 20 Returnable Documents

**Returnable Documents** means all the documents, Sections and Annexures, as listed in the tables below. There are three types of returnable documents as indicated below and Respondents are urged to ensure that these documents are returned with their bids based on the consequences of non-submission as indicated below:

Mandatory Returnable Documents	<b><i>Failure to provide all these Mandatory Returnable Documents at the Closing Date and time of this RFQ <u>will</u> result in a Respondent's disqualification.</i></b>
Returnable Documents Used for Scoring	<b><i>Failure to provide all Returnable Documents used for purposes of scoring a bid, by the closing date and time of this bid will not result in a Respondent's disqualification. However, Bidders will receive an automatic score of zero for the applicable evaluation criterion.</i></b>
Essential Returnable Documents	<b><i>Failure to provide essential Returnable Documents <u>will</u> result in Transnet affording Respondents a further opportunity to submit by a set deadline. Should a Respondent thereafter fail to submit the requested documents, this may result in a Respondent's disqualification.</i></b>

**All Returnable Sections, as indicated in the header and footer of the relevant pages, must be signed, stamped and dated by the Respondent.**

### a) Mandatory Returnable Documents

Respondents are required to submit with their bid submissions the following **Mandatory Returnable Documents**, and also to confirm submission of these documents by so indicating [Yes or No] in the tables below:

<b>MANDATORY RETURNABLE DOCUMENTS</b>	<b>SUBMITTED [Yes/No]</b>
SECTION 1: SBD1 Form Proof of CSD Registration	
SECTION 4 : The provided Quotation Form	
ANNEXURE B – Declaration Certificate for Local Production and Content [SBD6.2] (SBD6.2 must be completed and submitted even if a complete Local Content exemption letter from DTI has been obtained)	
ANNEXURE C – Local Content Declaration: Summary Schedule (Annexure C must be completed and submitted even if a complete Local Content exemption letter from DTI has been obtained)	
A Local Content exemption letter from DTI (where applicable)	
Valid proof of Respondent's compliance to B-BBEE requirements stipulated in Section 7 of this RFQ.	
Proof of NT-Central supplier database report.	

**b) Returnable Documents Used for Scoring**

In addition to the requirements of section (a) above, Respondents are further required to submit with their Proposals the following **Returnable Documents Used for Scoring** and also to confirm submission of these documents by so indicating [Yes or No] in the table below:

<b>RETURNABLE DOCUMENTS USED FOR SCORING</b>	<b>SUBMITTED [Yes or No]</b>
Valid proof of Respondent's compliance to B-BBEE requirements stipulated in Section 7 of this RFQ (Valid B-BBEE certificate or Sworn Affidavit).	
Annexure F: Delivery lead-time schedule.	

**c) Essential Returnable Documents:**

Over and the above the requirements of section (a) and (b) mentioned above, Respondents are further required to submit with their Proposals the following **Essential Returnable Documents** and also to confirm submission of these documents by so indicating [Yes or No] in the table below:

<b>ESSENTIAL RETURNABLE DOCUMENTS &amp; SCHEDULES</b>	<b>SUBMITTED [Yes or No]</b>
In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	
SECTION 3: Evaluation Methodology, Criteria And Returnable Documents	
SECTION 5: Certificate of Acquaintance with RFQ Documents	
SECTION 6: RFQ Declaration and Breach of Law Form	
SECTION 7: B-BBEE Preference Claim Form	
ANNEXURE D – Imported Content Declaration: Supporting Schedule to Annexure C	

ANNEXURE E – Local Content Declaration: Supporting Schedule to Annexure C	
SECTION 8: Protection of Personal Information	

**21 Continued validity of returnable documents**

The successful Respondent will be required to ensure the validity of all returnable documents, including but not limited to its valid proof of B-BBEE status, for the duration of any contract emanating from this RFQ. Should the Respondent be awarded the contract [**the Agreement**] and fail to present Transnet with such renewals as and when they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the eventual Agreement, to terminate such Agreement immediately without any liability and without prejudice to any claims which Transnet may have for damages against the Respondent.

## SECTION 4

### QUOTATION FORM

I/We \_\_\_\_\_  
hereby offer to supply the goods/services at the prices quoted in the Price Schedule below, in accordance with the conditions related thereto.

I/We agree to be bound by those terms and conditions in:

- the Standard RFQ Terms and Conditions for the Supply of Goods or Services to Transnet; and
- any other standard or special conditions embodied in this Request for Quotation.

I/We accept that unless Transnet should otherwise decide and so inform me/us, this Quotation [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet's acceptance thereof shall constitute a binding contract between Transnet and me/us. I/We further agree that if, after I/we have been notified of the acceptance of my/our Quotation, I/we fail to deliver the said goods/service/s within the delivery lead-time quoted, Transnet may, without prejudice to any other legal remedy which it may have, cancel the order and recover from me/us any expenses incurred by Transnet in calling for Quotations afresh and/or having to accept any less favourable offer.

#### Price Schedule

I/We quote as follows for the goods required, on a "delivered nominated destination" basis, including VAT:

Item No	Description of Item	UOM	Quantity	Unit Price	TOTAL PRICE OF ITEM [ZAR]
1	Supply of Contact splices	Each	250		
2	Supply of Contact clips	Each	10000		
3	Supply of Crosby clamps (M12)	Each	1500		
4	Supply of Dropper saddles	Each	10000		
5	Supply of Swivel Clips	Each	150		
6	Supply of 161 x 160mm Clamps	Each	500		
7	Supply of 160 x 160 Clamps	Each	500		
9	Supply of steady arm with socket	Each	100		
10	Supply of 3kV DC Track Switch	Each	10		
11	Supply of 3kV DC suspension Insulator	Each	50		
<b>TOTAL PRICE, exclusive of VAT:</b>					
<b>VAT 15% (if applicable)</b>					
<b>Total Inclusive of VAT (where applicable)</b>					

**Delivery Lead-Time from date of purchase order:** \_\_\_\_\_ **[days/weeks]**

*Respondents are to note that Transnet will round off final pricing scores to the nearest 2 (two) decimal places.*

**Notes to Pricing:**

- a) Respondents are to note that if the price offered by the highest scoring bidder is not market-related, Transnet may not award the contract to that Respondent. Transnet may-
  - (i) negotiate a market-related price with the Respondent scoring the highest points or cancel the RFQ;
  - (ii) if that Respondent does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the second highest points or cancel the RFQ;
  - (iii) if the Respondent scoring the second highest points does not agree to a market-related price, negotiate a market-related price with the Respondent scoring the third highest points or cancel the RFQ.

If a market-related price is not agreed with the Respondent scoring the third highest points, Transnet must cancel the RFQ.

- b) All Prices must be quoted in South African Rand, inclusive of VAT
- c) To facilitate like-for-like comparison bidders must submit pricing strictly in accordance with this price schedule and not utilise a different format. Deviation from this pricing schedule will result in a bid being disqualified.
- d) Please note that should you have offered a discounted price(s), Transnet will only consider such price discount(s) in the final evaluation stage if offered on an unconditional basis.
- e) In respect of incoterms conditions, if applicable, please refer to paragraph 25 of the General Bid Conditions which is attached to the RFQ.

**SECTION 5**  
**CERTIFICATE OF ACQUAINTANCE WITH RFQ DOCUMENTS**

**By signing this certificate the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with, and agrees with all the conditions governing this RFQ. This includes those terms and conditions contained in any printed form stated to form part hereof, including but not limited to the documents stated below. As such, Transnet will recognise no claim for relief based on an allegation that the Respondent overlooked any such term or condition or failed properly to take it into account in calculating tendered prices or any other purpose:**

1. Transnet's General Bid Conditions
2. Standard RFQ Terms and Conditions for the supply of Goods or Services to Transnet
3. Transnet's Supplier Integrity Pact
4. Non-disclosure Agreement

**Note:** Should a Respondent be successful and awarded the bid, they will be required to complete a Supplier Declaration Form for registration as a vendor onto the Transnet vendor master database.

Should the Bidder find any terms or conditions stipulated in any of the relevant documents quoted in the RFQ unacceptable, it should indicate which conditions are unacceptable and offer alternatives by written submission on its company letterhead, attached to its submitted Bid. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed alternative(s) are acceptable or otherwise, as the case may be. A material deviation from the Standard terms or conditions could result in disqualification.

Bidders accept that an obligation rests on them to clarify any uncertainties regarding any bid to which they intend to respond, before submitting the bid. The Bidder agrees that he/she will have no claim or cause of action based on an allegation that any aspect of this RFQ was unclear but in respect of which he/she failed to obtain clarity.

The bidder understands that his/her Bid will be disqualified if this Certificate of Acquaintance with RFQ documents included in the RFQ as a returnable document, is found not to be true and/ or complete in every respect.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_  
 Name \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

2 \_\_\_\_\_  
 Name \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: \_\_\_\_\_

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

**SECTION 6**  
**RFQ DECLARATION AND BREACH OF LAW FORM**

NAME OF ENTITY: \_\_\_\_\_

We \_\_\_\_\_ do hereby certify that:

1. Transnet has supplied and we have received appropriate responses to any/all questions [as applicable] which were submitted by ourselves for RFQ Clarification purposes;
2. We have received all information we deemed necessary for the completion of this Request for Quotation [**RFQ**];
3. We have been provided with sufficient access to the existing Transnet facilities/sites and all relevant information relevant to the Supply of the Goods as well as Transnet information and Employees, and have had sufficient time in which to conduct and perform a thorough due diligence of Transnet's operations and business requirements and assets used by Transnet. Transnet will therefore not consider or permit any pre- or post-contract verification or any related adjustment to pricing, service levels or any other provisions/conditions based on any incorrect assumptions made by the Respondent in arriving at his Bid Price.
4. At no stage have we received additional information relating to the subject matter of this RFQ from Transnet sources, other than information formally received from the designated Transnet contact(s) as nominated in the RFQ documents;
5. We have complied with all obligations of the Bidder/Supplier as indicated in the Transnet Supplier Integrity Pact which includes but are not limited to ensuring that we take all measures necessary to prevent corrupt practices, unfairness and illegal activities in order to secure or in furtherance to secure a contract with Transnet;
6. We are satisfied, insofar as our entity is concerned, that the processes and procedures adopted by Transnet in issuing this RFQ and the requirements requested from Bidders in responding to this RFQ have been conducted in a fair and transparent manner;
7. We declare that a family, business and/or social relationship **exists / does not exist** [delete as applicable] between an owner / member / director / partner / shareholder of our entity and an employee or board member of Transnet including any person who may be involved in the evaluation and/or adjudication of this Bid;
8. We declare that an owner / member / director / partner / shareholder of our entity **is / is not** [delete as applicable] an employee or board member of the Transnet;
9. In addition, we declare that an owner / member / director / partner / shareholder/employee of our entity **has / has not been** [delete as applicable] a former employee or board member of Transnet in the past 10 years. I further declare that if they were a former employee or board member of Transnet in the past 10 years that they **were/were not** involved in the bid preparation or had access to the information related to this RFQ; and
10. If such a relationship as indicated in paragraph 7, 8 and/or 9 exists, the Respondent is to complete the following section:

FULL NAME OF OWNER/MEMBER/DIRECTOR/



PARTNER/SHAREHOLDER/EMPLOYEE:

ADDRESS:

Indicate nature of relationship with Transnet:

*[Failure to furnish complete and accurate information in this regard will lead to the disqualification of a response and may preclude a Respondent from doing future business with Transnet]. **Information provided in the declarations may be used by Transnet and/or its affiliates to verify the correctness of the information provided.***

11. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet [other than any existing and appropriate business relationship with Transnet] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.

#### **BIDDER'S DISCLOSURE (SBD4)**

### **12 PURPOSE OF THE FORM**

- 12.1 Any person (natural or juristic) may make an offer or offers in terms of this invitation to bid. In line with the principles of transparency, accountability, impartiality, and ethics as enshrined in the Constitution of the Republic of South Africa and further expressed in various pieces of legislation, it is required for the bidder to make this declaration in respect of the details required hereunder.

- 12.2 Where a person/s are listed in the Register for Tender Defaulters and / or the List of Restricted Suppliers, that person will automatically be disqualified from the bid process.

### **13 Bidder's declaration**

- 13.1 Is the bidder, or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest<sup>1</sup> in the enterprise, employed by the state?

**YES/NO**

- 13.1.1. If so, furnish particulars of the names, individual identity numbers, and, if applicable, state employee numbers of sole proprietor/ directors / trustees / shareholders / members/ partners or any person having a controlling interest in the enterprise, in table below.

Full Name	Identity Number	Name of State institution

<sup>1</sup> the power, by one person or a group of persons holding the majority of the equity of an enterprise, alternatively, the person/s having the deciding vote or power to influence or to direct the course and decisions of the enterprise.


13.2 Do you, or any person connected with the bidder, have a relationship with any person who is employed by the procuring institution?

**YES/NO**

13.2.1. If so, furnish particulars:

.....  
 .....

13.3 Does the bidder or any of its directors / trustees / shareholders / members / partners or any person having a controlling interest in the enterprise have any interest in any other related enterprise whether or not they are bidding for this contract?

**YES/NO**

13.3.1. If so, furnish particulars:

.....  
 .....

#### **14 DECLARATION**

I, the undersigned, (name)..... in submitting the accompanying bid, do hereby make the following statements that I certify to be true and complete in every respect:

14.1 I have read and I understand the contents of this disclosure;

14.2 I understand that the accompanying bid will be disqualified if this disclosure is found not to be true and complete in every respect;

14.3 The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However, communication between partners in a joint venture or consortium<sup>1</sup> will not be construed as collusive bidding.

14.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications, prices, including methods, factors or formulas used to calculate prices, market allocation, the intention or decision to submit or not to submit the bid, bidding with the intention not to win the bid and conditions or delivery particulars of the products or services to which this bid invitation relates.

---

<sup>1</sup> Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

- 14.5 The terms of the accompanying bid have not been, and will not be, disclosed by the bidder, directly or indirectly, to any competitor, prior to the date and time of the official bid opening or of the awarding of the contract.
- 14.6 There have been no consultations, communications, agreements or arrangements made by the bidder with any official of the procuring institution in relation to this procurement process prior to and during the bidding process except to provide clarification on the bid submitted where so required by the institution; and the bidder was not involved in the drafting of the specifications or terms of reference for this bid.
- 14.7 I am aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in terms of section 59 of the Competition Act No 89 of 1998 and or may be reported to the National Prosecuting Authority (NPA) for criminal investigation and or may be restricted from conducting business with the public sector for a period not exceeding ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

I CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPHS 12, 13 and 14 ABOVE IS CORRECT.

I ACCEPT THAT THE STATE MAY REJECT THE BID OR ACT AGAINST ME IN TERMS OF PARAGRAPH 6 OF PFMA SCM INSTRUCTION 03 OF 2021/22 ON PREVENTING AND COMBATING ABUSE IN THE SUPPLY CHAIN MANAGEMENT SYSTEM SHOULD THIS DECLARATION PROVE TO BE FALSE.

#### **BREACH OF LAW**

12. We further hereby certify that *I/we **have/have not been*** [delete as applicable] found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. This includes the imposition of an administrative fine or penalty.

Where found guilty of such a serious breach, please disclose:

NATURE OF BREACH:

DATE OF BREACH: \_\_\_\_\_

Furthermore, I/we acknowledge that Transnet SOC Ltd reserves the right to exclude any Respondent from the bidding process, should that person or entity have been found guilty of a serious breach of law, tribunal or regulatory obligation.

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

For and on behalf of _____ duly authorised hereto	AS WITNESS:
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Registration No of Company/CC _____
Place:	Registration Name of Company/CC _____

## SECTION 7

### B-BBEE PREFERENCE POINTS CLAIM FORM

This preference form must form part of all bids invited. It contains general information and serves as a claim for preference points for Broad-Based Black Economic Empowerment [**B-BBEE**] Status Level of Contribution.

Transnet will award preference points to companies who provide valid proof of their B-BBEE status using either the latest version of the generic Codes of Good Practice or Sector Specific Codes (if applicable).

**NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2017.**

#### 1. GENERAL CONDITIONS

- 1.1 The following preference point systems are applicable to all bids:
- the 80/20 system for requirements with a Rand value of up to R50 000 000 (all applicable taxes included); and
  - the 90/10 system for requirements with a Rand value above R50 000 000 (all applicable taxes included).
- 1.2 The value of this bid is estimated to not exceed R50 000 000 (all applicable taxes included) and therefore the 80/20 preference point system shall be applicable. Despite the stipulated preference point system, Transnet shall use the lowest acceptable bid to determine the applicable preference point system in a situation where all received acceptable bids are received outside the stated preference point system.
- 1.3 The 80/20 preference point system will be applicable to this tender.
- 1.4 Preference points for this bid shall be awarded for:
- (a) Price; and
  - (b) B-BBEE Status Level of Contribution.
- 1.5 The maximum points for this bid are allocated as follows:

	POINTS
<b>PRICE</b>	<b>80</b>
<b>B-BBEE STATUS LEVEL OF CONTRIBUTOR</b>	<b>20</b>
<b>Total points for Price and B-BBEE must not exceed</b>	<b>100</b>

- 1.6 Failure on the part of a bidder to submit proof of B-BBEE status level of contributor together with the bid will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.
- 1.7 The purchaser reserves the right to require of a bidder, either before a bid is adjudicated or at any time subsequently, to substantiate any claim in regard to preferences, in any manner required by the purchaser

#### 2. DEFINITIONS

- (a) **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;
- (b) **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;
- (c) **"B-BBEE status level of contributor"** means the B-BBEE status received by a measured entity

based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

- (d) **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the supply/provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;
- (e) **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (f) **"EME"** means an Exempted Micro Enterprise as defines by Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);
- (g) **"functionality"** means the ability of a bidder to provide goods or services in accordance with specification as set out in the bid documents;
- (h) **"Price"** includes all applicable taxes less all unconditional discounts.
- (i) **"Proof of B-BBEE Status Level of Contributor"** means:
  - 1) B-BBEE status level certificate issued by an unauthorised body or person;
  - 2) A sworn affidavit as prescribed by the B-BBEE Codes of Good Practice;
  - 3) Any other requirement prescribed in terms of the B-BBEE Act.
- (j) **"QSE"** means a Qualifying Small EEnterprise in terms of a Codes of Good Practice under section 9 (1) of the Broad-Based Black Economic Empowerment Act, 2003 ( Act No. 53 of 2003);
- (k) **"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties.

### 3. POINTS AWARDED FOR PRICE

#### 3.1 THE 80/20 PREFERENCE POINT SYSTEMS

A maximum of 80 points is allocated for price on the following basis:

#### 80/20

$$P_s = 80 \left( 1 - \frac{P_t - P_{\min}}{P_{\min}} \right)$$

Where

$P_s$  = Points scored for comparative price of bid under consideration

$P_t$  = Comparative price of bid under consideration

$P_{\min}$  = Comparative price of lowest acceptable bid

### 4. POINTS AWARDED FOR B-BBEE STATUS LEVEL OF CONTRIBUTION

- 4.1 In terms of Regulation 6 (2) and 7 (2) of the Preferential Procurement Regulations, preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (80/20 system)
1	20
2	18
3	14
4	12
5	8

6	6
7	4
8	2
Non-compliant contributor	0

- 4.2 The table below indicates the required proof of B-BBEE status depending on the category of enterprises:

<b>Enterprise</b>	<b>B-BBEE Certificate &amp; Sworn Affidavit</b>
<b>Large</b>	Certificate issued by SANAS accredited verification agency
<b>QSE</b>	Certificate issued by SANAS accredited verification agency Sworn Affidavit signed by the authorised QSE representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership (only black-owned QSEs - 51% to 100% Black owned) [Sworn affidavits must substantially comply with the format that can be obtained on the DTI's website at <a href="http://www.dti.gov.za/economic_empowerment/bee_codes.jsp">www.dti.gov.za/economic_empowerment/bee_codes.jsp</a> .]
<b>EME<sup>1</sup></b>	Sworn Affidavit signed by the authorised EME representative and attested by a Commissioner of Oaths confirming annual turnover and black ownership Certificate issued by CIPC (formerly CIPRO) confirming annual turnover and black ownership Certificate issued by SANAS accredited verification agency only if the EME is being measured on the QSE scorecard

- 4.3 A trust, consortium or joint venture (including unincorporated consortia and joint ventures) must submit a consolidated B-BBEE Status Level verification certificate for every separate bid.
- 4.4 Tertiary Institutions and Public Entities will be required to submit their B-BBEE status level certificates in terms of the specialized scorecard contained in the B-BBEE Codes of Good Practice.
- 4.5 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.
- 4.6 A person awarded a contract may not sub-contract 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 than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.
- 4.7 Bidders are to note that the rules pertaining to B-BBEE verification and other B-BBEE requirements may be changed from time to time by regulatory bodies such as National Treasury or the DTI. It is the Bidder's responsibility to ensure that his/her bid complies fully with all B-BBEE requirements at the time of the submission of the bid.

## **5. BID DECLARATION**

- 5.1 Bidders who claim points in respect of B-BBEE Status Level of Contribution must complete the following:

## **6. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.4 AND 6.1**

- 6.1 B-BBEE Status Level of Contribution:        .        =        .....(maximum of 20 points)

<sup>1</sup> In terms of the Implementation Guide: Preferential Procurement Regulations, 2017, Version 2, paragraph 11.11 provides that in the Transport Sector, EMEs can provide a letter from accounting officer or get verified and be issued with a B-BBEE certificate by SANAS accredited professional or agency as the Transport Sector Code has not been aligned to the generic Codes. EMEs in the Transport Sector are not allowed to provide a Sworn Affidavit as the generic codes are not applicable to them.

(Points claimed in respect of paragraph 6.1 must be in accordance with the table reflected in paragraph 4.1 and must be substantiated by relevant proof of B-BBEE status level of contributor.

## 7. SUB-CONTRACTING

7.1 Will any portion of the contract be sub-contracted?

(***Tick applicable box***)

YES		NO	
-----	--	----	--

7.1.1 If yes, indicate:

- i) What percentage of the contract will be subcontracted.....%
- ii) The name of the sub-contractor.....
- iii) The B-BBEE status level of the sub-contractor.....
- iv) Whether the sub-contractor is an EME or QSE

(***Tick applicable box***)

YES		NO	
-----	--	----	--

- v) Specify, by ticking the appropriate box, if subcontracting with an enterprise in terms of Preferential Procurement Regulations, 2017:

<b>Designated Group: An EME or QSE which is at last 51% owned by:</b>	<b>EME ✓</b>	<b>QSE ✓</b>
Black people		
Black people who are youth		
Black people who are women		
Black people with disabilities		
Black people living in rural or underdeveloped areas or townships		
Cooperative owned by black people		
Black people who are military veterans		
<b>OR</b>		
Any EME		
Any QSE		

## 8. DECLARATION WITH REGARD TO COMPANY/FIRM

8.1 Name of company/firm:.....

8.2 VAT registration number:.....

8.3 Company registration number:.....

### 8.4 TYPE OF COMPANY/ FIRM

- ☐ Partnership/Joint Venture / Consortium
- ☐ One person business/sole propriety
- ☐ Close corporation
- ☐ Company
- ☐ (Pty) Limited

[TICK APPLICABLE BOX]

### 8.5 DESCRIBE PRINCIPAL BUSINESS ACTIVITIES

.....  
 .....

### 8.6 COMPANY CLASSIFICATION

- ☐ Manufacturer
- ☐ Supplier
- ☐ Professional service provider
- ☐ Other service providers, e.g. transporter, etc.

[TICK APPLICABLE BOX]



- 8.7 Total number of years the company/firm has been in business:.....
- 8.8 I/we, the undersigned, who is / are duly authorised to do so on behalf of the company/firm, certify that the points claimed, based on the B-BBEE status level of contribution indicated in paragraphs 4.1 and 6.1 of the foregoing certificate, qualifies the company/ firm for the preference(s) shown and I / we acknowledge that:
- i) The information furnished is true and correct;
  - ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form;
  - iii) In the event of a contract being awarded as a result of points claimed as shown in paragraphs 4.1 and 6.1, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;
  - iv) If the B-BBEE status level of contributor has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, the purchaser may, in addition to any other remedy it may have-
    - (a) disqualify the person from the bidding process;
    - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
    - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
    - (d) if the successful bidder subcontracted a portion of the bid to another person without disclosing it, Transnet reserves the right to penalise the bidder up to 10 percent of the value of the contract;
    - (e) recommend that the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, be restricted by the National Treasury from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and
    - (f) forward the matter for criminal prosecution.

WITNESSES

1. ....

2. ....

.....

SIGNATURE(S) OF BIDDERS(S)

DATE: .....

ADDRESS .....

.....

## **SECTION 8**

### **PROTECTION OF PERSONAL INFORMATION**

1. The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Person information act, No.4 of 2013.(“POPIA”):  
  
consent; data subject; electronic communication; information officer; operator; person; personal information; processing; record; Regulator; responsible party; special information; as well as any terms derived from these terms.
2. Transnet will process all information by the Respondent in terms of the requirements contemplated in Section 4(1) of the POPIA:  
  
Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.
3. The Parties acknowledge and agree that, in relation to personal information that will be processed pursuant to this RFQ, the Responsible party is “Transnet” and the Data subject is the “Respondent”. Transnet will process personal information only with the knowledge and authorisation of the Respondent and will treat personal information which comes to its knowledge as confidential and will not disclose it, unless so required by law or subject to the exceptions contained in the POPIA.
4. Transnet reserves all the rights afforded to it by the POPIA in the processing of any of its information as contained in this RFQ and the Respondent is required to comply with all prescripts as detailed in the POPIA relating to all information concerning Transnet.
5. In responding to this bid, Transnet acknowledges that it will obtain and have access to personal information of the Respondent. Transnet agrees that it shall only process the information disclosed by Respondent in their response to this bid for the purpose of evaluating and subsequent award of business and in accordance with any applicable law.
6. Transnet further agrees that in submitting any information or documentation requested in this RFQ, the Respondent is consenting to the further processing of their personal information for the purpose of, but not limited to, risk assessment, assurances, contract award, contract management, auditing, legal opinions/litigations, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.
7. Furthermore, Transnet will not otherwise modify, amend or alter any personal data submitted by the Respondent or disclose or permit the disclosure of any personal data to any third party without the prior written consent from the Respondent. Similarly, Transnet requires the Respondent to process any personal information disclosed by Transnet in the bidding process in the same manner.
8. Transnet shall, at all times, ensure compliance with any applicable laws put in place and maintain sufficient measures, policies and systems to manage and secure against all forms of risks to any information that may be shared or accessed pursuant to this RFQ (physically, through a computer or any other form of electronic communication).

9. Transnet shall notify the Respondent in writing of any unauthorised access to information, cybercrimes or suspected cybercrimes, in its knowledge and report such crimes or suspected crimes to the relevant authorities in accordance with applicable laws, after becoming aware of such crimes or suspected crime. The Respondent must take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible.
10. The Respondent may, in writing, request Transnet to confirm and/or make available any personal information in its possession in relation to the Respondent and if such personal information has been accessed by third parties and the identity thereof in terms of the POPIA. The Respondent may further request that Transnet correct (excluding critical/mandatory or evaluation information), delete, destroy, withdraw consent or object to the processing of any personal information relating to the Respondent in Transnet's possession in terms of the provision of the POPIA and utilizing Form 2 of the POPIA Regulations.
11. In submitting any information or documentation requested in this RFQ, the Respondent is hereby consenting to the processing of their personal information for the purpose of this RFQ and further confirming that they are aware of their rights in terms of Section 5 of POPIA.

**Respondents are required to provide consent below:**

<b>YES</b>		<b>NO</b>	
------------	--	-----------	--

12. Further, the Respondent declares that they have obtained all consents pertaining to other data subject's personal information included in its submission and thereby indemnifying Transnet against any civil or criminal action, administrative fines or other penalty or loss that may arise as a result of the processing of any personal information that the Respondent submitted.
13. The Respondent declares that the personal information submitted for the purpose of this RFQ is complete, accurate, not misleading, is up to date and may be updated where applicable.

Signature of Respondent's authorised representative: \_\_\_\_\_

Should a Respondent have any complaints or objections to processing of its personal information, by Transnet, the Respondent can submit a complaint to the Information Regulator on <https://www.justice.gov.za/inforeg/>, click on contact us, click on complaints.IR@justice.gov.za

## **LOCAL CONTENT INSTRUCTION NOTES AND ANNEXURES**



Private Bag X84, PRETORIA, 0001, the dti Campus, 77 Meintjies Street, Sunnyside, 0002, Tel: (012) 394 0000  
the dti Customer Contact Centre local: 0861 843 384 International: +27 12 394 9500, [www.thedti.gov.za](http://www.thedti.gov.za)

## **Guidance Document for the Calculation of Local Content**

### **1. DEFINITIONS**

Unless explicitly provided in this guideline, the definitions given in SATS 1286:2011 apply.

### **2. GENERAL**

#### **2.1. Introduction**

This guideline provides tenderers with a detailed description of how to calculate local content of products (goods, services and works) by components/material/services and enables them to keep an updated record for verification requirements as per the SATS 1286:2011 Annexure A and B.

The guideline consists of two parts, namely:

- a written guideline; and
- three declarations that must be completed:
  - Declaration C: “Local Content Declaration – Summary Schedule” (see Annexure C);
  - Declaration D: “Imported Content Declaration – Supporting Schedule to Annex C” (see Annexure D); and
  - Declaration E: “Local Content Declaration – Supporting Schedule to Annex C” (see Annexure E).

The guidelines and declarations should be used by tenderers when preparing a tender. A tenderer must complete Declarations D and E, and consolidate the information on Declaration C.

**C9. List of items**

Provide a list of the item(s) corresponding with the tender item number.  
This may be a short description or a brand name.

**Calculation of local content**

**C10. Tender price**

Provide the unit tender price of each item excluding VAT.

**C11. Exempted imported content**

Provide the ZAR value of the exempted imported content for each item, if applicable. These value(s) must correspond with the value(s) of column D16 on Annexure D.

**C12. Tender value net of exempted imported content**

Provide the net tender value of the item, if applicable, by deducting the exempted imported content (C11) from the tender price (C10).

**C13. Imported value**

Provide the ZAR value of the items' imported content.

**C14. Local value**

Provide the local value of the item by deducting the Imported value (C13) from the net tender value (C12).

**C15. Local content percentage (per item)**

Provide the local content percentage of the item(s) by dividing the local value (C14) by the net tender value (C12) as per the local content formula in SATS 1286.

**Tender Summary**

**C16. Tender quantity**

Provide the tender quantity for each item number as per the tender specification.

**C17. Total tender value**

Provide the total tender value by multiplying the tender quantity (C16) by the tender price (C10).

tender quantity (D17). The values in column D18 must correspond with the values of column C18 of Annexure C.

**D19. Total exempted imported value**

The total exempted imported value is the sum of the values in column D18. This total must correspond with the value of C21 on Annexure C.

**Table B. Imported Directly By Tenderer**

**D20. Tender item numbers**

Provide the tender item number(s) of the product(s) that have imported content.

**D21. Description of imported content:**

Provide a list of the product(s) imported directly by tender as specified in the tender documentation.

**D22. Unit of measure**

Provide the unit of measure for the product(s) imported directly by the tenderer.

**D23. Overseas supplier**

Provide the name(s) of the overseas supplier(s) supplying the imported product(s).

**D24. Imported value as per commercial Invoice**

Provide the foreign currency value of the product(s) imported directly by tenderer disclosed in the commercial invoice accepted by the South African Revenue Service (SARS).

**D25. Tender rate of exchange**

Provide the exchange rate used for this tender as per the Standard Bidding Document (SBD) and Municipal Bidding Document (MBD) 6.2.

**D26. Local value of imports**

Convert the value of the product(s) imported directly by the tenderer as per commercial invoice (D24) into the ZAR value by using the tender exchange rate (D25) disclosed in the tender documentation.

**5. ANNEXURE E**

**5.1. Guidelines to completing Annexure E: “Local Content Declaration-Supporting Schedule to Annexure C”**

*The paragraph numbers correspond to the numbers in Annexure E*

**E1. Tender number**

Supply the tender number that is specified on the specific tender documentation.

**E2. Tender description**

Supply the tender description that is specified on the specific tender documentation.

**E3. Designated products**

Supply the details of the products that are designated in terms of this tender (for example, buses/canned vegetables).

**E4. Tender authority**

Supply the name of the tender authority.

**E5. Tendering entity name**

Provide the tendering entity name (for example, Unibody Bus Builders (Pty) Ltd) Ltd).

**Local Goods, Services and Works**

**E6. Description of items purchased**

Provide a description of the items purchased locally in the space provided.

**E7. Local supplier**

Provide the name of the local supplier that corresponds to the item listed in column E6.

**E8. Value**

Provide the total value of the item purchased in column E6.



**E9. Total local products (Goods, Services and Works)**

Total local products (goods, services and works) is the sum of the values in E8.

**E10. Manpower costs:**

Provide the total of all the labour costs accruing only to the tenderer (i.e. not the suppliers to tenderer).

**E11. Factory overheads:**

Provide the total of all the factory overheads including rental, depreciation and amortisation for local and imported capital goods, utility costs and consumables. (Consumables are goods used by individuals and businesses that must be replaced regularly because they wear out or are used up. Consumables can also be defined as the components of an end product that are used up or permanently altered in the process of manufacturing, such as basic chemicals.)

**E12. Administration overheads and mark-up:**

Provide the total of all the administration overheads, including marketing, insurance, financing, interest and mark-up costs.

**E13. Total local content:**

The total local content is the sum of the values of E9, E10, E11 and E12. This total must correspond with C24 of Annexure C.



**TO: ACCOUNTING OFFICERS OF ALL NATIONAL DEPARTMENTS AND  
CONSTITUTIONAL INSTITUTIONS**

**ACCOUNTING OFFICERS OF ALL MUNICIPALITIES AND MUNICIPAL  
ENTITIES**

**ACCOUNTING AUTHORITIES OF ALL SCHEDULE 2 AND 3 PUBLIC  
ENTITIES**

**HEAD OFFICIALS OF PROVINCIAL TREASURIES**

**NATIONAL TREASURY DESIGNATED SECTORS INSTRUCTION NUMBER 9 OF  
2016/2017**

**INVITATION AND EVALUATION OF BIDS ON A STIPULATED MINIMUM THRESHOLD  
FOR LOCAL PRODUCTION AND CONTENT FOR:**

- **STEEL POWER PYLONS**
- **MONOPOLE PYLONS**
- **STEEL SUBSTATION STRUCTURES;**
- **POWERLINE HARDWARE**
- **STREET LIGHTING STEEL POLES; AND**
- **STEEL LATTICE TOWERS AND MASTS**

**1. PURPOSE**

- 1.1 The purpose of this Instruction is to:
- 1.1.1 Introduce amendments to the Instruction for steel power pylon dated 28 September 2015 by amending all clauses that contained the deeming of imported primary steel as locally manufactured.
- 1.1.1 Regulate the environment within which Accounting Officers (AOs) and Accounting Authorities (AAs) may procure the aforementioned products which have been designated as a sector for local production and content.

**2. BACKGROUND**

- 2.1. The Preferential Procurement Regulations, 2011 (the regulations) made in terms of section 5 of the Preferential Procurement Policy Framework Act, 2000 (Act No. 5 of 2000) which came into effect on 7 December 2011, make provision for Department of Trade and Industry (**the dti**) to designate sectors in line with national development and industrial policies for local production.
- 2.2. Regulation 9(1) of the regulations prescribes that in the case of designated sectors, where in the award of bids local production and content is of critical importance, such bids must be advertised with the specific condition that only locally produced goods,

**NATIONAL TREASURY DESIGNATED SECTORS INSTRUCTION NUMBER 9 OF 2016/2017  
INVITATION AND EVALUATION OF BIDS ON A STIPULATED MINIMUM THRESHOLD FOR LOCAL  
PRODUCTION AND CONTENT FOR: STEEL POWER PYLONS; MONOPOLE PYLONS; STEEL  
SUBSTATION STRUCTURES; POWERLINE HARDWARE; STREET LIGHTING STEEL POLES; AND STEEL  
AND LATTICE TOWERS AND MASTS**

services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.

- 2.3. The dti has designated and determined the stipulated minimum threshold for the Steel Power and Monopoles Pylons; Steel Substation Structures; Powerline Hardware; Street Lighting Steel Poles and Steel Lattice Towers and Masts for local production and content.

**3. PRODUCT DESIGNATION**

- 3.1 Power pylons and substation structures are steel fabricated (cut, punched and galvanised) components erected for the transmission, distribution and/or reticulation of electrical power from the power station through to the consumer. At every transition between power generation, power transmission and power distribution there is a need for the erection of a substation which serves as a facility for the stepping up or down of power in preparation for the requirements of the next phase of the power transfer process. Substations are erected using steel structures which are fabricated by way of cutting, punching and galvanising.
- 3.2 Depending on the procuring entity's design requirements, galvanised steel monopole structures can be specified for the transfer of power from the power station through to reticulation to the end user. Galvanised steel monopoles are fabricated following a cutting, bending, welding and galvanising process.
- 3.3 In the construction of power pylons, a variety of auxiliary components are used to fulfil such requirements as providing stability to the power pylon structures, attachment and fastening of components, provision of platforms and foundations etc. They are made in a variety of metals including cast aluminium, galvanised steel and brass. These components are collectively referred to as powerline hardware.
- 3.4 The structures are classified under the harmonisation system as follows:
- H730890: Structures and parts of structures iron/steel (Including Steel Powerlines Hardware)
  - H730820: Towers and Lattice Masts (including Monopole Pylons and Street Lighting Poles)
  - H761090 : Aluminium structures and parts for construction (Including Aluminium Powerlines Hardware)
- 3.5 To ensure that local production and content is discharged on manufacturing activities, the following *steel structures* have been designated and must be included in bid invitations:

Product for designation	Minimum local content
Steel Power Pylons	100%
Monopole Pylons	100%
Steel Substation Structures	100%
Powerline Hardware (listed in Appendix A)	100%
Street Lighting Steel Poles	100%
Steel Lattice Towers and Masts	100%

- 3.6 All primary steel related products: flat products (plates and coils) and long products (rounds, angles, sections and wire related products) and secondary aluminium ingots

**NATIONAL TREASURY DESIGNATED SECTORS INSTRUCTION NUMBER 9 OF 2016/2017  
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PRODUCTION AND CONTENT FOR: STEEL POWER PYLONS; MONOPOLE PYLONS; STEEL  
SUBSTATION STRUCTURES; POWERLINE HARDWARE; STREET LIGHTING STEEL POLES; AND STEEL  
AND LATTICE TOWERS AND MASTS**

are included in this designation and must be manufactured and sourced locally. This is to support and sustain the existing local steelmaking and aluminium secondary smelting capacities respectively.

- 3.7 In this designation, imported input raw materials (aluminium extrusion billets for the manufacture of aluminium components; and zinc ingots used for galvanising powerline, street lighting and substation structure components) are deemed as locally manufactured input materials. These inputs should be imported in raw material form for further fabrication in South Africa.
- 3.8 The imported input raw materials indicated in 3.7 for fabrication of steel power pylons and monopole pylons, steel substation structures, powerline hardware, street lighting steel poles and steel lattice towers and masts will be deemed to have been sourced locally for the purposes of calculating local content.
- 3.9 Organs of State may contact the dti in instances where the stipulated minimum threshold for local content cannot be met in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.
- 3.10 Subject to market changes, National Treasury in consultation with the dti reserves the right to reintroduce deeming of primary steel as locally produced.
- 3.11 For further information, bidders and procuring state organs may contact the Metals Fabrication, Capital and Rail Transport unit within the dti at telephone 012 394 4522 or email Muzi Manzi [MManzi@thedti.gov.za](mailto:MManzi@thedti.gov.za).
- 3.12 Bid specifications for the designated products in this instruction may be done in collaboration with the dti.

**4. INVITATION OF BIDS FOR:**

- 4.1 Bids in respect of Steel Power Pylons, Monopole Pylons; Steel Substation Structures; Powerline Hardware; Street Lighting Poles and Lattice Towers and Masts must contain a specific bidding condition which states that:
  - 4.1.1 Only locally produced or locally manufactured products with a stipulated threshold for local production and content will be considered;
  - 4.1.2 If the quantity; input materials; and/or components of steel power pylons, monopole pylons, steel substation structures, power line hardware, street lighting steel poles, and lattice towers and masts required cannot be wholly sourced from South African (SA) based manufacturers to achieve the designated local content threshold at any particular time, bidders should request and obtain written exemption from the dti. Such exemption applications should be submitted and approvals should be obtained prior to the closure of the bid(s) concerned. The dti, in consultation with the procuring Organ of State and the local industry, will consider the exemption applications on a case-by-case basis and will consider the following:
    - Required volumes in the particular bid;
    - Available collective SA industry manufacturing capacity at that time;
    - Delivery times;
    - Availability of input materials and components;
    - Technical considerations including operating conditions; and
    - Materials of construction.
  - 4.1.3 Bidders must clearly indicate in their bids the quantities to be supplied and the level of local content for each product.
- 4.2 AOs/AAs must stipulate in bid invitations that:



**NATIONAL TREASURY DESIGNATED SECTORS INSTRUCTION NUMBER 9 OF 2016/2017  
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SUBSTATION STRUCTURES; POWERLINE HARDWARE; STREET LIGHTING STEEL POLES; AND STEEL  
AND LATTICE TOWERS AND MASTS**

- 4.2.1 The exchange rate to be used for the calculation of local production and content must be the exchange rate published by the South African Reserve Bank (SARB) on the date of advertisement of the bid.
- 4.2.2 Only the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 must be used to calculate local content.
- 4.3 The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the following formula which must be disclosed in the bid documentation:

$$LC = \left(1 - \frac{x}{y}\right) \times 100$$

Where

$x$  is the imported content in Rand

$y$  is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of  $x$  must be converted to Rand (ZAR) by using the exchange rate published by SARB on the date of advertisement of the bid.

- 4.4 AOs/AAs must clearly stipulate in the bid documentation that the SABS approved technical specification number SATS 1286:2011 and the Guidance on the Calculation of Local Content together with the Local Content Declaration Template [Annex C (Local Content Declaration: Summary Schedule), D(Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)] are accessible to all potential bidders on the dti's official website <http://www.thedti.gov.za/industrialdevelopment/ip.jsp> at no cost.
- 4.5 For the purpose of paragraphs 4.1, 4.2 and 4.3 above, the attached Declaration Certificates for Local Production and Content (SBD/MBD 6.2) must form part of the bid documentation. The SBD 6.2 is for use by all National and Provincial Departments, Constitutional Institutions and Public Entities listed in Schedules 2, 3A, 3B, 3C and 3D to which the Public Finance Management Act apply, whilst the MBD 6.2 is for use by all Municipalities and Municipal Entities to which the Municipal Finance Management Act (MFMA) apply.
- 4.6 AOs/AAs must stipulate in the bid documentation that:
- 4.6.1 The Declaration Certificate for Local Production and Content (SBD/MBD 6.2) together with the **Annex C** (Local Content Declaration: Summary Schedule) must be completed, duly signed and submitted by the bidder at the closing date and time of the bid; and
- 4.6.2 The rate of exchange quoted by the bidder in paragraph 4.1 of the Declaration Certificate will be verified for accuracy.
- 5. EVALUATION OF BIDS FOR:**
- STEEL POWER PYLONS
  - MONOPOLE PYLONS;
  - SUBSTATION STRUCTURES;
  - POWERLINE HARDWARE;
  - STREET LIGHTING STEEL POLES; AND
  - STEEL LATTICE TOWERS AND MASTS
- 5.1 A two stage evaluation process must be followed to evaluate the bids received.

**NATIONAL TREASURY DESIGNATED SECTORS INSTRUCTION NUMBER 9 OF 2016/2017  
INVITATION AND EVALUATION OF BIDS ON A STIPULATED MINIMUM THRESHOLD FOR LOCAL  
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AND LATTICE TOWERS AND MASTS**

**5.1.1 First stage: Evaluation in terms of the stipulated minimum threshold for local production and content**

- (a) Bids must be evaluated in terms of the minimum threshold stipulated in the bid documents.
- (b) The declaration made by the bidder in the Declaration Certificate for Local Content (SBD / MBD 6.2) and Annex C (Local Content Declaration: Summary Schedule) must be used for this purpose. If the bid is for more than one product, the local content percentages for each product contained in Annex C must be used.
- (c) The amendment of the stipulated minimum threshold for local production and content is not allowed.
- (d) AOs/AAs must ensure that the **Declaration Certificate for Local Content** (SBD/MBD 6.2) and **Annex C** (Local Content Declaration: Summary Schedule) are submitted as part of the bid documentation.
- (e) AOs/AAs must verify the accuracy of the rates of exchange quoted by the bidder in paragraph 4.1 of the Declaration Certificate for Local Content (SBD/MBD 6.2).

**5.1.2 Second stage: Evaluation in terms of the 80/20 or 90/10 preference point systems**

- (a) Only bids that achieve the minimum stipulated threshold for local production and content must be evaluated further. The evaluation must be done in accordance with the 80/20 or 90/10 preference point systems prescribed in the Preferential Procurement Regulations, 2011.
- (b) AOs/AAs must ensure that bids for products that are designated in this Instruction are awarded at prices that are market related taking into account, among others, benchmarking prices, value for money and economies of scale.
- (c) Where appropriate, prices may be negotiated with short listed or preferred bidders. Such negotiations must not prejudice other bidders.

**5.2 Benchmark/market related prices**

- 5.2.1 AOs/AAs are required to ensure that reasonable or market related prices are secured for the products being procured taking into account factors such as benchmark prices, value for money and economies of scale.
- 5.2.2 For this purpose, AOs/AAs may approach **the dti** to assist, where possible, with benchmark prices. **The dti** will be in a position to provide price references for the different products that have been designated for local production and content.

**6. EVALUATION OF BIDS BASED ON FUNCTIONALITY**

Whenever it is deemed necessary to evaluate bids on the basis of functionality, the prescripts contained in Regulation 4 of the PPPFA regulation and paragraph 6 and 11 of the Implementation Guide must be followed.

**7. POST AWARD AND REPORTING REQUIREMENTS**

- 7.1. Once bids are awarded **the dti** must be:
  - 7.1.1 Notified of all the successful bidders and the value of the contracts; and
  - 7.1.2 Provided with copies of the contracts, the SBD/MBD 6.2 Certificates together with the Annex C submitted by the successful bidder(s).

**NATIONAL TREASURY DESIGNATED SECTORS INSTRUCTION NUMBER 9 OF 2016/2017  
INVITATION AND EVALUATION OF BIDS ON A STIPULATED MINIMUM THRESHOLD FOR LOCAL  
PRODUCTION AND CONTENT FOR: STEEL POWER PYLONS; MONOPOLE PYLONS; STEEL  
SUBSTATION STRUCTURES; POWERLINE HARDWARE; STREET LIGHTING STEEL POLES; AND STEEL  
AND LATTICE TOWERS AND MASTS**

- 7.2. The purpose of the requirements of paragraph 7.1 above is for **the dti** to, among others, conduct compliance audits with a view to monitor the implementation of industrial development strategies.
- 7.3. Contractors must not be allowed to sub-contract 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.
- 7.4. Where, after the award of a bid, contractors experience challenges in meeting the stipulated minimum threshold for local content **the dti** must be informed accordingly in order for the department to verify and in consultation with the AO/AA provide directives in this regard.

**8. CONTACT INFORMATION**

- 8.1 **Any enquiries in respect of Local Production and Content and all documents to be submitted to the dti in respect of paragraph 7.1 above must be directed as follows:**

The Department of Trade and Industry  
Private Bag X84  
Pretoria  
0001

For attention:

Dr Tebogo Makube  
Chief Director: Industrial Procurement  
Tel: (012) 394 3927  
Fax: (012) 394 4927  
Email: [TMakube@thedti.gov.za](mailto:TMakube@thedti.gov.za)

**9. APPLICABILITY**

This Instruction note applies to all National and Provincial Departments, Constitutional Institutions, public Entities listed in Schedule 2 and 3 to the PFMA and Municipalities and Municipal Entities to which MFMA apply.

**10. DISSEMINATION OF INFORMATION CONTAINED IN THIS INSTRUCTION NOTE**

- 10.1 Heads of Provincial Treasuries are requested to bring the contents of this Instruction note to the attention of Accounting Officers and Supply Chain Management Officials of their respective Provincial Departments.
- 10.2 Accounting Officers of National and Provincial Departments are requested to bring the contents of this Instruction note to the attention of Accounting Authorities and the Supply Chain Management Officials of Schedule 3A and 3C Public Entities reporting to their respective Executive Authorities.
- 10.3 Accounting Officers of Municipalities and Municipal Entities are requested to bring the contents of this Instruction Note to the attention of the Supply Chain Management Officials of their Municipalities and Municipal Entities.
- 10.4 Accounting Authorities of Schedule 2, 3B and 3C Public Entities are requested to bring the contents of this Instruction note to the attention of the Supply Chain Management Officials of their Public Entities.

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NATIONAL TREASURY DESIGNATED SECTORS INSTRUCTION NUMBER 9 OF 2016/2017  
INVITATION AND EVALUATION OF BIDS ON A STIPULATED MINIMUM THRESHOLD FOR LOCAL  
PRODUCTION AND CONTENT FOR: STEEL POWER PYLONS; MONOPOLE PYLONS; STEEL  
SUBSTATION STRUCTURES; POWERLINE HARDWARE; STREET LIGHTING STEEL POLES; AND STEEL  
AND LATTICE TOWERS AND MASTS

---

**11. NOTIFICATION TO THE AUDITOR-GENERAL**

A copy of this Instruction will be forwarded to the Auditor-General for notification.

**12. REPEAL OF INSTRUCTION DATED 28 SEPTEMBER 2015**

This Instruction repeals Instruction on invitation and evaluation of bids based on a stipulated minimum threshold for local production and content for Solar Water Heater Components dated 28 September 2015 and effected on 21 October 2015.

**13. AUTHORITY FOR THIS INSTRUCTION NOTE AND EFFECTIVE DATE**

13.1 The Minister of Finance has approved the issuance of this Instruction in terms of Regulation 9(2) of the Preferential Procurement Regulations.

13.2 The Instruction takes effect on 27 July 2016.



**KENNETH BROWN**  
**CHIEF PROCUREMENT OFFICER**

DATE: 30/6/2016.



**NATIONAL TREASURY DESIGNATED SECTORS INSTRUCTION NUMBER 9 OF 2016/2017  
INVITATION AND EVALUATION OF BIDS ON A STIPULATED MINIMUM THRESHOLD FOR LOCAL  
PRODUCTION AND CONTENT FOR: STEEL POWER PYLONS; MONOPOLE PYLONS; STEEL  
SUBSTATION STRUCTURES; POWERLINE HARDWARE; STREET LIGHTING STEEL POLES; AND STEEL  
AND LATTICE TOWERS AND MASTS**

**APPENDIX A: DESIGNATED LINE HARDWARE COMPONENTS**

The stipulated minimum threshold for local content is 100% for each of the items below

Designated Components		
Adaptor plates	Guy Grips	Termination bracket
Adjustable extension links	Helical line items	Threaded rods
Adjustable Stay rod,	Hip stay assembly	Tie strap
Adjustable U bolts	H-Pole Cross-arms	Triangle yokes
Adjustor plate	Insulator spindles & hardware	Trimble
A-Frame Cross-arms	Interim cross-arm	Turnbuckles
Anchor links	Joints & compression fittings	Vibration dampers
Ancillary materials - strain	Jumper terminals	X Arm – A Frames
Arcing horns	Light bracket	Yoke Plates
Armour rods	LV ancillary materials	
Ball clevis	Meter box bracket	
Ball hooks	Midspan joints	
Ball oval eyes	Non-Adjustable stay rod	
Ball tongues	PG clamps	
Base assembly	Pigtail	
Big guards	Pistol clamps	
Bird diverters	Pole clamps	
Bolted connectors	Pole top bracket	
Bolted strain clamps	Pole top make-offs	
Bonding clip	Repair sleeves	
Castings line hardware	Rigid spacers	
Composite/ Silicone Insulators	Rock anchor	
Compression strain clamps	Sag Adjustor	
Conductor clamps	Shackles	
Corona rings	S-Hook	
Counterweights	Socket clevis	
Crosby clamps	Socket tongues	
Cross-arm	Soil Anchors	
Curved washer	Spacer dampers	
Dampers	Spacer yokes	
D-Iron	Spindles	
Earth anchor	Stay bracket	
Earthing	Stay plate	
Equipment platform / Transformer platform	Stay steel components	
Equipment platform bracket	Stay Wire / Steel Wire	
Eye bolt	Steel Poles	
Eye nut	Steel rope terminal fittings	
Fasteners - threaded rods	Strain bracket	
Fasteners (Bolts, nuts, washers, threaded rod)	Strain cross-arm	
Fasteners bolt, nuts & washers	Strapping	
Fasteners strain nuts, strain bolts & forgings	Streetlight brackets	
Forging line hardware	Strut bracket	
Fuse Cut-out Brackets	Support cradle	
Fuse Holder brackets	Suspension cross-arm	
Galvanised pre-fabricated steel	Swivel bracket	

**MANDATORY RETURNABLE DOCUMENT:  
FAILURE TO FULLY COMPLETE, DECLARE, SIGN, DATE & WITNESS  
THIS ANNEXURE B WILL RESULT IN THE BID BEING NON-RESPONSIVE &  
DISQUALIFIED**

**ANNEXURE B****SBD 6.2****DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS**

This Standard Bidding Document (SBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2017, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

**1. General Conditions**

- 1.1. Preferential Procurement Regulations, 2017 (Regulation 8) makes provision for the promotion of local production and content.
- 1.2. Regulation 8.(2) prescribes that in the case of designated sectors, where in the award of bids local production and content is of critical importance, such bids must be advertised with the specific bidding condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.
- 1.3. In terms of Regulation 16(2) of the Preferential Procurement Regulations, 2017, any sector designated and minimum threshold determined for local production and content for purposes of regulation 9 of the 2011 Regulations and in force immediately before the repeal of the 2011 Regulations, are regarded as having been done under regulation 8(1) of the 2017 Regulations.
- 1.4. Where necessary, for bids referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.
- 1.5. A person awarded a contract in relation to a designated sector, may not sub-contract 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.
- 1.6. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where

x is the imported content in Rand

y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

**The SABS approved technical specification number SATS 1286:2011 is accessible on <http://www.thedti.gov.za/industrial development/ip.jsp> at no cost.**

- 1.7. A bid will be disqualified if this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation;

**2. The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:**

<u>Description of services, works or goods</u>	<u>Stipulated minimum threshold</u>
<b>1. Contact splices</b>	<b>100%</b>
<b>2. Contact clips</b>	<b>100%</b>

**MANDATORY RETURNABLE DOCUMENT:  
FAILURE TO FULLY COMPLETE, DECLARE, SIGN, DATE & WITNESS  
THIS ANNEXURE B WILL RESULT IN THE BID BEING NON-RESPONSIVE &  
DISQUALIFIED**

3. Crosby clamps	100%
4. Dropper saddles	100%
5. Swivel Clips	100%
6. 161 x 160mm Clamps	100%
7. 160 x 160 Clamps	100%
8. steady arm with socket	100%
9. 3kV DC Track Switch	100%
10. 3kV DC suspension Insulator	100%
11. 3kV section Insulator	100%

3. Does any portion of the services, works or goods offered have any imported content?

( *Tick applicable box* )

YES		NO	
-----	--	----	--

- 3.1. If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on [www.reservebank.co.za](http://www.reservebank.co.za)

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

Currency	Rates of exchange
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

4. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

**MANDATORY RETURNABLE DOCUMENT:  
FAILURE TO FULLY COMPLETE, DECLARE, SIGN, DATE & WITNESS  
THIS ANNEXURE B WILL RESULT IN THE BID BEING NON-RESPONSIVE &  
DISQUALIFIED**

**LOCAL CONTENT DECLARATION (REFER TO ANNEX B OF SATS 1286:2011)**

**LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)**

**IN RESPECT OF BID NO. CRAC-STQ-38036**

**ISSUED BY: TRANSNET SOC LTD**

NB

- 1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.
- 2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on [http://www.thdti.gov.za/industrial\\_development/ip.jsp](http://www.thdti.gov.za/industrial_development/ip.jsp). Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, ..... (full names), do hereby declare, in my capacity as .....of.....(name of bidder entity), the following:

- (a) The facts contained herein are within my own personal knowledge.
- (b) I have satisfied myself that:
  - (i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and
- (c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	<b>100%</b>
Local content %, as calculated in terms of SATS 1286:2011	

FAILURE TO  
FULLY  
COMPLETE,  
DECLARE &  
SIGN THIS  
WILL RESULT  
IN THE BID  
BEING NON-  
RESPONSIVE &  
DISQUALIFIED

**If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above. The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.**

- (d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.
- (e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 14 of the Preferential Procurement Regulations, 2017 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**WITNESS No. 1** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**WITNESS No. 2** \_\_\_\_\_

**DATE:** \_\_\_\_\_



SATS 1286.2011

**Annex C**

**MANDATORY RETURNABLE DOCUMENT:**  
**FAILURE TO FULLY COMPLETE, DECLARE, SIGN & DATE THIS ANNEXURE C**  
**WILL RESULT IN THE BID BEING NON-RESPONSIVE & DISQUALIFIED**

**NB: THESE SHADED SECTIONS MUST BE COMPLETED BY THE TENDERER**

**Local Content Declaration - Summary Schedule**

(C1)	<b>Tender No.</b>	CRAC-STQ-38036	
(C2)	<b>Tender description:</b>	RFQ FOR THE SUPPLY AND DELIVERY OF ELECTRICAL OHE COMPONENTS TO TRANSNET FREIGHT RAIL NATIONAL INFRA DEPOT, SENTRA RAND ON A ONCE-OFF REQUIREMENT.	
(C3)	<b>Designated product(s)</b>	POWERLINE HARDWARE	
(C4)	<b>Tender Authority:</b>	TRANSNET FREIGHT RAIL	
(C5)	<b>Tendering Entity name:</b>		
(C6)	<b>Tender Exchange Rate:</b> <b>Select/Amend to reflect the applicable foreign currency</b>	PULA	EU
(C7)	<b>Specified local content</b>	100%	

**Note:** VAT to be excluded from all calculations

		Calculation of local content						Tender summary			
Tender item no's	List of items	Tender price - each (excl VAT)	Exempted imported value	Tender value- net of exempted imported content	Imported value	Local value	Local content % (per item)	Tender Qty	Total tender value	Total exempted imported content	Total Imported content
(C8)	(C9)	(C10)	(C11)	(C12)	(C13)	(C14)	(C15)	(C16)	(C17)	(C18)	(C19)
1	Contact splices										
2	Contact clips										
3	Crosby clamps										
4	Dropper saddles										
5	Swil Clips										
6	161 x 160mm Clamps										
7	160 x 160 Clamps										
8	steady arm with socket										
9	3kV DC Track Switch										
10	3kV DC suspension Insulator										
	3kV section Insulator										
		(C20) Total tender value R									
		(C21) Total Exempt imported content									
		(C22) Total Tender value net of exempt imported content									
		(C23) Total Imported content									
		(C24) Total local content									
		(C25) Average local content % of tender									
<b>Signature of tenderer from Annex B</b>											
X											
Date:											

**NB: THESE SHADED SECTIONS MUST BE COMPLETED BY THE TENDERER**

**ESSENTIAL RETURNABLE DOCUMENT:**  
**FAILURE TO FULLY COMPLETE, DECLARE, SIGN & DATE THIS ANNEXURE D**  
**MAY RESULT IN THE BID BEING NON-RESPONSIVE & DISQUALIFIED**

### Imported Content Declaration - Supporting Schedule to Annex C

[illegible]

### Calculation of imported content

## Summary

[illegible]

(D19) Total exempt imported value	R
-----------------------------------	---

**This total must correspond with  
Annex C - C21**

### Calculation of imported content

## Summary

[illegible]

(D32) Total imported value by tenderer	R
--	---

### Calculation of imported content

## Summary

[illegible]

(D45) Total imported value by 3rd party	R
---	---

### Calculation of foreign currency payments

### Summary of payments

[illegible]

(D52) Total of foreign currency payments declared by tenderer and/or 3rd party

Signature of tenderer from Annex B

	X
--	---

(D53) Total of imported content & foreign currency payments - (D32), (D45) & (D52) above

Date:

**This total must correspond with  
Annex C - C 23**

**NB: THESE SHADED SECTIONS MUST BE COMPLETED BY THE TENDERER**

**ESSENTIAL RETURNABLE DOCUMENT:**  
**FAILURE TO FULLY COMPLETE, DECLARE, SIGN & DATE THIS ANNEXURE E**  
**MAY RESULT IN THE BID BEING NON-RESPONSIVE & DISQUALIFIED**

## Local Content Declaration - Supporting Schedule to Annex C

(E1)	Tender No.	CRAC-STQ-38036			
(E2)	Tender description:	RFQ FOR THE SUPPLY AND DELIVERY OF ELECTRICAL OHTE COMPONENTS TO TRANSNET FREIGHT RAIL NATIONAL INFRA DEPOT, SENTRA RAND ON A ONCE-OFF REQUIREMENT.			<b>Note:</b> VAT to be excluded from all calculations
(E3)	Designated products:	POWERLINE HARDWARE			
(E4)	Tender Authority:	TRANSNET FREIGHT RAIL			
(E5)	Tendering Entity name:				

Local Products (Goods, Services and Works)		Description of items purchased	Local suppliers	Value
		(E6)	(E7)	(E8)
		<b>(E9) Total local products (Goods, Services and Works)</b>		R
(E10)	<b>Manpower costs</b>	(Tenderer's manpower cost)		R
(E11)	<b>Factory overheads</b>	(Rental, depreciation & amortisation, utility costs, consumables etc.)		R
(E12)	<b>Administration overheads and mark-up</b>	(Marketing, insurance, financing, interest etc.)		R
			<b>(E13) Total local content</b>	R
			<b>This total must correspond with Annex C</b>	
			<b>C24</b>	

**Signature of tenderer from Annex B**

	X
--	---

Date:



**TRANSNET GENERAL TERMS AND CONDITIONS**

**GENERAL BID CONDITIONS**

**[June 2022]**

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## 22 DEFINITIONS

Where the following words or phrases are used in this Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise:

- 22.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;
- 22.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- 22.3 **Business Day** shall mean any day other than a Saturday, Sunday or public holiday;
- 22.4 **Goods** shall mean the goods required by Transnet as specified in its Bid Document;
- 22.5 **Parties** shall mean Transnet and the Respondents to a Bid Document;
- 22.6 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- 22.7 **RFP** shall mean Request for Proposal;
- 22.8 **RFQ** shall mean Request for Quotation;
- 22.9 **RFX** shall mean RFP or RFQ, as the case may be;
- 22.10 **Services** shall mean the services required by Transnet as specified in its Bid Document;
- 22.11 **Service Provider or Supplier** shall mean the successful Respondent;
- 22.12 **Tax Invoice** shall mean the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 22.13 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- 22.14 **VAT** shall mean Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

## 23 GENERAL

All Bid Documents and subsequent contracts and orders shall be subject to the following general conditions as laid down by Transnet and are to be strictly adhered to by any Respondent to this RFX.

## 24 SUBMITTING OF BID DOCUMENTS

- 24.1 A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Transnet no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.
- 24.2 The Bid Documents must be completed in their entirety and Respondents are required to complete and submit their Bid submissions by uploading them into the system against each tender selected. The bidder guide can be found on the Transnet Portal [transnetetenders.azurewebsites.net](https://transnetetenders.azurewebsites.net).

## 25 USE OF BID FORMS

- 25.1 Where special forms and/or formats are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and/or formats and not in other forms and/or formats or documents bearing



their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.

25.2 Respondents must note that the original Bid forms and/or formats must be completed for submission.

25.3 Only if insufficient space has been allocated to a particular response may a Respondent submit additional information under separate cover using the Company's letterhead. This must be duly cross-referenced in the RFX.

## **26 BID FEES**

A bid fee is not applicable. The Bid Documents may be downloaded directly from National Treasury's e-Tender Publication Portal at [www.etenders.gov.za](http://www.etenders.gov.za) and may also be downloaded from the Transnet website at [www.transnet.net](http://www.transnet.net) free of charge.

## **27 VALIDITY PERIOD**

27.1 The Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period after the closing date of the bid.

27.2 Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change/s is as a direct and unavoidable consequence of Transnet's extension of the validity period.

## **28 SITE VISITS / BRIEFING SESSIONS**

Respondents may be requested to attend a site visit or briefing session where it is necessary to view the site in order to prepare their Bids, or where Transnet deems it necessary to provide Respondents with further information to allow them to complete their Bids properly. Where such visits or sessions are indicated as compulsory in the RFX Document, Respondents are obliged to attend these meetings as failure to do so will result in their disqualification.

## **29 CLARIFICATION BEFORE THE CLOSING DATE**

Should clarification be required on any aspect of the Bid before the closing date, the Respondent must upload questions onto the Transnet e-Tender Submission Portal or direct such queries to the contact person listed in the RFX Document in the stipulated manner.

## **30 COMMUNICATION AFTER THE CLOSING DATE**

After the closing date of a Bid (i.e. during the evaluation period) the Respondent may only communicate with the contact person listed in the RFX Document.

## **31 UNAUTHORISED COMMUNICATION ABOUT BIDS**

Respondents may at any time communicate with the contact person listed in the RFX Document on any matter relating to its Bid but, in the absence of written authority from the delegated individual (BEC chairperson), no communication on a question affecting the subject of a Bid shall take place between Respondents or other potential service providers or any member of the Bid Adjudication Committee or official of Transnet during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.



### **32 RETURNABLE DOCUMENTS**

All returnable documents listed in the RFX Documents must be submitted with Respondent's Bid. Failure to submit mandatory returnable schedules / documents will result in disqualification. Failure to submit other schedules / documents may result in disqualification.

### **33 DEFAULTS BY RESPONDENTS**

If the Respondent, after it has been notified of the acceptance of its Bid fails to:

- 33.1 enter into a formal contract when called upon to do so within such period as Transnet may specify; or
- 33.2 accept an order in terms of the Bid;
- 33.3 furnish satisfactory security when called upon to do so for the fulfilment of the contract; or
- 33.4 comply with any condition imposed by Transnet,

Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other Bid or, if it is necessary to do so, call for Bids afresh, and may recover from the defaulting Respondent any additional expense incurred by Transnet in calling for new offers or in accepting a less favourable offer.

### **34 CURRENCY**

All monetary amounts referred to in a Bid response must be in Rand, the currency of the Republic of South Africa [**ZAR**], save to the extent specifically permitted in the RFP.

### **35 PRICES SUBJECT TO CONFIRMATION**

Prices which are quoted subject to confirmation will not be considered.

### **36 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES**

All alterations made by the Respondent to its Bid price(s) prior to the submission of its Bid Documents must be done by deleting the incorrect figures and words where required and by inserting the correct figures and words against the items concerned. All such alterations must be initialled by the person who signs the Bid Documents. Failure to observe this requirement may result in the particular item(s) concerned being excluded in the matter of the award of the business.

### **37 EXCHANGE AND REMITTANCE**

37.1 The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Supplier/Service Provider, effect payment overseas directly to the foreign principal or manufacturer of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.

37.2 It is Transnet's preference to enter into Rand-based agreements. Transnet would request, therefore, that the Respondent give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order.



37.3 The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the information called for in the Exchange and Remittance section of the Bid Documents and also furnish full details of the principals or manufacturer to whom payment is to be made.

37.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.

37.5 Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which the Goods/Services were to be delivered, as set out in the order and/or contract, or any subsequent agreement between the parties.

37.6 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value-Added Tax Act no. 89 of 1991 [VAT Act].

### **38 ACCEPTANCE OF BID**

38.1 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.

38.2 Where the Respondent has been informed by Transnet of the acceptance of its Bid, an email communication that has been successfully sent to the Respondent shall be regarded as proof of delivery to the Respondent 1 day after the date of submission.

### **39 NOTICE TO UNSUCCESSFUL RESPONDENTS**

39.1 Unsuccessful Respondents shall be advised in writing that their Bids have not been accepted as soon as possible after the closing date of the Bid. On award of business to the successful Respondent all unsuccessful Respondents must be informed of the name of the successful Respondent and of the reason as to why their Bids had been unsuccessful.

### **40 TERMS AND CONDITIONS OF CONTRACT**

40.1 The Supplier/Service Provider shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.

40.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ alternatives by written submission on a company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed amendments /alternative(s) are acceptable or otherwise, as the case may be. Respondents will be afforded an opportunity to withdraw an unacceptable deviation, failing which the respondent will be disqualified.

### **41 CONTRACT DOCUMENTS**

41.1 The contract documents will comprise these General Bid Conditions, the Terms and Conditions of Contract and any schedule of "Special Conditions" which form part of the Bid Documents.

41.2 The abovementioned documents together with the Respondent's Bid response will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of



acceptance, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.

41.3 Should Transnet inform the Respondent that a formal contract will be signed, the abovementioned documents together with the Respondent's Bid response [and, if any, its covering letter and any subsequent exchange of correspondence] as well as Transnet's Letter of Acceptance, shall constitute a binding contract until the final contract is signed.

## **42 LAW GOVERNING CONTRACT**

The law of the Republic of South Africa shall govern the contract created by the acceptance of a Bid. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent in its Bid at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. A foreign Respondent shall, therefore, state in its Bid the name of its authorised representative in the Republic of South Africa who is empowered to sign any contract which may be entered into in the event of its Bid being accepted and to act on its behalf in all matters relating to the contract.

## **43 IDENTIFICATION**

If the Respondent is a company, the full names of the directors shall be stated in the Bid. If the Respondent is a close corporation, the full names of the members shall be stated in the Bid. If the Respondent is a partnership or an individual trading under a trade name, the full names of the partners or of such individual, as the case may be, shall be furnished.

## **44 RESPONDENT'S SAMPLES**

44.1 If samples are required from Respondents, such samples shall be suitably marked with the Respondent's name and address, the Bid number and the Bid item number and must be despatched in time to reach the addressee as stipulated in the Bid Documents on or before the closing date of the Bid. Failure to submit samples by the due date may result in the rejection of a Bid.

44.2 Transnet reserves the right to retain samples furnished by Respondents in compliance with Bid conditions.

44.3 Payment will not be made for a successful Respondent's samples that may be retained by Transnet for the purpose of checking the quality and workmanship of Goods/Services delivered in execution of a contract.

44.4 If Transnet does not wish to retain unsuccessful Respondents' samples and the Respondents require their return, such samples may be collected by the Respondents at their own risk and cost.

## **45 SECURITIES**

45.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of a Deed of Suretyship [Deed of Suretyship] furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.



45.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.

45.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.

45.4 For the purpose of clause 45.145.1 above, Transnet will supply a Deed of Suretyship form to the successful Respondent for completion and no guarantee in any other form will be accepted. A copy of such form will be supplied to Respondents on request. For this purpose a Deed of Suretyship form will be provided which shall be completed and returned to Transnet or a designated official by the successful Respondent within 30 [thirty] calendar days from the date of the letter of acceptance. No payment will be made until the form, duly completed, is delivered to Transnet. Failure to return the Deed of Suretyship within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Supplier/Service Provider to cancel the contract with immediate effect.

45.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Supplier/Service Provider in relation to the conditions of this clause 45.4 will be for the account of the Supplier/Service Provider.

#### **46 PRICE AND DELIVERY BASIS FOR GOODS**

46.1 Unless otherwise specified in the Bid Documents, the prices quoted for Goods must be on a Delivered Duty Paid [latest ICC Incoterms] price basis in accordance with the terms and at the delivery point or points specified in Transnet's Bid Documents. Bids for supply on any other basis of delivery are liable to disqualification. The lead time for delivery stated by the Respondent must be inclusive of all non-working days or holidays, and of periods occupied in stocktaking or in effecting repairs to or overhauling plant, which would ordinarily occur within the delivery period given by the Respondent.

46.2 Respondents must furnish their Bid prices in the Price Schedule of the Bid Documents on the following basis:

Local Supplies - Prices for Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held in South Africa, to be quoted on a Delivered RSA named destination basis.

Imported Supplies - Prices for Goods to be imported from all sources to be quoted on a Delivered Duty Paid [latest ICC Incoterms] basis, to end destination in South Africa, unless otherwise specified in the Bid Price Schedule.

#### **47 EXPORT LICENCE**

The award of a Bid for Goods to be imported may be subject to the issue of an export licence in the country of origin or supply. If required, the Supplier/Service Provider's manufacturer or forwarding agent shall be required to apply for such licence.

#### **48 QUALITY OF MATERIAL**

Unless otherwise stipulated, the Goods offered shall be NEW i.e. in unused condition, neither second-hand nor reconditioned.





#### **49 DELETION OF ITEMS EXCLUDED FROM BID**

The Respondent must delete items for which it has not tendered or for which the price has been included elsewhere in its Bid.

#### **50 VALUE-ADDED TAX**

50.1 In respect of local supplies, i.e. Goods to be manufactured, produced or assembled in the Republic of South Africa, or imported supplies held or already in transit to South Africa, the prices quoted by the Respondent are to be inclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.

50.2 In respect of foreign Services rendered:

- a) the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and
- b) the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

#### **51 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT**

51.1 Method of Payment

The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.

However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.

The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.

The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 51.1 (a) above. Failure to comply with clause 51.1 (a) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Supplier/Service Provider**] shall, where applicable, be required to furnish a guarantee covering any advance payments.

51.2 Conditional Discount

Respondents offering prices which are subject to a conditional discount applicable for payment within a specific period are to note that the conditional period will be calculated as from the date of receipt by Transnet of the Supplier/Service Provider's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax Invoice is correct in all respects as referred to in the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional period will be recalculated from the date of receipt of the correct documentation.

#### **52 CONTRACT QUANTITIES AND DELIVERY REQUIREMENTS**

52.1 Contract Quantities

It must be clearly understood that although Transnet does not bind itself to purchase a definitive quantity under any contract which may be entered into pursuant to this Bid, the successful



Respondent nevertheless undertakes to supply against the contract such quantities as may be ordered against the contract, which orders are posted or delivered by hand or transmitted electronically on or before the expiry date of such contract.

It is furthermore a condition that Transnet will not accept liability for any material/stocks specially ordered or carried by the Respondent with a view to meeting the requirements under any such contract.

The estimated planned quantities likely to be ordered by Transnet per annum are furnished in relevant section of the Bid Documents. For avoidance of doubt the estimated quantities are estimates and Transnet reserves the right to order only those quantities sufficient for its operational requirements.

## 52.2 Delivery Period

### Period Contracts and Fixed Quantity Requirements

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of the Terms and Conditions of Contract.

### Progress Reports

The Supplier/Service Provider may be required to submit periodical progress reports with regard to the delivery of the Goods/Services.

### Emergency Demands as and when required

If, due to unforeseen circumstances, supplies of the Goods/Services covered by the Bid are required at short notice for immediate delivery, the Supplier/Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period, Transnet reserves the right to purchase such supplies as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. The *Total or Partial Failure to Perform the Scope of Supply* section in the Terms and Conditions of Contract will not be applicable in these circumstances.

## 53 PLANS, DRAWINGS, DIAGRAMS, SPECIFICATIONS AND DOCUMENTS

### 53.1 Copyright

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Supplier/Service Provider for the purpose of contract work shall be governed by the Intellectual Property Rights section in the Terms and Conditions of Contract.

### 53.2 Drawings and specifications

In addition to what may be stated in any Bid Document, the Respondent should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for Goods/Services strictly in accordance with the drawings and/or specifications supplied by Transnet, notwithstanding that it may be aware that alterations or amendments to such drawings or specifications are contemplated by Transnet.

### 53.3 Respondent's drawings

Drawings required to be submitted by the Respondent must be furnished before the closing time and date of the Bid. The non-receipt of such drawings by the appointed time may disqualify the Bid.



#### 53.4 Foreign specifications

The Respondent quoting for Goods/Services in accordance with foreign specifications, other than British and American standards, is to submit translated copies of such specifications with the Bid. In the event of any departures or variations between the foreign specification(s) quoted in the Bid Documents, full details regarding such departures or variations must be furnished by the Respondent in a covering letter attached to the Bid. Non-compliance with this condition may result in disqualification.

### 54 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS

54.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the designated official of Transnet according to whichever officer is specified in the Bid Documents.

54.2 In the case of a representative or agent, written proof must be submitted to the effect that such representative or agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative or agent shall disqualify the Bid.

54.3 When legally authorised to prepare and submit Bids on behalf of their principals not domiciled in the Republic of South Africa, representatives or agents must compile the Bids in the names of such principals and sign them on behalf of the latter.

54.4 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative or agents authorising them to enter into and sign such contract.

Such Power of Attorney must comply with Rule 63 (Authentication of documents executed outside the Republic for use within the Republic) of the Uniform Rules of Court: Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.

The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.

If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.

The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi*.

54.5 If payment is to be made in South Africa, the foreign Supplier/Service Provider [i.e. the principal, or its South African agent or representative], must notify Transnet in writing whether, for payment by electronic funds transfer [EFT]:

funds are to be transferred to the credit of the foreign Supplier/Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished;  
or

funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.



54.6 The attention of the Respondent is directed to clause 45 above [Securities] regarding the provision of security for the fulfilment of contracts and orders and the manner and form in which such security is to be furnished.

## **55 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.

## **56 CONFLICT WITH ISSUED RFX DOCUMENT**

56.1 Should a conflict arise between these General Bid Conditions and the issued RFX document, the conditions stated in the RFX document shall prevail.

**ooo000ooo**

**MASTER AGREEMENT**

entered into by and between

**TRANSNET SOC LTD**

and

.....

**FOR THE SUPPLY AND DELIVERY: OF ELECTRICAL COMPONENTS TO TRANSNET FREIGHT RAIL  
INFRA DEPOT, SENTRA RAND ON A ONCE OFF -REQUIREMENT**

**Agreement Number** .....

**Commencement Date** .....

**Expiry Date** .....

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SCHEDULE 1 – SCHEDULE OF REQUIREMENTS

## **I. INTRODUCTION**

This Agreement is entered into by and between:

**Transnet SOC Ltd** [Registration Number 1990/000900/30] whose registered address is  
....., Republic of South Africa [**Transnet**]

and

..... [Registration Number .....] whose registered address is  
..... [**the Supplier**].

### **NOW THEREFORE, IT IS AGREED:**

- a. Transnet hereby appoints the Supplier to provide, and Transnet undertakes to accept the supply of Goods / provision of Services provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements / Work Orders issued as a schedule to this Agreement; and
- b. the Supplier hereby undertakes to provide the Goods/Services provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements issued as a schedule to this Agreement.

## **II. DEFINITIONS**

Where the following words or phrases are used in this Agreement, such words or phrases shall have the meaning assigned thereto in this clause, except where the context clearly requires otherwise:

- a. **AFSA** means the Arbitration Foundation of South Africa;
- b. **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, and/or schedules, including the Schedule of Requirements/Work Orders, the technical specifications for the Goods/Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Supplier [as agreed, in writing, between the Parties], which collectively and exclusively govern the supply of Goods and provision of ancillary Services by the Supplier to Transnet;
- c. **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under this Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;
- d. **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
- e. **Commencement Date** means ....., notwithstanding the signature date of this Agreement;
- f. **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or

unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

information relating to methods of operation, data and plans of the disclosing Party;

the contents of this Agreement;

private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;

any information disclosed by either Party and which is clearly marked as being confidential or secret;

information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;

information relating to the past, present and future research and development of the disclosing Party;

information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;

information contained in the software and associated material and documentation belonging to the disclosing Party;

technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;

Copyright works;

commercial, financial and marketing information;

data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;

plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;

information concerning faults or defects in Goods, equipment, hardware or software or the incidence of such faults or defects; and

information concerning the charges, fees and/or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

- g. **Copyright** means the right in expressions, procedures, methods of operations or mathematical concepts, computer program codes, compilations of data or other material, literary works, musical works, artistic works, sound recordings, broadcasts, program carrying signals, published editions, photographic works, or cinematographic works of the copyright owner to do or to authorise the doing of certain acts specified in respect of the different categories of works;
- h. **Data** means all data, databases, documents, information, graphics, text or other material in an electronic or tangible medium which the Parties to this Agreement generate, collect, process, store or transmit in relation to their business;
- i. **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;



- j. **Expiry Date** means ..... ;
- k. **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to this Agreement;
- l. **Goods** means SMALL OHTE COMPONENTS, the material / products specified in the Schedule of Requirements appended as Schedule 1 hereto
- m. **ICC Incoterms** means the the latest version of commercial trade terms as published by the International Chamber of Commerce, Paris [ICC], which are otherwise referred to as purchase terms and which define precisely the responsibilities, costs and risks of the buyer [**Transnet**] and the seller [**the Supplier**]. Incoterms are only applicable to contracts involving the import or export of Goods from one country to another and for the purpose of this Agreement, if applicable, shall mean the designated Incoterm as stipulated in Schedule 1 hereto. Further details of the Incoterm [purchase terms] for this Agreement, if applicable, can be viewed at the International Business Training website - <http://www.i-b-t.net/incoterms.html>;
- n. **Imported content** means that portion of the bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad (this includes labour or intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry
- o. **Intellectual Property** means Patents, Designs, Know-How, Copyright and Trade Marks and all rights having equivalent or similar effect which may exist anywhere in the world and includes all future additions and improvements to the Intellectual Property;
- p. **Know-How** means all Confidential Information of whatever nature relating to the Intellectual Property and its exploitation as well as all other Confidential Information generally relating to Transnet's field of technology, including technical information, processing or manufacturing techniques, Designs, specifications, formulae, systems, processes, information concerning materials and marketing and business information in general;
- q. **Local content** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;
- r. **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;
- s. **Party** means either one of these Parties;
- t. **Patents** mean registered Patents and Patent applications, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;
- u. **Permitted Purpose** means any activity or process to be undertaken or supervised by a Staff member of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;
- v. **Price(s)** means the agreed Price(s) for the Goods/Services to be purchased from the Supplier/Service Provider by Transnet, as detailed in the Schedule of Requirements, issued in accordance with this Agreement, as amended by mutual agreement between the Parties and in accordance with the terms and conditions in this Agreement from time to time;

- w. **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Supplier/Service Provider for the supply of Goods or Services;
- x. **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the **Goods** to be provided by the **Supplier**;
- y. **Staff** means any partner, employee, agent, consultant, independent associate or contractor, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;
- z. **Schedule of Requirements** means Schedule 1 hereto;
- aa. **Subcontract** means any contract or agreement or proposed contract or agreement between the Supplier/Service Provider and any third party whereby that third party agrees to provide to the Supplier the Goods or related Services or any part thereof or material used in the manufacture of the Goods or any part thereof;
- bb. **Subcontractor** means the third party with whom the Supplier enters into a Subcontract;
- cc. **Tax Invoice** means the document as required by Section 20 of the VAT Act, as may be amended from time to time;
- dd. **Trade Marks** mean registered Trade Marks and Trade Mark applications and include any sign or logo, or combination of signs and/or logos capable of distinguishing the goods or services of one undertaking from those of another undertaking;
- ee. **VAT** means Value-Added Tax chargeable in terms of the VAT Act, 89 of 1991, as may be amended from time to time; and
- ff. **VAT Act** means the Value Added Tax Act, No 89 of 1991, as may be amended from time to time.
- gg. **Schedule of Requirements** means a detailed scope of work for a Service required by Transnet, including **timeframes**, Deliverable, Fees and costs for the supply of the Service to Transnet, which may be appended to this Agreement from time to time.

### **III. INTERPRETATION**

- a. Clause headings in this Agreement are included for ease of reference only and do not form part of this Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.
- b. Any term, word or phrase used in this Agreement, other than those defined under the clause heading "*Definitions*" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.
- c. A reference to the singular incorporates a reference to the plural and *vice versa*.
- d. A reference to natural persons incorporates a reference to legal persons and *vice versa*.
- e. A reference to a particular gender incorporates a reference to the other gender.

### **IV. NATURE AND SCOPE**

- a. This Agreement is an agreement under the terms and conditions of which the Supplier/Service Provider will arrange for the supply/provision to Transnet of the Goods/Services which meet the requirements

and specifications of Transnet, the delivery of which is controlled by means of Purchase Orders to be issued by Transnet and executed by the Supplier/Service Provider in accordance with this Agreement.

- b. Such Purchase Orders and deliveries to Transnet shall be agreed between the Parties from time to time, subject to the terms of the Schedule of Requirements/Work Order.
- c. Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.
- d. During the period of this Agreement, both Parties can make written suggestions for amendments to the Schedule of Requirements/Work Orders in accordance with procedures set out in clause xxxv2 *[Amendment and Change Control]*. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.
- e. Insofar as any term, provision or condition in the Schedule of Requirements/Work Order conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, the term or provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.
- f. Time will be of the essence and the Supplier/Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Supplier/Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

## **V. AUTHORITY OF PARTIES**

- a. Nothing in this Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.
- b. Neither Party shall be entitled to, or have the power or authority to:
  - a) enter into an agreement in the name of the other; or
  - b) give any warranty, representation or undertaking on the other's behalf; or
  - c) create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

## **VI. DURATION/TERM AND CANCELLATION**

- a. Notwithstanding the date of signature hereof, the Commencement Date if this Agreement is ..... and the duration shall be for a ..... [.....] year period, expiring on ....., unless:  
 this Agreement 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 Agreement is extended at Transnet's option for a further period to be agreed by the Parties.
- b. Notwithstanding clause xxii9 *[Breach and Termination]*, either Party may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the other Party,

provided that in such instance, this Agreement will nevertheless be applicable in respect of all Purchase Orders which have been placed prior to the date of such cancellation.

#### **VII. RISK MANAGEMENT**

- a. Where Transnet determines appropriate, within 2 weeks from the date of contract signature, the Parties are to meet to prepare and maintain a contract Risk Register. The Risk Register shall include a description of the risks and a description of the actions which are to be taken to avoid or reduce these risks which both Parties shall jointly determine.
- b. Contract progress meetings shall be held monthly, or unless otherwise agreed between the Parties in writing. The purposes of these progress meetings shall be to capture the number of late deliverables against agreed milestones, actual costs against payment plans, performance issues or concerns, contract requirements not achieved, the status of previous corrective actions and risk management. Minutes of meetings shall be maintained and signed off between the Parties throughout the contract period

#### **VIII. TRANSNET'S OBLIGATIONS**

- a. Transnet undertakes to promptly comply with any reasonable request by the Supplier/Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Goods/Services as may be necessary for the Supplier/Service Provider to provide the Goods/Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Supplier/Service Provider of its confidentiality obligations under this Agreement.
- b. The Supplier/Service Provider shall give Transnet reasonable notice of any information it requires.
- c. Transnet agrees to provide the Supplier/Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Supplier/Service Provider to perform its obligations under this Agreement.

#### **IX. GENERAL OBLIGATIONS OF THE SUPPLIER**

- a. The Supplier/Service Provider shall:
  - respond promptly to all complaints and enquiries from Transnet;
  - inform Transnet immediately of any dispute or complaint arising in relation to the storage or delivery of the Goods;
  - conduct its business in a professional manner which will reflect positively upon the Supplier/Service Provider and the Supplier's/Service Provider's products/services;
  - keep full records clearly indicating all transactions concluded by the Supplier/Service Provider relating to the delivery of the Goods/Services and keep such records for at least 5 [five] years from the date of each such transaction;
  - obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Goods/Services and ancillary Services and the conduct of the business and activities of the Supplier/Service Provider;

observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993, as may be amended from time to time;

observe and ensure compliance with all requirements and objectives of the Transnet Supplier Integrity Pact as agreed to in response to the RFP. 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;

comply with all applicable environmental legislation and regulations, demonstrate sound environmental performance and have an environmental management policy which ensures that its products, including the Goods/Services or ancillary Services are procured, produced, packaged, delivered and are capable of being used and ultimately disposed of in a way that is environmentally appropriate; and

ensure the validity of all renewable certifications, including but not limited to its B-BBEE Verification Certificate, throughout the entire term of this Agreement. Should the Supplier/Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Supplier/Service Provider.

b. The Supplier/Service Provider acknowledges and agrees that it shall at all times:

render the supply of the Goods/Services and ancillary Services (if applicable) and perform all its duties with honesty and integrity;

communicate openly and honestly with Transnet regarding the supply and performance of the Goods/Services and demonstrate a commitment to effecting the supply and performing ancillary Services timeously, efficiently and at least to the required standards;

endeavour to provide the highest possible standards of service and workmanship, with a reasonable degree of care and diligence;

use its best endeavours and make every diligent effort to meet agreed deadlines;

treat its own Staff, as well as all Transnet's Staff, with fairness and courtesy and respect for their human rights;

practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination;

treat all enquiries from Transnet in connection with the supply of the Goods/Services and/or ancillary Services with courtesy and respond to all enquiries promptly and efficiently. Where the Supplier/Service Provider is unable to comply with the provisions of this clause, the Supplier/Service Provider will advise Transnet of the delay and the reasons therefor and will keep Transnet informed of progress made regarding the enquiry;

when requested by Transnet, provide clear and accurate information regarding the Supplier's/Service Provider's own policies and procedures, excluding Know-How and other Confidential

Information, except where a non-disclosure undertaking has been entered into between the Parties;

not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;

not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;

not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;

not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image;

immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the supply of Goods/Services or ancillary Services to Transnet;

ensure that at all times, during the currency of this Agreement, it complies with all obligations and commitments in terms of the provisions of the Income Tax Act, No 58 of 1962, the VAT Act or any other tax legislation relating to their liability for Income Tax, VAT, Pay as You Earn or any other tax. The Supplier/Service Provider shall further ensure Tax Clearance Compliance, for the duration of this Agreement;

not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

shall ensure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

- c. In compliance with the National Railway Safety Regulator Act, 16 of 2002, as may be amended from time to time, the Supplier shall ensure that the Goods/Services and ancillary Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the Specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Supplier, as applicable, shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Supplier and/or its Subcontractor shall grant Transnet access, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

## **X. B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS**

### **a. B-BBEE Scorecard**

- c) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past.

- d) In response to this requirement, the Supplier/Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.
- e) The Supplier/Service Provider undertakes to notify and provide full details to Transnet in the event there is:
  - 1. a change in the Supplier's/Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and
  - 2. a corporate or internal restructure or change in control of the Supplier/Service Provider which has or likely to impact negatively on the Supplier's/ Service Provider's B-BBEE status.
- f) Notwithstanding any other reporting requirement in terms hereof, the Supplier Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Supplier /Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Supplier/Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Supplier/ Service Provider Default and may be dealt with in accordance with the provisions of clause xxii9.
- g) In the event there is a change in the Supplier's/ Service Provider's B-BBEE status, then the provisions of clause xxii9 shall apply.

**b. Green Economy/Carbon Footprint**

The Supplier/Service Provider has in its bid provided Transnet with an understanding of the Supplier's/Service Provider's position with regard to issues such as waste disposal, recycling and energy conservation.

**c.Reporting**

The Supplier/Service Provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with its Local Content obligations (if applicable) and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning its Local Content obligations.

The Supplier/Service Provider shall, on a monthly basis from the Commencement Date and within 7 (seven) calendar days of the end of the previous calendar month, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause.

**XI. LOCAL CONTENT OBLIGATIONS**

- a. In terms of Annexure A (SBD 6.2) and Annexure C of the RFP, the Supplier has undertaken to implement the local content and production requirements set by National Treasury for the **Powerline hardware** designated sector ("local content undertaking"). It is recorded that the local content undertaking was a prequalification criterion of the RFP and it is therefore mandatory for the Supplier to comply with Annexures A and C in order for it to fulfil its local content obligations.

- b. The Supplier is required to note that Transnet, the Department of Trade, Industry and Competition [DTIC] and/or the body appointed by the DTIC as the verification authority for local content may conduct compliance audits with regard to the local content requirements as prescribed in Regulation 9 of the Preferential Procurement Regulations, 2011 issued in terms of the Preferential Procurement Policy Framework Act.
- c. The Supplier is required to continuously update Declarations C, D and E of the Local Content Declaration templates with the actual local content values for the duration of the contract.
- d. Breach of Local Content obligations also provides Transnet cause to terminate the contract in certain cases where material non compliance with Local Content requirements are not achieved.

## **XII. PENALTIES**

### **a. Penalties for Non-compliance to Service Level Agreement**

Where the Supplier/Service Provider fails to deliver the Goods/Services within the agreed and accepted milestone timelines and provided that the cause of the delay was not due to a fault of Transnet, penalties shall be imposed at .....

### **b. Non-compliance Penalties for Local Content**

The Parties have agreed on the following milestone targets ("the Local Content Plan"):  
.....

If for any reason the Supplier is unable to achieve any milestone target indicated in the local content undertaking, the Supplier must approach the Department of Trade and Industry ("DTI") to obtain exemption in order to supply the goods at a lower local content threshold. The Supplier is obliged to approach DTI for exemption within 10 (ten) days of determining that it is unable to achieve any milestone target or local content threshold.

Should the DTI provide exemption, the Supplier shall be entitled to provide the goods at the lower local content threshold set by DTI. In such event, the Parties shall in good faith renegotiate the milestone targets or local content undertaking to ensure that the lowered local content thresholds are achieved.

Should DTI not provide the necessary exemption, the Supplier shall be obliged to meet each milestone target as stated in the Local Content Plan or the local content undertaking.

Should the Supplier fail to meet any milestone target or the local content undertaking, the following remedies shall apply without limiting any of Transnet's other rights in law:

- i. Transnet shall afford the Supplier a period of thirty (30) days to remedy its non-compliance.
- ii. Should the Supplier fail to meet its obligations within the further 30 day period, the Supplier shall pay a Non-Compliance penalty ("Non-compliance Penalty") to Transnet in respect of such Non-compliance as set out in clause iv below. The penalties shall be imposed per milestone measurement for non-delivery of committed values in the case of a Local Content Plan or shall be imposed against the non-delivery of committed values where local content undertakings must be met immediately.



- iii. To the extent that the Actual Local Content Spend<sup>4</sup> is lower than the Required Local Content Spend<sup>5</sup> (or the Adjusted Required Local Content Spend<sup>6</sup>, as the case may be), the Supplier shall be liable for Penalties which is the difference in value between the Actual Local Content Spend and the Required Local Content Spend (or the Adjusted Required Local Content Spend, as the case may be) plus an additional percentage of such difference. Such Non-compliance Penalties shall be calculated and levied at the relevant milestones as stipulated in the Local Content Plan or shall be imposed against the non-delivery of committed values where local content undertakings must be met immediately, in accordance with clause iv below.
- iv. Non-compliance penalties shall apply at the following rate: the difference in value between the Required Local Content Spend and the Actual Local Content Spend, plus 5% of such difference.
- v. In order to guarantee that the Supplier meets its obligations in terms of the Local Content Plan or its committed local content undertaking, Transnet shall be entitled to retain a Non-compliance Penalty at the rate of 2% of every monthly payment due by Transnet to the Supplier over the contract period ("the Local Content Retention Amount"). The Local Content Retention Amount shall be set off against any penalties payable by the Supplier at any milestone assessment.

Should no penalties be imposed during the duration of the contract, Transnet shall refund the full value of the Local Content Retention Amount to the Supplier at the end of the contract period.

Should any unpaid penalties remain at the end of the contract period, then without limiting other rights that Transnet may have in law, the Supplier shall forfeit the Local Content Retention Amount and shall have no further claim against Transnet for the repayment of such amount.

Non-compliance Penalty Certificate:

If any Non-compliance Penalty arises, the Supplier Development Manager shall issue a Non-compliance Penalty Certificate on the last day of each month during such Non-compliance indicating the Non-compliance Penalties which have accrued during that period.

A Non-compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Supplier disputes any of the amounts set out in a Non-compliance Penalty Certificate:

- the dispute shall be resolved in accordance with the provisions of the Agreement; and
- if pursuant to that referral, it is determined that the Supplier owes any amount to Transnet pursuant to the Non-compliance Penalty Certificate, then the Supplier shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non-compliance Penalties:

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<sup>4</sup> Actual Local Content Spend means the monetary value of local content initiatives actually delivered by the Supplier during the period under review.

<sup>5</sup> Required Local Content Spend means the monetary value of local content obligations that the Supplier has agreed to deliver during the period under review.

<sup>6</sup> Adjusted Required Local Content Spend means any adjustment to the Required Local Content Spend as prescribed by DTCI through the process of exemption referred to in clause c) above and as agreed to between the parties, reduced to writing and signed by the parties.

Subject to Clause i) above, the Supplier shall pay the Non-compliance Penalty indicated in the Non-compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Supplier for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Supplier for Non-compliance Penalties accrued during any relevant period, those Non-compliance Penalties shall be carried forward to the next period.

The Supplier shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and appropriate.

It is agreed that Transnet, the DTI, the South African Bureau of Standards and/or any of their appointed agents shall be entitled to monitor, evaluate and audit the Contractor's compliance with its obligations under the Local Content Plan. To this end, the Contractor shall provide its full cooperation to the respective bodies referred to in this clause to ensure that effective monitoring, evaluation and auditing takes place.

The Non Compliance Penalties set forth in this Clause are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Supplier.

### **XIII. INVOICES AND PAYMENT**

- a. Transnet shall pay the Supplier/Service Provider the amounts stipulated in each Purchase Order/Work Order, subject to the terms and conditions of this Agreement.
- b. Transnet shall pay such amounts to the Supplier/Service Provider upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation, as specified in the Schedule of Requirements appended hereto, once the valid and undisputed Tax Invoices or such portions of the Tax Invoices which are valid and undisputed become due and payable to the Supplier/Service Provider for the delivery of the Goods/Services ordered, in terms of clause e below.
- c. Transnet may, pending an investigation, withhold any payments to the Supplier/Service Provider, in the case where irregular expenditure has been identified in the particular contract and that there is reasonable suspicion that the Supplier/Service Provider is involved or was aware that the contract transgressed any legislation.
- d. All Prices set out in this Agreement and the Schedule of Requirements hereto are to be indicated inclusive and exclusive of VAT, which will be payable at the applicable rate in ZAR.
- e. Unless otherwise provided for in the Schedule of Requirements appended to this Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the Supplier's/Service Provider's statement together with the relevant valid and undisputed Tax Invoice(s) and supporting documentation.
- f. Where the payment of any Tax Invoice, or any part of a Tax Invoice which is not in dispute, is not made in accordance with this clause, the Supplier/Service Provider shall be entitled to charge interest on the outstanding amount, at The Standard Bank of South Africa's prime rate of interest in force, for the period from the due date of payment until the outstanding amount is paid.
- g. The Supplier/Service Provider shall remain the owner of all plant, material, machinery, equipment and the like [collectively, **the Supplier's Goods**] provided to Transnet until Transnet has paid in full

for the Supplier's Goods, it being specifically agreed that Transnet shall acquire no rights [including liens] of whatsoever nature in such Supplier's Goods until date of final payment by Transnet. Subject to the foregoing, all risk and benefit to the Supplier's Goods shall pass from the Supplier to Transnet on delivery of the Supplier's Goods by the Supplier to Transnet.

#### **XIV. PRICE ADJUSTMENTS**

- a. Prices for Goods/Services supplied in terms of this Agreement shall be subject to review as indicated in the Schedule of Requirements/Works Order annexed hereto.
- b. No less than 2 [two] months prior to any proposed Price adjustment, the Parties shall commence negotiations for Prices for the next period or as otherwise indicated in Schedule 1 hereto. The Parties shall have regard for market-related pricing of equivalent goods, continuous improvement initiatives, costs [including labour, raw materials and transport/delivery], order size and frequency and changes to the specification of the Goods/Services.
- c. Pursuant to clause b above, the Supplier/Service Provider shall keep full and accurate records of all costs associated with the supply of the Goods/Services to Transnet, in a form to be approved in writing by Transnet. The Supplier/Service Provider shall produce such records to Transnet for inspection at all reasonable times on request and such records may, at Transnet's option, be audited by Transnet or its designated representatives.
- d. Should Transnet and the Supplier/Service Provider fail to reach an agreement on Price for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 39 of the Master Agreement [Dispute Resolution].
- e. If during the period of this Agreement Transnet can purchase similar Goods/Services of a like quality from another supplier at a total delivered cost to a Transnet facility that is lower than the total delivered cost of the Goods/Services purchased hereunder from the Supplier/Service Provider, Transnet may notify the Supplier/Service Provider of such total delivered cost and the Supplier/Service Provider shall have an opportunity to adjust the Price of the Goods/Services purchased hereunder, on such a basis as to result in the same total delivered cost to Transnet, within 30 [thirty] calendar days of such notice. If the Supplier/Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Goods/Services from such other supplier in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Supplier/Service Provider hereunder shall be reduced accordingly; (ii) terminate this Agreement without any penalty, liability or further obligation; or (iii) continue purchases under this Agreement.
- f. If during the period of this Agreement the Supplier/Service Provider sells any materials which are the same as, equivalent to, or substantially similar to the Goods/Services herein, at a total delivered cost to a third party lower than the total delivered cost to a Transnet facility, then the Supplier/Service Provider has an opportunity to adjust its Price for the Goods/Services purchased hereunder within 30 [thirty] calendar days so that the Price is the same or lower than the total delivered cost of such third party. If the Supplier/Service Provider fails to do so or cannot legally do so, Transnet may (i) purchase the Goods/Services from any other such supplier, in which case the obligations, including, but not limited to, any purchase and sale requirements and/or commitments, if any, of Transnet and the Supplier/Service Provider hereunder shall be reduced accordingly; or (ii) terminate this Agreement without any penalty, liability or further obligation. Within 30 [thirty] calendar days of the Commencement Date of this Agreement or at any time Transnet so requests, the Supplier/Service

Provider shall certify in writing to Transnet that it is in compliance with this clause and shall provide all information that Transnet reasonably requests in order to verify such compliance.

#### **XV. WARRANTIES APPLICABLE TO GOODS**

The Supplier warrants that:

- a. pursuant to clause ix.c [General Obligations of the Supplier], the Goods will be manufactured in accordance with the specifications appended hereto at Schedule 1, or the manufacturer's specifications, as agreed in writing by both Parties;
- b. the execution and performance of this Agreement by the Supplier does not infringe any rights of a third party or breach any obligation of the Supplier to any third party; and
- c. it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Supplier to comply with its obligations under this Agreement will be reduced to the greatest extent possible, and that the Supplier shall ensure that it has appropriate, tested and documented recovery arrangements in place.

#### **XVI. THIRD PARTY INDEMNITY**

The Supplier/Service Provider hereby indemnifies and shall hold Transnet harmless against any direct damages suffered by or claims arising against Transnet in respect of clause xv.b above.

#### **XVII. INSPECTION APPLICABLE TO GOODS**

- a. Transnet reserves the right to arrange for the inspection of all Goods forming the subject of any Purchase Order, at any stage before final acceptance and by any means it may think fit, and when such inspection is to be carried out, the relevant Purchase Order(s) shall be endorsed accordingly.
- b. When inspection at the Supplier's works or warehouse is specified, Transnet's authorised inspector shall have free access to the premises of the Supplier at all times during working hours on a Business Day; shall have liberty to inspect work which is the subject of the Purchase Order at any stage of manufacture, and may reject any Goods which are found to be incomplete, defective or in any way not in conformity with the terms and specifications of this Agreement; and the Supplier shall afford all reasonable facilities for such access and inspection.
- c. The Supplier shall provide inspection gauges, measuring and test equipment to ensure that the requirements of this Agreement are satisfied. All gauges, templates, tools and other equipment required to check the accuracy of the work shall be calibrated at regular and reasonable intervals by a laboratory which has been approved in writing by Transnet. This certificate shall not be more than 12 [twelve] months old.
- d. The Supplier shall prepare and supply, without charge to Transnet, all test pieces, samples and specimens; shall provide all labour and apparatus for carrying out tests and analyses in accordance with the terms of this Agreement or Purchase Order, and render all reasonable assistance in making such tests and analyses.
- e. All special rules governing gauging, testing, analysis and other inspection procedures shall be adhered to strictly in accordance with the terms of this Agreement or Purchase Order and the conditions of any specifications and drawings quoted therein.
- f. Inspection will be arranged by the Staff of Transnet, as indicated in the Purchase Order(s).

- g. When Goods are ready for inspection, the Supplier shall apply promptly to the appropriate authority for instructions regarding such inspection. All applications for inspection shall quote Transnet's Agreement or Purchase Order number. 7 [seven] Business Days' notice of readiness from the Supplier shall be given to the authorised inspector appointed by Transnet to carry out such inspection.
- h. Transnet shall have the right to recover from the Supplier the cost of inspection of any Goods that have been rejected by its authorised inspector in terms of this clause xviii4.

#### **XVIII. DEFECTIVE GOODS**

- a. Notwithstanding any certificate and/or receipt that may have been issued by or on behalf of Transnet either in South Africa or overseas, Goods will be accepted at the place of delivery or at the port of shipment, as specified in this Agreement, only as regards outward condition of packages and Transnet retains the right to reject the Goods supplied, on or after arrival at the place to which they are consigned, or after they have been placed in use in South Africa, should they be found defective.
- b. If Goods are rejected owing to latent defects becoming apparent during machining operations or other preparation necessary on the part of Transnet before they can be put into use, the Supplier shall bear all expenses incurred by Transnet in carrying out such necessary operations.
- c. If such Goods are rejected, the Supplier will pay the following costs:  
 for Goods purchased in South Africa on an ex works basis, the cost of transport from the Supplier's works in South Africa to the named destination where the Goods have been rejected by Transnet, plus handling charges and storage, if leviable; or  
 for Goods manufactured overseas, the Supplier shall pay all replacement costs including the overseas inland transport cost, freight and insurance charges incurred plus railage or other inland transport costs from the South African port to the place where the Goods have been rejected by Transnet, including handling charges, storage, landing charges, customs duty and surcharges, if leviable.
- d. If Transnet requires rejected Goods to be replaced, the Supplier shall, when called upon to do so, arrange prompt replacement of the Goods within the prescribed manufacturing lead times for such Goods, as indicated in Schedule 1.
- e. If Goods are found to be defective but the defects are, in the opinion of Transnet, not of so serious a nature as to warrant total rejection of the Goods, the Supplier shall, when called upon to do so, remedy or make good such defects at its own cost, or Transnet may remedy or make good such defects at the request of the Supplier and recover from the Supplier all costs or expenses reasonably incurred by it in doing so.
- f. Should the Supplier fail, when called upon to remedy or make good such defects within a reasonable time or to request Transnet to do so, Transnet may proceed to remedy or make good such defects and thereafter recover from the Supplier all such costs and expenses as aforementioned.
- g. Any amount recoverable from the Supplier in terms of this clause may, without prejudice to any other legal remedies available to Transnet, be deducted in whole or in part from any monies in the hands of Transnet which are due for payment to the Supplier.

#### **XIX. TOTAL OR PARTIAL FAILURE TO PERFORM**

- a. In the case of Goods to be specially manufactured for it, if Transnet at any time ascertains that:

no manufacturing of the Goods specified in a Purchase Order has commenced and there is little or no prospect, in Transnet's opinion, that manufacturing will commence within a reasonable time; or delivery of any of the Goods is being or is likely to be delayed beyond the promised delivery date(s), and there is little or no prospect of the Purchase Order(s) being carried out within reasonable adherence to the promised delivery rate(s) or time(s),

then Transnet may, irrespective of the cause of the delay, by notice to the Supplier, cancel as from a future date specified in such notice the whole or any part of this Agreement or Purchase Order in respect of which the Goods to be supplied have not been completed by that date, without incurring any liability by reason of such cancellation except as provided in this clause.

- b. The Supplier/Service Provider shall thereupon, as soon as possible after such date, deliver to Transnet the Goods/Services [if any] already completed, and payment for the part performance shall be made on a pro rata basis, provided the uncompleted part is not an integral or essential part of the completed Goods/Services. Where an integral or essential part of the work has not been completed, the amount to be paid to the Supplier/Service Provider will be calculated on the basis of Transnet's enrichment. The Supplier/Service Provider shall, wherever practicable, supply Transnet with the necessary drawings and/or specifications to enable it to complete the work.
- c. Whenever, in any case not covered by clause a above, the Supplier fails or neglects to execute the work or to deliver any portion of the Goods/Services as required by the terms of this Agreement or Purchase Order, or if any Goods/Services are rejected on any of the grounds mentioned in clause xviii5 [Defective Goods], Transnet may cancel this Agreement or Purchase Order in so far as it relates to the unexecuted work or the undelivered or rejected portion of the Goods/Services, and in such event, the supply of the remaining portion shall remain subject in all respects to these conditions.

## **XX. NON CONFORMANCE OF GOODS/SERVICES PROCURED**

- a. In the case of Goods/services manufactured for and procured by Transnet from the Supplier/Service Provider in terms of this Agreement, being found not to conform to the Transnet standards, specifications and requirements, Transnet at any time may be entitled to raise a Non Conformance Report (NCR) against a Supplier/Service Provider whose Goods/ Services do not conform to Transnet standards, specifications and requirements directing the Supplier/Service Provider to investigate and remedy the non-conformance within the stipulated time frame as may be determined by Transnet at its discretion.
- b. Failure by the Supplier/Service Provider to fully comply with NCR within the period stated in sub-clause 26.1 above, shall entitle Transnet to further conditions to which the Supplier/ Service Provider must discharge in order to close the NCR or to terminate the order without by given the Supplier/Service Provider written notice of termination in terms of this Agreement.

## **XXI. RIGHTS ON CANCELLATION**

- a. If this Agreement or Purchase Order is cancelled in whole or in part in terms of clause xix6 [*Total or Partial Failure to Perform*], Transnet may execute or complete this Agreement with any other entity and do so on such terms as it may deem proper, or may procure other comparable Goods/Services in substitution for those neglected to be manufactured or supplied or rejected as aforesaid, and may recover from the Supplier the difference between the cost of such Goods/Services and the Price [if the

latter was lower] as well as any costs and expenses [including any additional transport costs] which Transnet may have had to incur in consequence of the Supplier's/Service Provider's default.

- b. Any amount which may be recoverable from the Supplier/Service Provider in terms of clause a above, without prejudice to any other legal remedies available to Transnet, may be deducted in whole or in part from any monies in the hands of Transnet and due for payment to the Supplier/Service Provider.

## **XXII. BREACH AND TERMINATION**

- a. Termination in accordance with clause vi [Term and Cancellation] shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.
- b. On termination of this Agreement or a Work Order, the Service Provider will immediately deliver up, and procure that its Personnel will immediately deliver up to Transnet, all Deliverables and property belonging to Transnet [or, in the event of termination of a Work Order, such as is relevant to that Work Order] which may be in the possession of, or under the control of the Service Provider, and certify to Transnet in writing that this has been done.
- c. To the extent that any of the Deliverables and property referred to in clause b above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.
- d. In the event that this Agreement is terminated by the Service Provider under clause **Error! Reference source not found.** [Term and Cancellation], or in the event that a Work Order is terminated by Transnet under clause **Error! Reference source not found.**9 [Breach and Consequences of Termination], Transnet will pay to the Service Provider all outstanding Fees [apportioned on a pro rata basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to the such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.
- e. If either Party [**the Defaulting Party**] commits a material breach of this Agreement and fails to remedy such breach within 30 [thirty] calendar days of written notice thereof, the other Party [hereinafter **the Aggrieved Party**], shall be entitled, in addition to any other rights and remedies that it may have in terms of this Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which the Aggrieved Party may have for damages against the Defaulting Party.
- f. Either Party may terminate this Agreement forthwith by notice in writing to the other Party when the other Party is unable to pay its debts as they fall due or commits any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as amended from time to time], or if any action, application or proceeding is made with regard to it for:
  - a voluntary arrangement or composition or reconstruction of its debts;
  - its winding-up or dissolution;
  - the appointment of a liquidator, trustee, receiver, administrative receiver or similar officer;
  - any similar action, application or proceeding in any jurisdiction to which it is subject.

- g. Transnet may terminate this Agreement at any time within 2 [two] months of becoming aware of a change of control of the Supplier/Service Provider by notice in writing to the Supplier/Service Provider. For the purposes of this clause, **control** means the right to direct the affairs of a company whether by ownership of shares, membership of the board of directors, agreement or otherwise.
- h. Notwithstanding this clause xxii9, Transnet may cancel this Agreement without cause by giving 30 [thirty] calendar days prior written notice thereof to the Supplier/Service Provider, or
- i. The provisions of clauses ii [Definitions], xv2 [Warranties], xxi8 [Rights on Cancellation], xxv3 [Confidentiality], xxviii5 [Limitation of Liability], 36 [Intellectual Property Rights], xxxii9 [Dispute Resolution] and xxxvi.a [Governing Law] shall survive termination or expiry of this Agreement.

### **XXIII. CESSION**

- a. Upon written notice to the Supplier/Service Provider, Transnet shall be entitled:
  - to appoint Transnet's financier of the Goods/Services as first payer under this Agreement, without transferring the ultimate responsibility for payment which will remain with Transnet; and
  - to cede, assign and transfer its right, title and interest in the Goods/Services to such financier as part of the funding consideration for the Goods/Services.
- b. The Supplier/Service Provider is not entitled to cede, delegate, assign, Subcontract or in any other manner dispose of any of its rights or obligations in terms of this Agreement without the prior written consent of Transnet, which consent shall not be withheld or delayed unreasonably.

### **XXIV. FORCE MAJEURE**

- a. Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under this Agreement caused by an act of force majeure such as acts of God, fire, flood, war, lockout, government action, laws or regulations, terrorism or civil disturbance, defaults or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended. Transnet may however rely on strikes, industrial dispute and riots as a ground of force majeure.
- b. Each Party will take all reasonable steps by whatever lawful means that are available to resume full performance as soon as practicable and will seek agreement to modification of the relevant provisions of this Agreement in order to accommodate the new circumstances caused by the act of *force majeure*. If a Party fails to agree with such modifications proposed by the other Party within 90 [ninety] calendar days of the act of *force majeure* first occurring, either Party may thereafter terminate this Agreement with immediate notice.

### **XXV. PROTECTION OF PERSONAL INFORMATION**

- a) The following terms shall bear the same meaning as contemplated in Section 1 of the Protection of Personal Information Act 4 of 2013 ("POPIA"):
  - consent; person; personal information; processing; record; Regulator as well as any terms derived from these terms of the POPIA
- b) Transnet will process all information by the Respondent in terms of the requirements contemplated in Section 4(1) of the POPIA:



Accountability; Processing limitation; Purpose specification; Further processing limitation; Information quality; Openness; Security safeguards and Data subject participation.

- c) Transnet agrees that in submitting any information or documentation requested in the RFP and in this Agreement, the Supplier/Service Provider consents to the processing of their personal information for the purpose of, but not limited to, risk assessment, contract award, contract management, auditing, legal opinions/litigation, investigations (if applicable), document storage for the legislatively required period, destruction, de-identification and publishing of personal information by Transnet and/or its authorised appointed third parties.
- d) The Parties agree that they may obtain and have access to personal information for the fulfilment of the rights and obligations contained herein. In performing the obligations as set out in this Agreement, the Parties shall at all times ensure that:
  - i. they process personal information only for the express purpose for which it was obtained;
  - ii. once processed for the purposes for which it was obtained, all personal information will be destroyed to an extent that it cannot be reconstructed to its original form, subject to any legal retention requirements;
  - iii. Personal information is provided only to authorised personnel who strictly require the personal information to carry out the Parties' respective obligations under this Agreement;
  - iv. they do not disclose personal information of the other Party, other than in terms of this Agreement;
  - v. they have all reasonable technical and organisational measures in place to protect all personal information from unauthorised access and/or use;
  - vi. they have appropriate technical and organisational measures in place to safeguard the security, integrity and authenticity of all information in their possession or under their control in terms of this Agreement;
  - vii. they identify all reasonably foreseeable internal and external risks to personal information in their possession or under their control; establish and maintain appropriate safeguards against the risks identified; regularly verify that the safeguards are effectively implemented; and ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards;
  - viii. such personal information is protected against unauthorised or unlawful processing, accidental loss, destruction or damage, alteration, disclosure or access.
- a. The Parties agree that if personal information will be processed for additional purposes beyond the original purpose for which it was obtained, explicit consent must be obtained beforehand from those persons whose information will be subject to such processing.
- b. Should it be necessary for either Party to disclose or otherwise make available the personal information to any third party (including sub-contractors and employees) that is not already consented to, it may do so only with the prior written consent of the other Party. The Party requiring such consent shall require of all such third parties, appropriate written undertakings to be provided, containing similar terms to that set forth in this clause, and dealing with that third party's obligations in respect of its processing of the personal information. Following approval by the other Party, the Party requiring

consent agrees that the provisions of this clause shall *mutatis mutandis* apply to all authorised third parties who process personal information.

- c. The Parties shall ensure that any persons authorized to process information on their behalf (including employees and third parties) will safeguard the security, integrity and authenticity of all information. Where necessary to meet this requirement, the Parties shall keep all personal information and any analyses, profiles, or documents derived therefrom logically separated from all other information and documentation held by it.
- d. The Parties shall carry out regular assessments to identify all reasonably foreseeable internal and external risks to the personal information in its possession or under its control. The Parties shall implement and maintain appropriate safeguards against the risks which it identifies and shall also regularly verify that the safeguards which it has in place have been effectively implemented.
- e. The Parties agree that they will promptly return, destroy or de-identify any personal information in their possession or control which belongs to the other Party once it no longer serves the purpose for which it was collected in relation to this Agreement, subject to any legal retention requirements. This may be at the request of the other Party and includes circumstances where a person has requested the Parties to delete all instances of their personal information. The information will be destroyed or de-identified in such a manner that it cannot be reconstructed to its original form, linking it to any particular individual or organisation.
- f. Personal Information security breach:
  - a) Each Party shall notify the other party in writing as soon as possible after it becomes aware of or suspects any loss, unauthorised access or unlawful use of any personal information and shall, at its own cost, take all necessary remedial steps to mitigate the extent of the loss or compromise of personal information and to restore the integrity of the affected personal information as quickly as is possible. The Parties shall also be required to provide each other with details of the persons affected by the compromise and the nature and extent of the compromise, including details of the identity of the unauthorised person who may have accessed or acquired the personal information.
  - b) The Parties shall provide on-going updates on the progress in resolving the compromise at reasonable intervals until such time as the compromise is resolved.
  - c) Where required, the Parties must notify the South African Police Service; and/or the State Security Agency and the Information Regulator and the affected persons of the security breach. Any such notification shall always include sufficient information to allow the persons to take protective measures against the potential consequences of the compromise.
  - d) The Parties undertake to co-operate in any investigations relating to security which is carried out by or on behalf of the other including providing any information or material in its possession or control and implementing new security measures.

## **XXVI. CONFIDENTIALITY**

- a. The Parties hereby undertake the following with regard to Confidential Information:
  - not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in

which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;

not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;

not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;

not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;

not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;

Confidential Information disclosed by either Party to the other or by either Party to any other party used by such party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;

the Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;

each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;

each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by such person or entity; and

each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

- b. The duties and obligations with regard to Confidential Information in this clause xxvi3 shall not apply where:

a Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Staff; or

was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or

can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or

is independently developed by a Party as proven by its written records.

- c. This clause xxvi3 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Supplier/Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation, all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

## **XXVII. INSURANCES**

- a. Without limiting the liability of the Supplier/Service Provider under this Agreement, the Supplier/Service Provider shall take out insurance in respect of all risks for which it is prudent for the Supplier/Service Provider to insure against, including any liability it may have as a result of its activities under this Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Supplier/Service Provider.
- b. The Supplier/Service Provider shall arrange insurance with reputable insurers and will produce to Transnet evidence of the existence of the policies on an annual basis within 30 [thirty] calendar days after date of policy renewals.
- c. Subject to clause d below, if the Supplier/Service Provider fails to effect adequate insurance under this clause xxvii4, it shall notify Transnet in writing as soon as it becomes aware of the reduction or inadequate cover and Transnet may arrange or purchase such insurance on behalf of the Supplier/Service Provider. The Supplier/Service Provider shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Supplier/Service Provider's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Supplier/Service Provider's liability.
- d. In the event that the Supplier/Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause a above or if the insurance ceases to be available upon commercially reasonable terms, the Supplier/Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, whereafter either the Supplier/Service

Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

#### **XXVIII. LIMITATION OF LIABILITY**

- a. The Supplier/Service Provider's liability under this clause xxviii5 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Goods/Services or ancillary Services, including the quality of the Goods/Services or ancillary Services or any materials delivered pursuant to this Agreement.
- b. Neither Party excludes or limits liability to the other Party for:
  - death or personal injury caused by its negligence, [including its employees', agents' or Subcontractors' negligence]; or
  - fraud or theft.
- c. The Supplier/Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Supplier/Service Provider or its Personnel in connection with this Agreement. The Supplier/Service Provider's liability arising out of this clause c shall be limited to direct damages.
- d. Subject always to clauses a and b above, the liability of either the Supplier/Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.
- e. Subject to clauses a to d above, in no event shall either Party be liable to the other for indirect or consequential loss or damage or including indirect or consequential loss of profits, business, revenue, goodwill or anticipated savings of an indirect nature or loss or damage incurred by the other Party as a result of third party claims.
- f. If for any reason the exclusion of liability in clause e above is void or unenforceable, either Party's total liability for all loss or damage under this Agreement shall be as provided in clause c above.
- g. Nothing in this clause xxviii5 shall be taken as limiting the liability of the Parties in respect of clauses xxv3 [*Confidentiality*] and xxix6 [*Intellectual Property Rights*].

#### **XXIX. INTELLECTUAL PROPERTY RIGHTS**

##### **a. Title to Confidential Information**

Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Supplier/Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual Property that is proprietary to Transnet. For the avoidance of doubt all the Supplier/Service Provider's Background Intellectual Property shall remain vested in the Supplier/Service Provider.

Transnet shall grant to the Supplier/Service Provider an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This licence shall not permit the Supplier/Service Provider to sub-license to other parties.

The Supplier/Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Supplier/Service Provider's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.

The Supplier/Service Provider shall grant Transnet access to the Supplier/Service Provider's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.

The above shall not pertain to any software licenses procured by the Supplier/Service Provider from third parties and used in the supply of the Goods/Services.

**b. Title to Intellectual Property**

All right, title and interest in and to Foreground Intellectual Property prepared, conceived or developed by the Supplier/Service Provider, its researchers, agents and employees shall vest in Transnet and the Supplier/Service Provider acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. The Supplier/Service Provider shall not at any time during or after the termination or cancellation of this Agreement dispute the validity or enforceability of such Foreground Intellectual Property, or cause to be done any act or anything contesting or in any way impairing or tending to impair any part of that right, title and interest to any of the Foreground Intellectual Property and shall not counsel or assist any person to do so.

Transnet shall be entitled to seek protection in respect of the Foreground Intellectual Property anywhere in the world as it shall decide in its own absolute discretion and the Supplier/Service Provider shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.

Where the Foreground Intellectual Property was created by the Supplier/Service Provider or its researchers, agents and employees and where Transnet elects not to exercise its option to seek protection or decides to discontinue the financial support of the prosecution or maintenance of any such protection, Transnet shall notify the Supplier/Service Provider who shall have the right of first refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Foreground Intellectual Property.

No consideration shall be paid by Transnet to the Supplier/Service Provider for the assignment of any Foreground Intellectual Property from the Supplier/Service Provider to Transnet, over and above the sums payable in terms of this Agreement. The Supplier/Service Provider undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.

Subject to anything contrary contained in this Agreement and/or the prior written consent of Transnet [which consent shall not be unreasonably be withheld], the Supplier/Service Provider shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.

**c. Title to Improvements**

Any improvements, developments, adaptations and/or modifications to the Foreground Intellectual Property, and any and all new inventions or discoveries, based on or resulting from the use of Transnet's Background Intellectual Property and/or Confidential Information shall be exclusively owned by Transnet. The Supplier/Service Provider shall disclose promptly to Transnet all such improvements,

developments, adaptations and/or modifications, inventions or discoveries. The Supplier/Service Provider hereby undertakes to sign all documents and do all things as may be necessary to effect, record and perfect the assignment of such improvements, developments, adaptations and/or modifications, inventions or discoveries to Transnet and the Supplier/Service Provider shall reasonably assist Transnet in attaining, maintaining or documenting ownership and/or protection of the improved Foreground Intellectual Property.

**d. Unauthorised Use of Confidential Information**

The Supplier/Service Provider shall not authorise any party to act on or use in any way any Confidential Information belonging to Transnet whether or not such party is aware of such Confidential Information, and shall promptly notify Transnet of the information if it becomes aware of any party so acting, and shall provide Transnet the information with such assistance as Transnet reasonably requires, at Transnet's cost and expense, to prevent such third party from so acting.

**e. Unauthorised Use of Intellectual Property**

The Supplier/Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Supplier/Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

It shall be within the sole and absolute discretion of Transnet to determine what steps shall be taken against the infringer and the Supplier/Service Provider shall co-operate fully with Transnet, at Transnet's cost, in whatever measure including legal action to bring any infringement of illegal use to an end.

The Supplier/Service Provider shall cooperate to provide Transnet promptly with all relevant ascertainable facts.

If proceedings are commenced by Transnet alone, Transnet shall be responsible for all expenses but shall be entitled to all damages or other awards arising out of such proceedings. If proceedings are commenced by both Parties, both Parties will be responsible for the expenses and both Parties shall be entitled to damages or other awards arising out of proceedings.

**XXX. NON-WAIVER**

- a. Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not in any manner be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.
- b. Such failure or neglect shall not in any manner affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

**XXXI. PARTIAL INVALIDITY**

If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, or shall be required to be modified, the validity, legality and enforceability of the remaining provisions shall not be affected thereby.

### **XXXII. DISPUTE RESOLUTION**

- a. Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.
- b. If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.
- c. Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.
- d. This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause xxxii.
- e. This clause xxxii9 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- f. This clause xxxii9 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

### **XXXIII. ADDRESSES FOR NOTICES**

- a. The Parties to this Agreement select the physical addresses and fax numbers, as detailed hereafter, as their respective addresses for giving or sending any notice provided for or required in terms of this Agreement, provided that either Party shall be entitled to substitute such other address or fax number, as may be, by written notice to the other:

#### **Transnet**

1. For legal notices:  
.....  
.....  
.....  
Fax No. ....  
Attention: Group Legal Department
2. For commercial notices:  
.....  
.....  
.....  
Fax No. ....  
Attention: .....

#### **The Supplier**

3. For legal notices:  
.....  
.....  
.....  
Fax No. ....



Attention: .....

4.

For commercial notices:

.....  
 .....  
 .....

Fax No. ....

Attention: .....

- b. Any notice shall be addressed to a Party at its physical address, or delivered by hand, or sent by fax or email.
- c. Any notice shall be deemed to have been given:
  - if hand delivered, on the day of delivery;
  - if faxed, on the date and time of sending of such fax, as evidenced by a fax confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such fax, or, should no postal facilities be available on that date, on the next Business Day;
  - or
  - if sent by email, on the date and time received, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such email, or, should no postal facilities be available on that date, on the next Business Day.

#### **XXXIV. WHOLE AND ONLY AGREEMENT**

- a. The Parties hereby confirm that this Agreement constitutes the whole and only agreement between them with regard to the subject matter of this Agreement.
- b. The Parties hereby confirm that this Agreement replaces all other agreements which exist or may have existed in any form whatsoever between them, with regard to the subject matter dealt with in this Agreement, any annexures appended hereto and the Schedule of Requirements/Work Order.

#### **XXXV. AMENDMENT AND CHANGE CONTROL**

- a. Any amendment or change of any nature made to this Agreement and the Schedule of Requirements thereof shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto. In this regard a Change Notice must first be defined and issued by the requesting Party. A Change Notice Response must then be issued by responding Party. A formal approval of the Change Request will then trigger the issue of the addendum to this Agreement.
- b. In the event the Parties cannot agree upon changes, the Parties shall in good faith seek to agree any proposed changes using the dispute resolution procedures in clause xxxii9 *[Dispute Resolution]*.

#### **XXXVI. GENERAL**

##### **a. Governing Law**

This Agreement is exclusively governed by and construed in accordance with the laws of the Republic of South Africa and is subject to the jurisdiction of the courts of the Republic of South Africa.

##### **b. Change of Law**

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any

regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Supplier/Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Prices, delivery schedules, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause xxxii9 [*Dispute Resolution*] above.

**c. Counterparts**

This Agreement may be signed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Either Party may enter into this Agreement by signing any such counterpart.

**XXXVII. DATABASE OF RESTRICTED SUPPLIER**

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.

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

For and on behalf of <b>TRANSNET SOC LTD</b> duly authorised hereto	For and on behalf of ..... duly authorised hereto
Name:	Name:
Position:	Position:
Signature:	Signature:
Date:	Date:
Place:	Place:

<b>AS WITNESS:</b> Name:	<b>AS WITNESS:</b> Name:
Signature:	Signature:

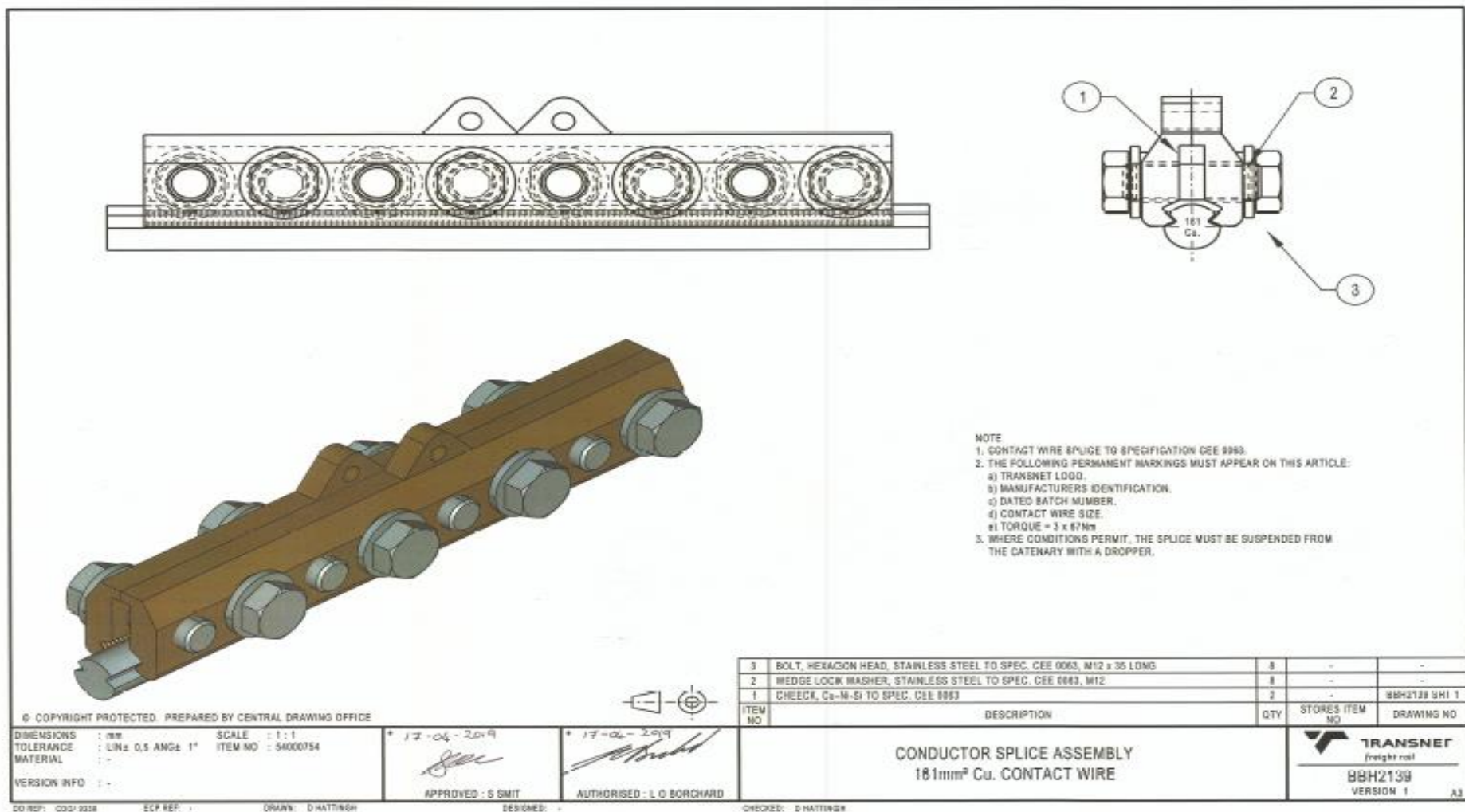
<b>AS WITNESS:</b> Name:	<b>AS WITNESS:</b> Name:
Signature:	Signature:

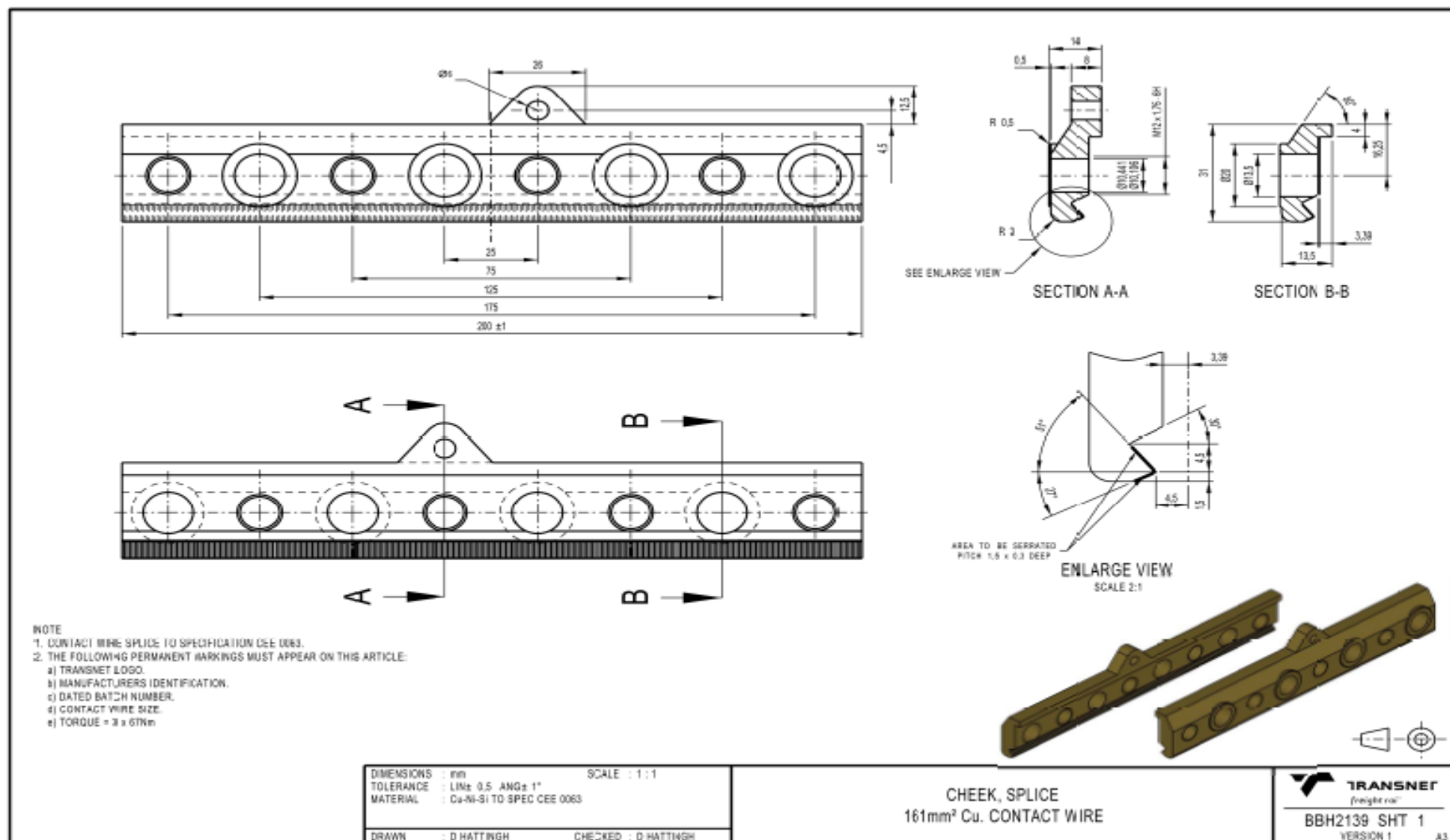
**ANNEXURE G:**  
**DELIVERY LEAD-TIMES SCORING MATRIX**

Score	Description	Bidders Response
100%	Material to be supplied greater than 2 Weeks but less than or equals to 3 weeks.	
75%	Material to be supplied greater than 3 Weeks but less than or equals to 4 weeks.	
50%	Material to be supplied greater than 4 Weeks but less than or equals to 5 weeks.	
25%	Material to be supplied greater than 5 Weeks but less than or equals to 6 weeks.	
0%	Material to be supplied greater than 6 Weeks	

**75% Minimum Threshold required for a bidder to proceed to the next stage of evaluations**

**SPECIFICATIONS AND DRAWINGS**







NOTE

1. STOPPER TO PREVENT OVER TORQUE, STOPPER MAY NOT INTERFERE WITH CONTACT WIRE.
2. ASSEMBLES DROPPER MINIMUM WORKING LOAD OF 4kN.
3. ASSEMBLED DROPPER CLIP MUST BE PERMANENTLY MARKED WITH THE FOLLOWING:
  - a) MANUFACTURERS IDENTIFICATION.
  - b) TRANSNET LOGO.
  - c) DATED BATCH NUMBER.
  - d) WIRE SIZES.
  - e) TORQUE = 9Nm.

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ITEM NO	DESCRIPTION	QTY	STORES ITEM NO	DRAWING NO
5	LOCK WASHER, INTERNAL TOOTH, STAINLESS STEEL, AISI GRADE 316, M8	1	-	-
4	HEXAGON BOLT, STAINLESS STEEL, GRADE AISI 316, M8 x 30 LONG	1	-	-
3	STOPPER	1	-	CEE-TND-0022 Sht 3
2	HALF DROPPER CLIP WITHOUT THREAD	1	-	CEE-TND-0022 Sht 2
1	HALF DROPPER CLIP WITH THREAD AND SPACER PIN ASSEMBLY	1	-	CEE-TND-0022 Sht 1

TABLE	
CONTACT WIRE	STORE NO.
161mm <sup>2</sup>	54017312
107mm <sup>2</sup>	54008767

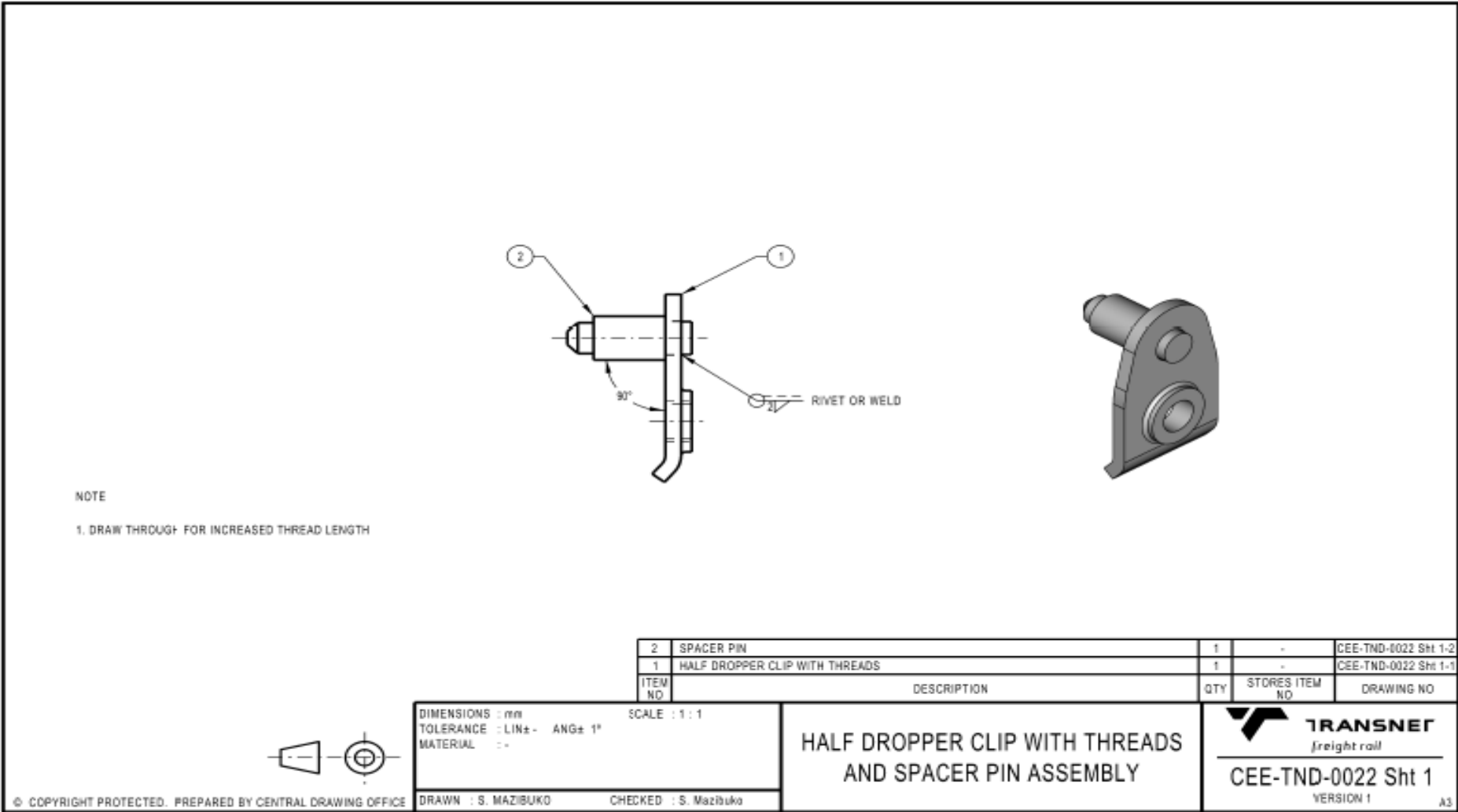
DIMENSIONS : mm SCALE : 1 : 1  
 TOLERANCE : LIN ± - ANG ± - ITEM NO : -  
 MATERIAL : -  
 VERSION INFO : Stopper length and diameter changed

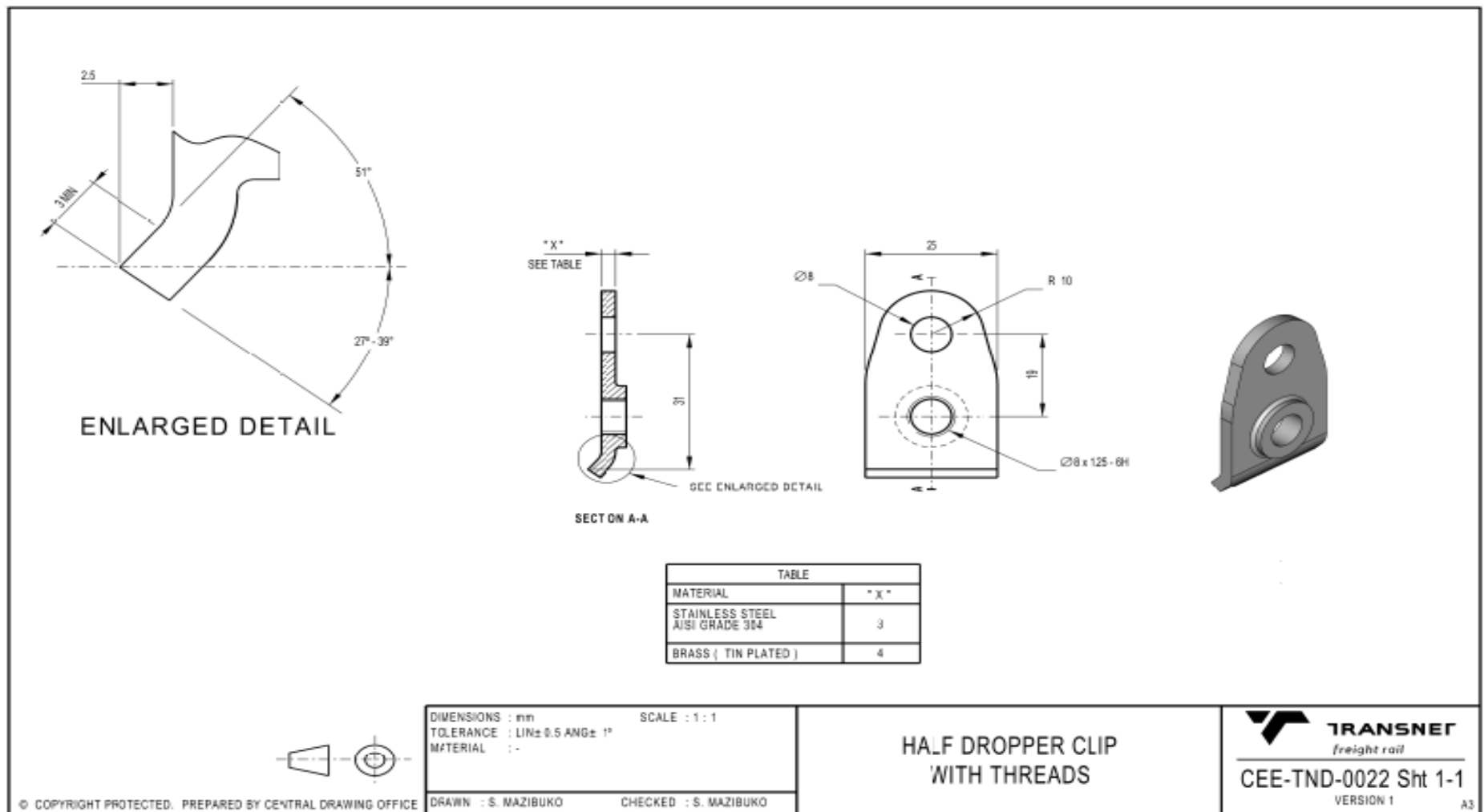
APPROVED W. SCHOEMAN 2020-10-01  
 AUTHORIZED S. SMIT 2020-10-01

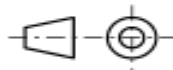
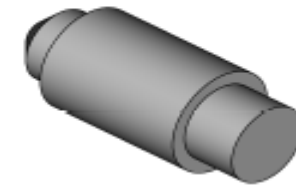
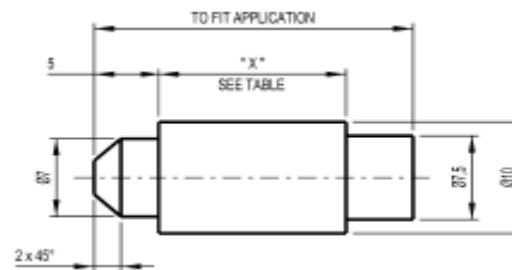
**DROPPER CLIP**  
**161mm<sup>2</sup> / 107mm<sup>2</sup> CONTACT WIRE**

**TRANSNET**  
 freight roll  
**CEE-TND-0022**  
 VERSION 7

DO REF: CDO1 9549 ECP REF: - DRAWN: S. MAZIBUKO DESIGNED: - CHECKED: S. Mazibuko







DIMENSIONS : mm SCALE : 2 : 1  
 TOLERANCE : LIN ± 0.5 ANG ± 1°  
 MATERIAL : ROUND BAR, STAINLESS STEEL, AISI GRADE 304,  
 Ø10 x 24 LONG.  
 ALTERNATIVELY, USE BRASS

DRAWN : S. MAZIBUKO CHECKED : S. MAZIBUKO

SPACER PIN  
 DROPPER CLIP FOR CONTACT WIRE

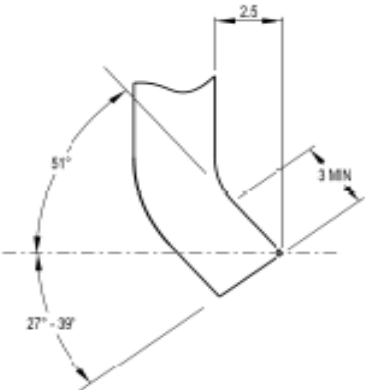


CEE-TND-0022 Sht 1-2

VERSION 1

A4

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ENLARGED DETAIL

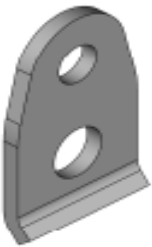
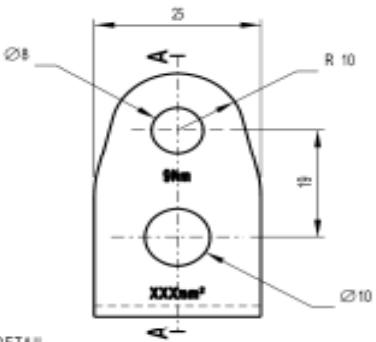
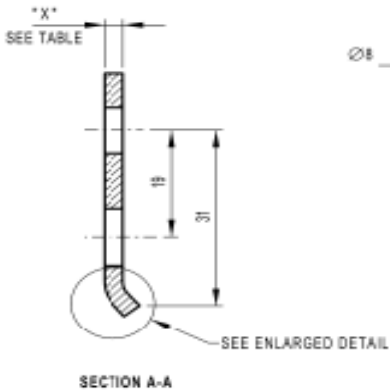
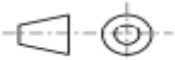


TABLE	
MATERIAL	"X"
STAINLESS STEEL AISI GRADE 304	3
BRASS   TIN PLATED	4



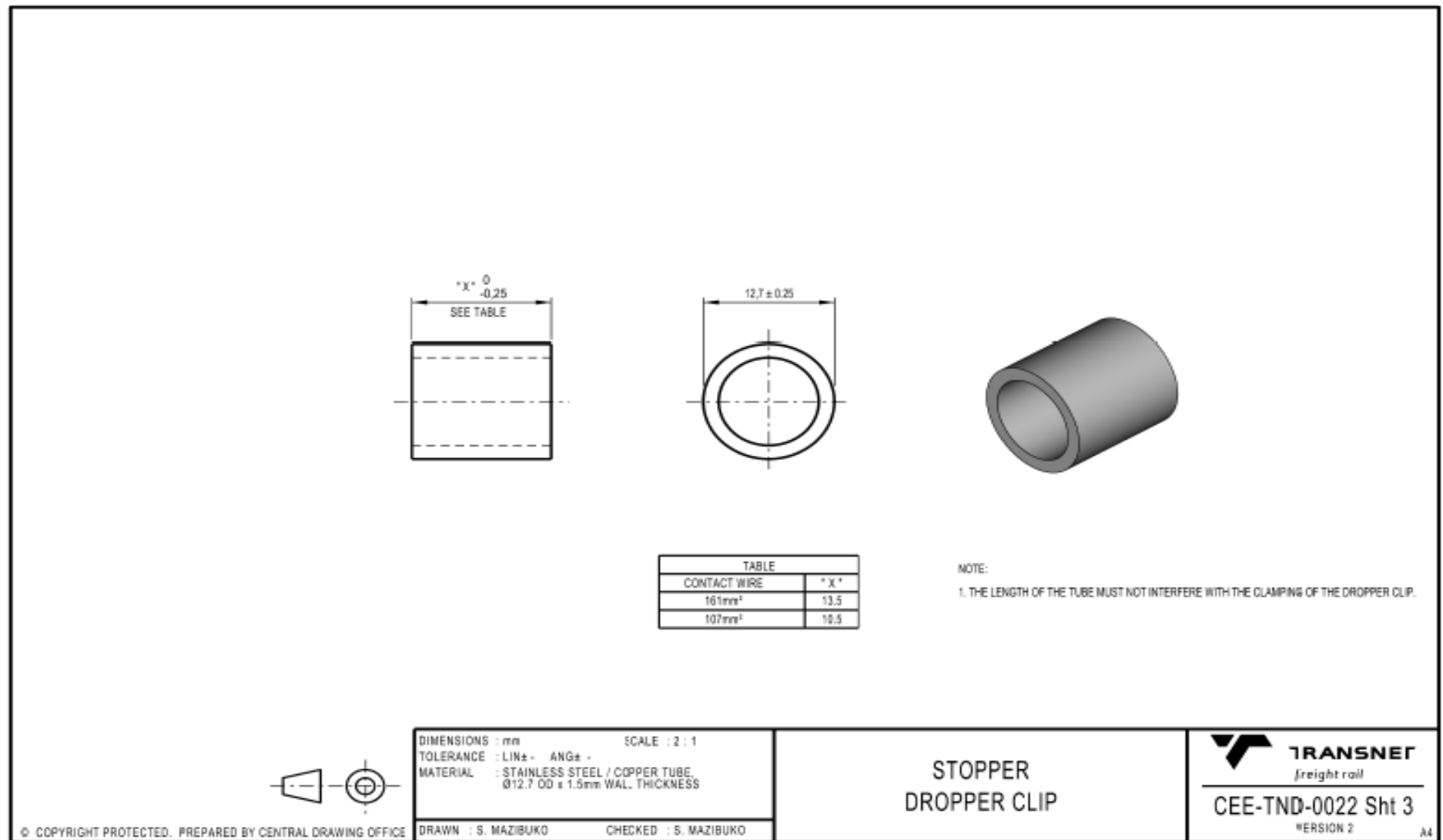
DIMENSIONS : mm	SCALE : 1 : 1
TOLERANCE : LIN ± 0.5 ANG ± 1°	
MATERIAL : -	
DRAWN : S. MAZIBUKO	CHECKED : S. MAZIBUKO

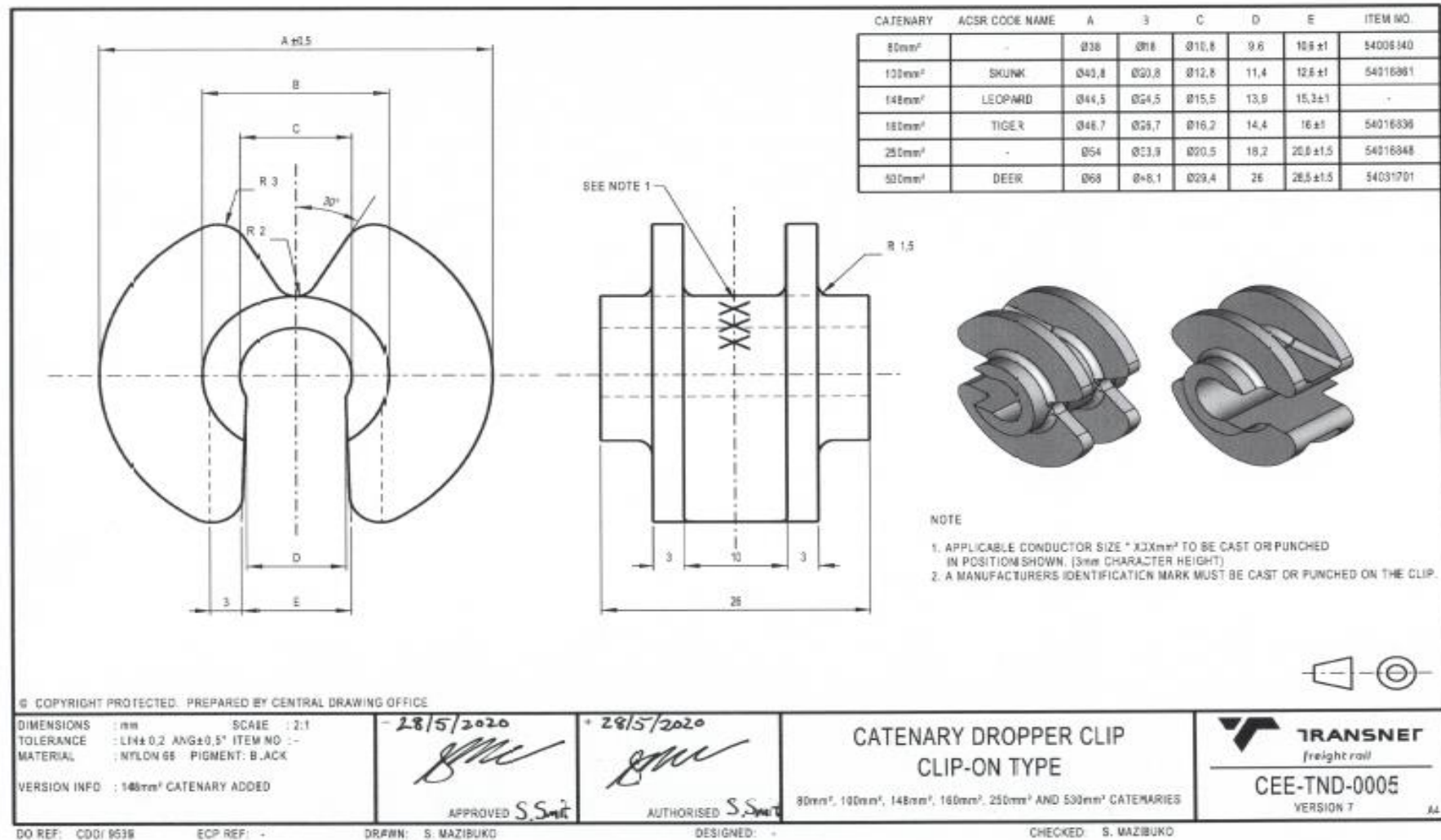
HALF DROPPER CLIP  
WITHOUT THREADS

**TRANSNET**  
*freight rail*

CEE-TND-0022 S1t 2  
VERSION 1

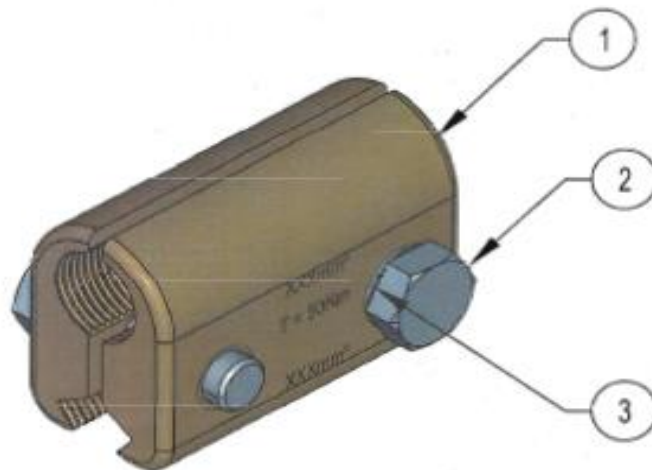
A3





## NOTES

1. FEEDER CLAMP TO SPECIFICATION CEE 0863.
2. FEEDER CLAMP TO BE SUPPLIED AS A COMPLETE ASSEMBLY.



STORES ITEM NO. FOR 107mm <sup>2</sup> CONTACT WIRE	STORES ITEM NO. FOR 161mm <sup>2</sup> CONTACT WIRE	COPPER CONDUCTOR SIZES
54014849	54008820	50mm <sup>2</sup> / 53mm <sup>2</sup> / 70mm <sup>2</sup>
54014850	54001948	80mm <sup>2</sup> / 100mm <sup>2</sup>
54014882	54004830	180mm <sup>2</sup>
54014874	54004854	250mm <sup>2</sup>

3	LOCKING WASHER, INTERNALLY TOOTHED, STAINLESS STEEL TO SPEC. AISI GR 304, M12.	2	-	-
2	BOLT, HEXAGON HEAD, STAINLESS STEEL TO SPEC. AISI GR 304, M12 x 35 LONG.	2	-	-
1	FEEDER HALF CLAMP FOR 161mm <sup>2</sup> CONTACT WIRE.	2	-	BBH2142 SHT 2
	FEEDER HALF CLAMP FOR 107mm <sup>2</sup> CONTACT WIRE.	2	-	BBH2142 SHT 1
ITEM NO	DESCRIPTION	QTY	STORES ITEM NO	DRAWING NO

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DIMENSIONS : mm SCALE : 1 : 1  
 TOLERANCE : LINES 0.5 ANGLES 0.5° ITEM NO : -  
 MATERIAL : \*

VERSION INFO : -

2019-05-28

APPROVED: S SMIT

2019-05-28

AUTHORISED: L O BORCHARD

**FEEDER CLAMP ASSEMBLY**  
**FOR 107mm<sup>2</sup> AND 161mm<sup>2</sup>**  
**Cu. CONTACT WIRE**

**TRANSNET**  
 freight rail

**BBH2142**  
 VERSION 1

A4

DO REF: CDO/ 9393

ECP REF: -

DRAWN: D HATTINGH

DESIGNED: -

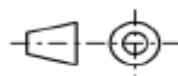
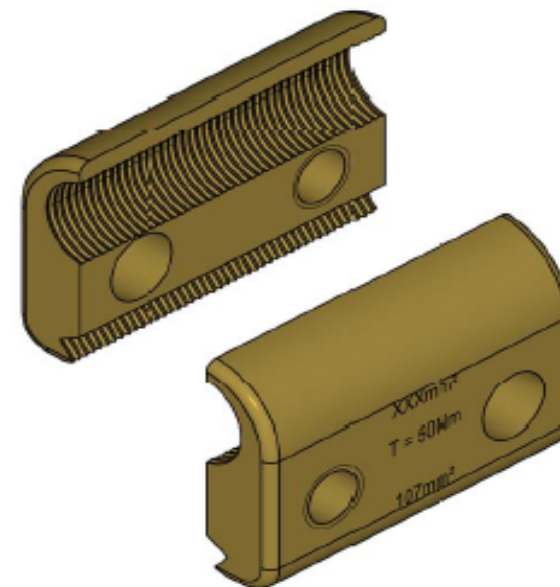
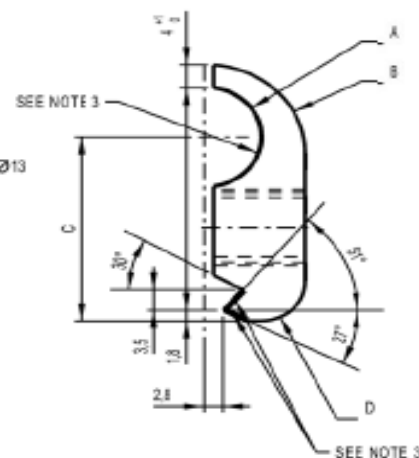
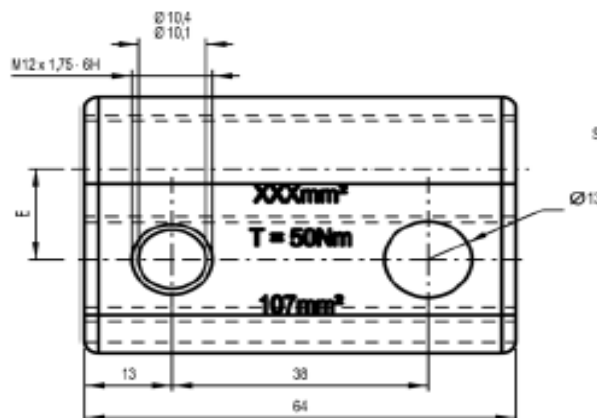
CHECKED: D HATTINGH



**NOTES**

1. FEEDER CLAMP TO SPECIFICATION CEE 0063.
2. THE FOLLOWING PERMANENT MARKINGS MUST APPEAR ON THIS ARTICLE:
  - a) TRANSNET LOGO.
  - b) MANUFACTURERS IDENTIFICATION.
  - c) DATED BATCH NUMBER.
  - d) WIRE SIZES.
  - e) TORQUE AS "T = 50Nm".
3. THESE SURFACES TO BE SERRATED: 1,5 PITCH x 0,3 DEEP.
4. ALL UNSPECIFIED RADII R2.

COPPER CONDUCTOR SIZES	DIMENSIONS				
	A	B	C	D	E
50mm <sup>2</sup> / 63mm <sup>2</sup> / 70mm <sup>2</sup>	4,5 <sup>+0</sup> <sub>-0,5</sub>	15 <sup>+0</sup> <sub>-0,5</sub>	27,5	6,5	11,5
80mm <sup>2</sup> / 100mm <sup>2</sup>	6,5 <sup>+0</sup> <sub>-0,5</sub>	15 <sup>+0</sup> <sub>-0,5</sub>	29,5	6,5	13,5
160mm <sup>2</sup>	8,5 <sup>+0</sup> <sub>-0,5</sub>	15 <sup>+0</sup> <sub>-0,5</sub>	31,5	6,5	15,5
250mm <sup>2</sup>	10,5 <sup>+0</sup> <sub>-0,5</sub>	18 <sup>+0</sup> <sub>-0,5</sub>	33,5	9,5	18



DIMENSIONS : mm SCALE : 1 : 1  
 TOLERANCE : LIN ± 0,5 ANG ± 0,5°  
 MATERIAL : Cu-Ni-Si TO SPEC. CEE0063.

**FEEDER HALF CLAMP FOR  
 107mm<sup>2</sup> Cu. CONTACT WIRE**

**TRANSNET**  
 freight rail  
**BBH2142 SHT 1**  
 VERSION 1

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DRAWN : D. HATTINGH

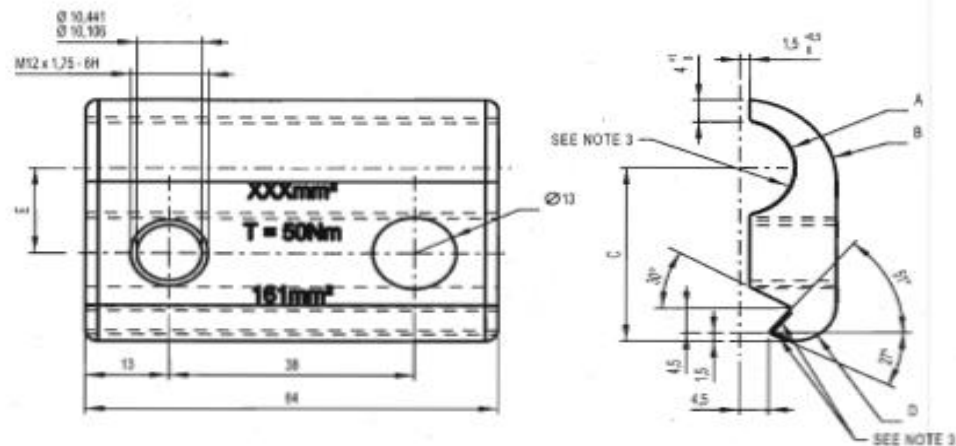
CHECKED : D. HATTINGH

A4



**NOTES**

1. FEEDER CLAMP TO SPECIFICATION CEE 0063.
2. THE FOLLOWING PERMANENT MARKINGS MUST APPEAR ON THIS ARTICLE:
  - a) TRANSNET LOGO.
  - b) MANUFACTURERS IDENTIFICATION.
  - c) DATED BATCH NUMBER.
  - d) WIRE SIZES.
  - e) TORQUE AS "T = 50Nm".
3. THESE SURFACES TO BE SERRATED: 1,5 PITCH x 0,3 DEEP.
4. ALL UNSPECIFIED RADI R2.



COPPER CONDUCTOR SIZES	DIMENSIONS				
	A	B	C	D	E
50mm²	4,5 <sup>+0/-0,5</sup>	15 <sup>+0/-0,5</sup>	27,5	8,5	11,5
80mm² / 100mm²	6,5 <sup>+0/-0,5</sup>	15 <sup>+0/-0,5</sup>	29,5	8,5	13,5
180mm²	8,5 <sup>+0/-0,5</sup>	15 <sup>+0/-0,5</sup>	31,5	8,5	15,5
250mm²	10,5 <sup>+0/-0,5</sup>	18 <sup>+0/-0,5</sup>	33,5	8,5	18



DIMENSIONS : mm SCALE : 1 : 1  
 TOLERANCE : LINES 0,5 ANGLES 0,5  
 MATERIAL : Cu-Ni-Si TO SPEC CEE 0063.

DRAWN : D. HATTINGH CHECKED : D. HATTINGH

**FEEDER HALF CLAMP FOR  
161mm² Cu. CONTACT WIRE**

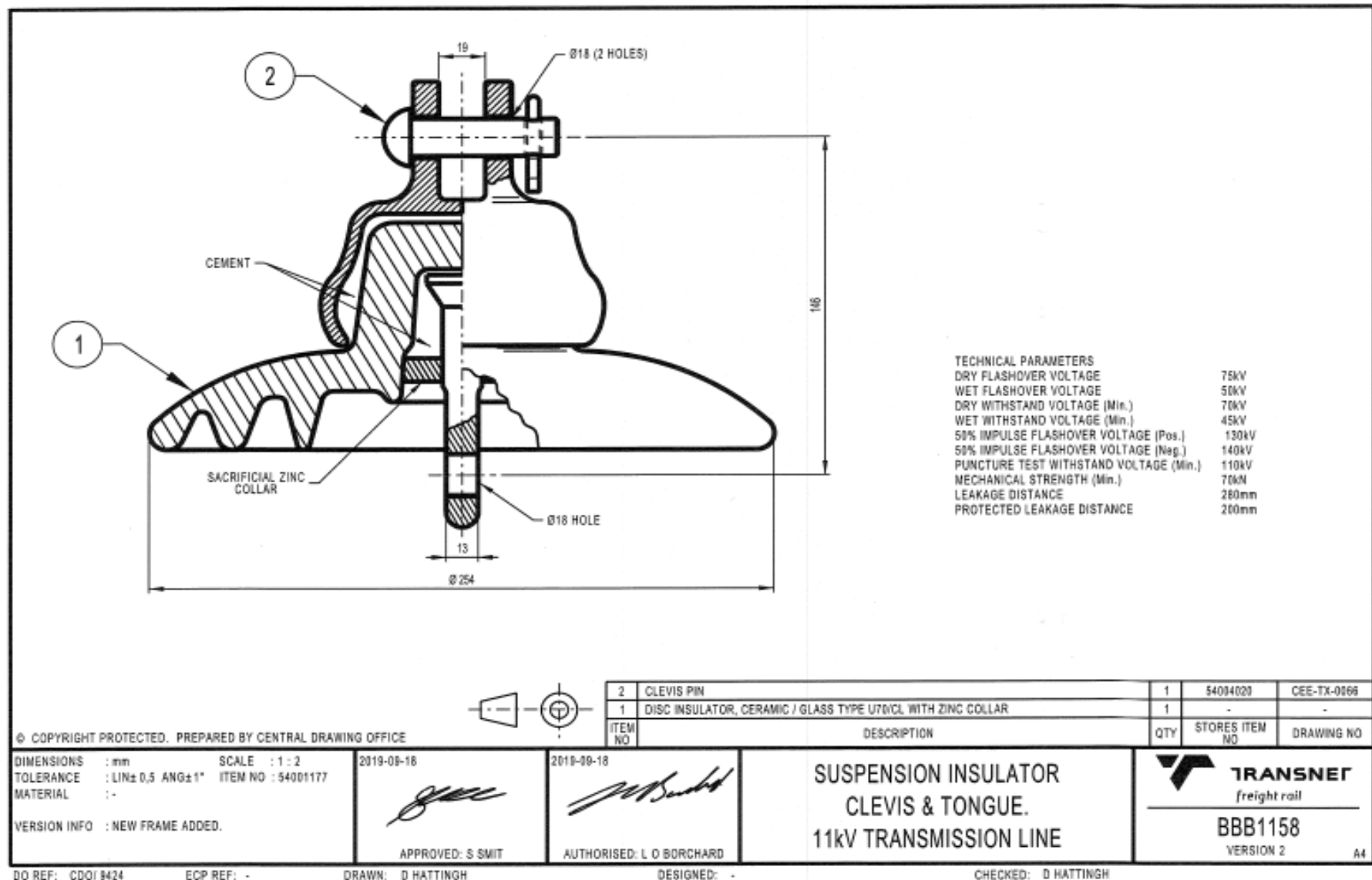
**TRANSNET**  
freight rail

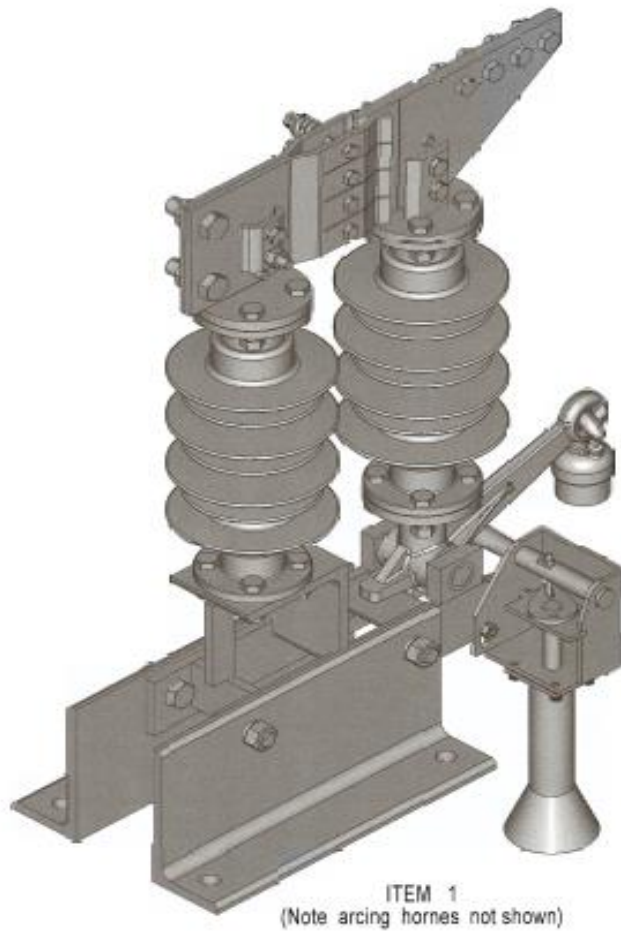
**BBH2142 SHT 2**

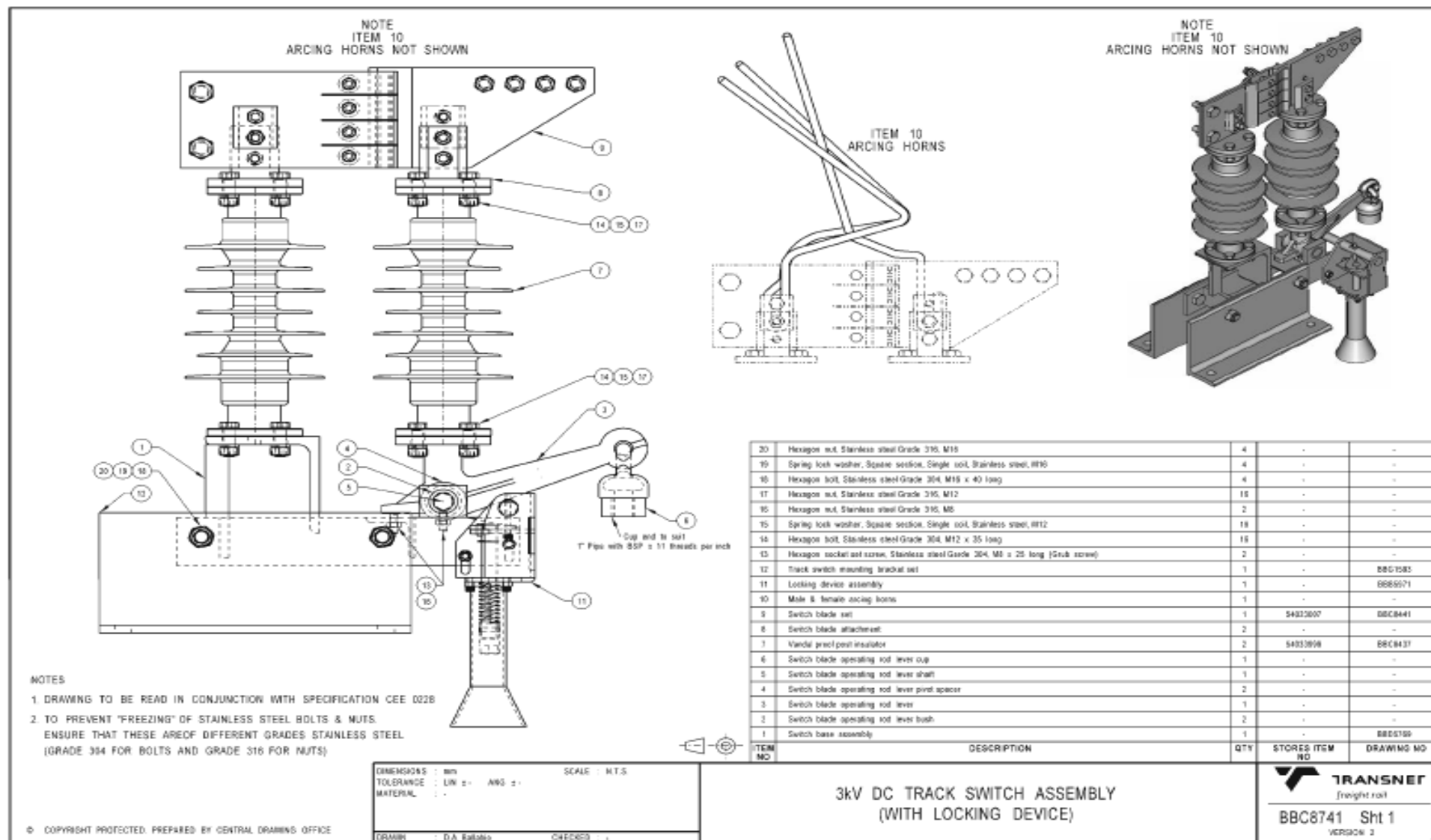
VERSION 1

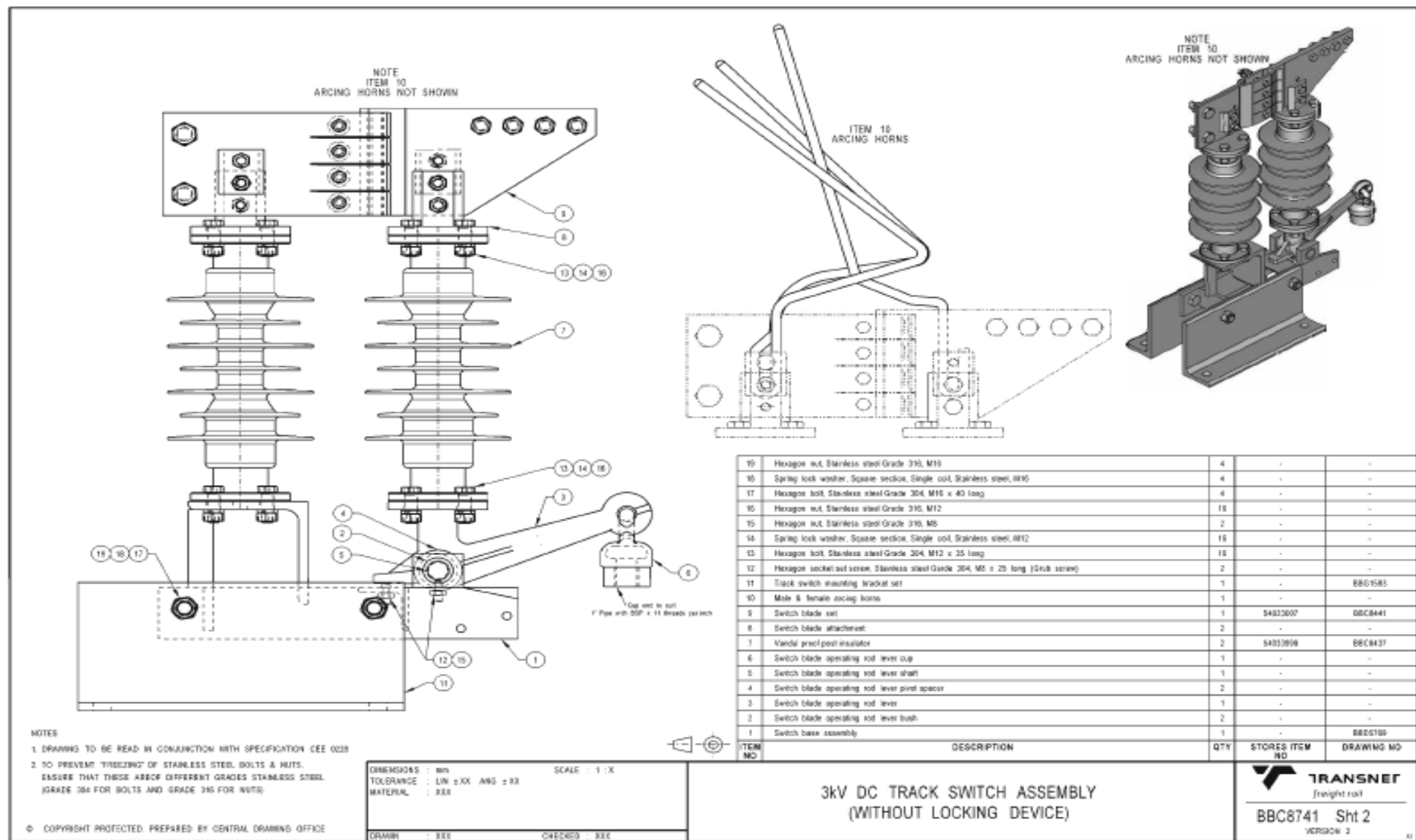
A4

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STORES ITEM NO.	ALUMINIUM CONDUCTOR SIZES
54032504	180mm <sup>2</sup> TO 180mm <sup>2</sup>
54000590	500mm <sup>2</sup> TO 160mm <sup>2</sup>
54000603	800mm <sup>2</sup> TO 160mm <sup>2</sup>

**NOTES**

1. CLAMP TO SPECIFICATION CEE 0063.

2. CLAMP TO BE SUPPLIED AS A COMPLETE ASSEMBLY.

ITEM NO	DESCRIPTION	QTY	STORES ITEM NO	DRAWING NO
4	LOCKING WASHER, INTERNALLY TOOTHED, STAINLESS STEEL TO SPEC AISI GR 304, M12	2	-	-
3	NUT, HEXAGON, STAINLESS STEEL TO SPEC CEE0063, M12	2	-	-
2	BOLT, HEXAGON, STAINLESS STEEL TO SPEC CEE 0063, M12	2	-	-
	PARALLEL HALF CLAMP FOR 800mm <sup>2</sup> Al TO 180mm <sup>2</sup> Al.	2	-	8BD5138 SHT 3
1	PARALLEL HALF CLAMP FOR 500mm <sup>2</sup> Al TO 160mm <sup>2</sup> Al.	2	-	8BD5138 SHT 2
	PARALLEL HALF CLAMP FOR 160mm <sup>2</sup> Al TO 160mm <sup>2</sup> Al.	2	-	8BD5138 SHT 1

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DIMENSIONS : mm SCALE : 1 : 1

TOLERANCE : LIN ± 0,5 ANG ± - ITEM NO : -

MATERIAL : -

VERSION INFO : DESCRIPTION CHANGED.

DO REF: CDO/9339 ECP REF: -

2020-1-28

*[Signature]*

APPROVED: S SMIT

2020-01-28

*[Signature]*

AUTHORISED: L O BORCHARD

**ALUMINIUM PARALLEL CLAMP ASSEMBLY**

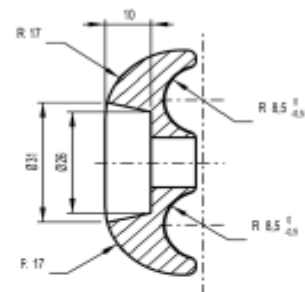
**TRANSNET**  
freight rail

**BBG7987**  
VERSION 4

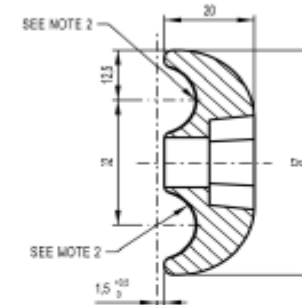
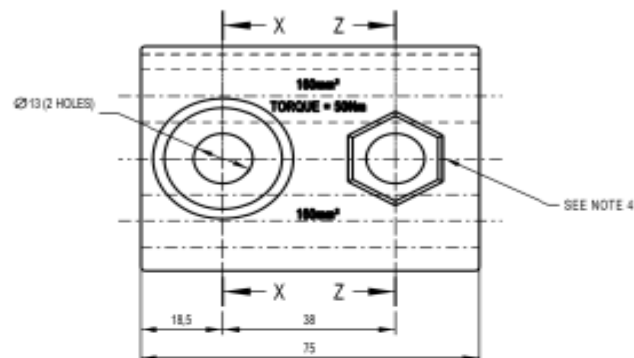
A4

DRAWN: D HATTINGH DESIGNED: - CHECKED: D HATTINGH





SECTION X-X

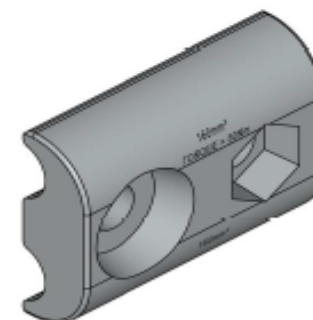
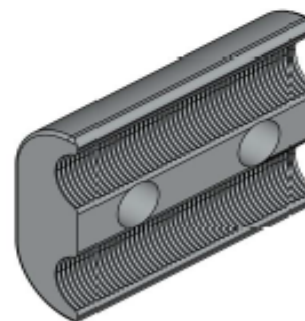


SECTION Z-Z

NOTES

1. WITH AN AMBIENT TEMPERATURE OF 20°C THE TEMPERATURE IN THE CLAMP SHALL NOT EXCEED 60°C WHEN APPLYING THE CURRENT IN TABLE 1.
2. CLAMPING SURFACES TO BE SERRATED, PITCH 1,5 x 0,3 DEEP.
3. ALL UNSPECIFIED RADII R2.
4. RECESS TO SUITE M12 NUT.
5. FOR ASSEMBLY, SEE DRAWING BBG7987.
6. ALUMINIUM CLAMP TO SPECIFICATION CEE 0063.
7. THE FOLLOWING PERMANENT MARKINGS MUST APPEAR ON THIS ARTICLE:
  - a) TRANSNET LOGO.
  - b) MANUFACTURERS IDENTIFICATION.
  - c) DATED BATCH NUMBER.
  - d) WIRE SIZES.
  - e) TORQUE = 50Nm

TABLE 1 (SEE NOTE 1)	
CONTINUOUS	1140A
5 MIN.	1840A
1 MIN.	3760A



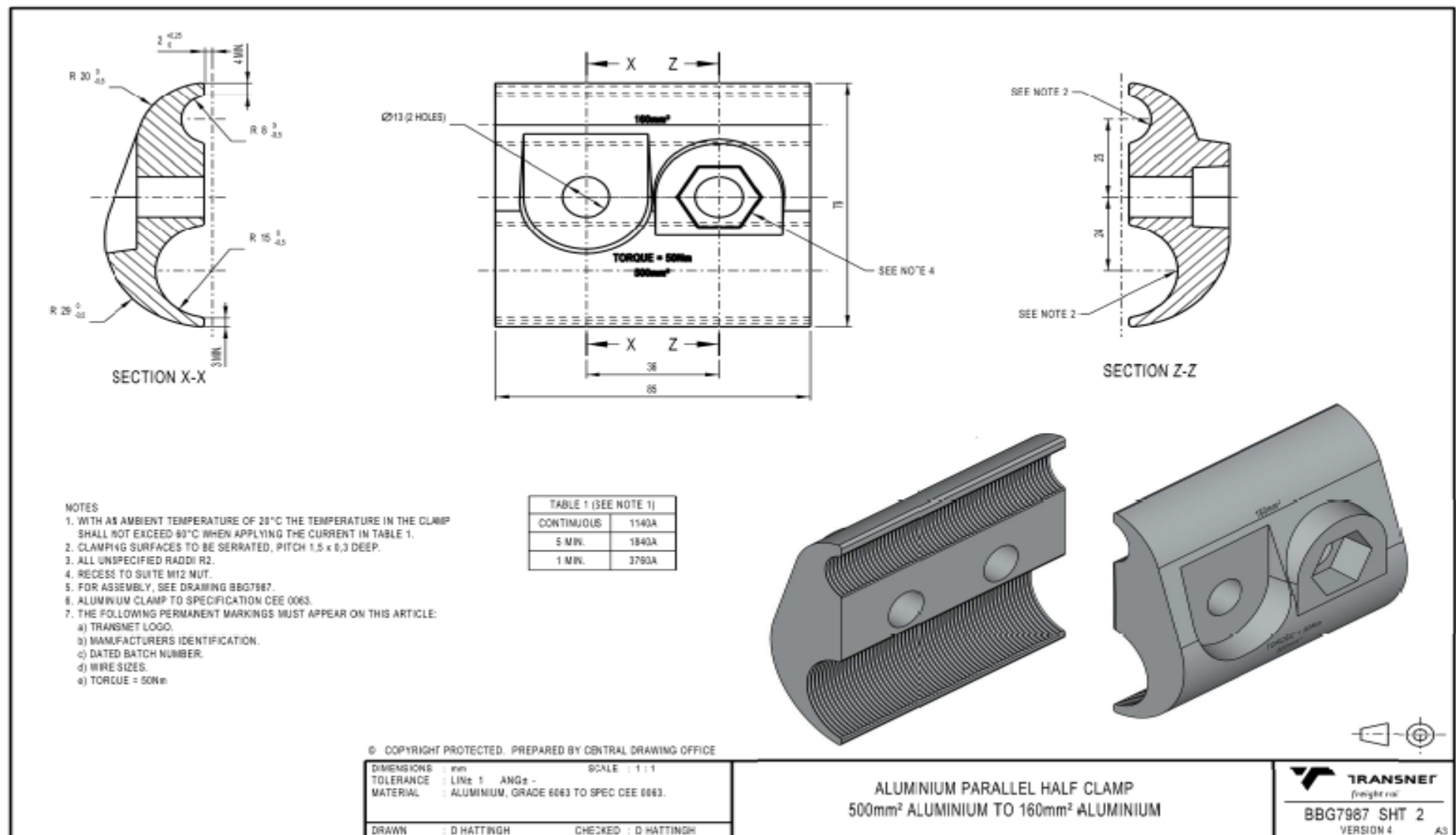
© COPYRIGHT PROTECTED. PREPARED BY CENTRAL DRAWING OFFICE

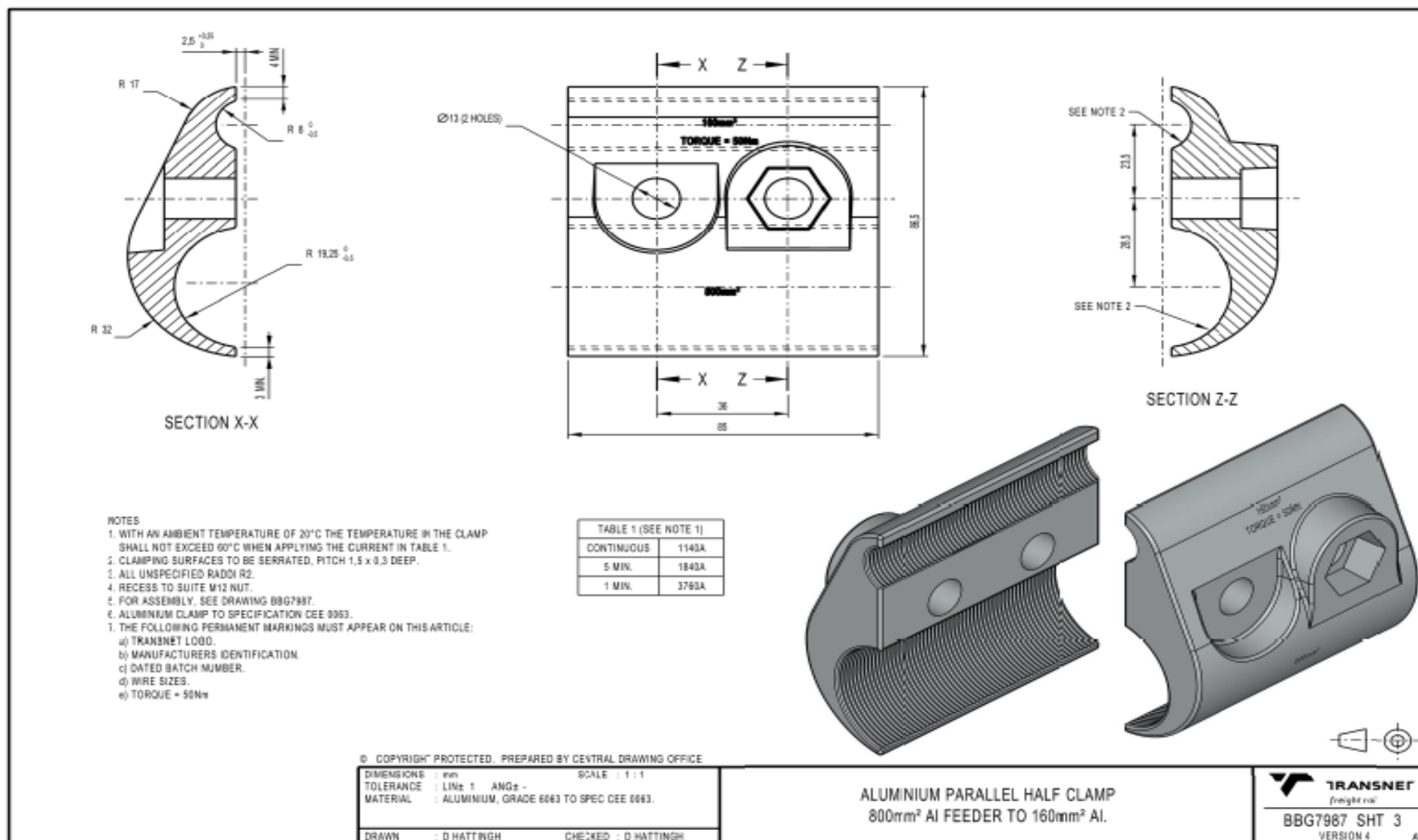
DIMENSIONS : mm SCALE : 1 : 1  
 TOLERANCE : Lin ± 1 ANG ± -  
 MATERIAL : ALUMINIUM, GRADE 6063 TO SPEC CEE 0063.

DRAWN : D HATTINGH CHECKED : D HATTINGH

ALUMINIUM PARALLEL HALF CLAMP  
 160mm² TO 160mm² Al.  
 TIGER CATENARY

**TRANSNET**  
 freight rail  
 BBG7987 SHT 1  
 VERSION 4 A3





SEE NOTE 6

NOTE

1. CLAMP NOT FOR CONDUCTIVE PURPOSES AND ELECTRICAL SPLICING.
2. CLAMP TO BE USED AS MECHANICAL CLAMP ONLY.
3. CLAMP TO BE MADE IN ACCORDANCE TO SANS 813, HIGHER GRADE BODIES.
4. CLAMP FORCES TO BE EQUAL TO TABLE 2 IN SANS 813
5. CLAMP TO BE HOT DIPPED GALVANISE IN ACCORDANCE TO SANS 121.
6. PITCH TO SUIT CLAMP FORCES IN NOTE 3.

STORES ITEM NO.	WIRE SIZE METRIC	WIRE SIZE INCHES	A	B	C	D
-	Ø8 TO Ø10	Ø 3/8	14.2	M11	38	27
54017021	Ø11 TO Ø13	Ø1/2	17.5	M12	60	48
54001201	Ø16	Ø 5/8	19	M16	57	41
54003872	Ø18	Ø 3/4	22.3	M18	70	54
54032590	Ø20	Ø 7/8	25.4	M18	95	77

ITEM NO	DESCRIPTION	QTY	STORES ITEM NO	DRAWING NO
4	SPRING LOCK WASHER, STEEL, SINGLE CON., SQUARE SECTION, GALVANISED TO SANS 121.	2	-	-
3	HEXAGON NUT, STEEL, GRADE 8.8, GALVANISED TO SANS 121.	2	-	-
2	U BOLT, STEEL, GALVANISED TO SANS 121 AFTER MANUFACTURED	1	-	-
1	CROSBY CLAMP SADDLE	1	-	-

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DIMENSIONS : mm SCALE : 1 : 1  
 TOLERANCE : LIN ± 0,2 ANG ± 1° ITEM NO : -  
 MATERIAL : -  
 VERSION INFO : -

2018-12-05  
 APPROVED: S SMIT

2018-12-05  
 AUTHORISED: L O BORCHARD

**CROSBY CLAMP**

**TRANSNET**  
 freight rail  
 BBH1889  
 VERSION 1

DO REF: CDOF 0202 ECP REF: - DRAWN: D HATTINGH DESIGNED: - CHECKED: D HATTINGH

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Respondent's Signature

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Date & Company Stamp