



**GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS OR SERVICES TO TRANSNET LIMITED**  
**trading as TRANSNET PORT TERMINALS**

**1. SOLE AGREEMENT**

Unless otherwise agreed in writing, these terms ("Terms" and each "Term") and Transnet's purchase order/s ("Order" or "Orders") represent the only conditions upon which Transnet Limited, trading as Transnet Port Terminals ("Transnet"), procures items or services specified in the Order ("Products") from the person to whom the Order is addressed ("Supplier"). Transnet does not accept any other conditions which the Supplier may specify, unless otherwise agreed to by Transnet in writing. In the event of any inconsistency between these Terms and any Order, the Order shall take precedence.

**2. CONFORMITY WITH ORDER**

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

**3. DELIVERY AND TITLE**

- (a) The delivery dates and address/es are those in the Order. Time shall be of the essence in respect of the Supplier's obligations under the Order.
- (b) The Supplier will not be excused delay in delivery or performance except due to circumstances outside its control and then only subject to the Supplier having notified Transnet in writing on becoming aware of such circumstances. Transnet may terminate an Order, in whole or in part, without incurring any liability to the Supplier if such a delay becomes, in Transnet's absolute opinion, significant.
- (c) Title to the Products and risk of loss or damage to Products shall pass to Transnet on delivery.
- (d) If on delivery, the Products do not conform to the Order, Transnet may reject the Products and the Supplier shall promptly rectify any defects or in Transnet's opinion, supply appropriate replacement Products at the Supplier's expense within the specified delivery times, without any liability due by Transnet. Products shall be subject to such testing and/or inspection as Transnet may consider necessary.

**4. PRICE AND PAYMENT**

Prices specified in an Order cannot be increased. Payment for the Products shall be made by Transnet against an original Tax Invoice and month-end statement from the Supplier excluding Value-Added Tax, undisputed Tax Invoices and supporting documentation. Tax Invoices plus supporting documentation shall be posted to the address shown in the Order. Payment of the Supplier's Tax Invoice/s will be made by Transnet in the South African currency and on the terms stated in the Order, the standard payment terms being 30 (thirty) days from date of receipt by Transnet of a month-end statement. Transnet shall arrange for payment of such Tax Invoices and any pre-authorized additional expenses incurred, provided that the authorized expenses are supported by acceptable documentary proof of expenditure incurred (where this is available). Any amounts due in terms of these Terms shall be paid to the Supplier, taking into account any deduction or set-off and bank charges.

**5. PROPRIETARY RIGHTS LIABILITY**

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

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

provided that in both cases the Products shall continue to meet Transnet's requirements and any specifications stipulated in the Order. Should neither option be possible, the Supplier may remove, with Transnet's prior written consent, such Products and will pay to Transnet a sum equivalent to the purchase price. If Transnet refuses to give such consent, the



Supplier shall have no liability in respect of any continued use of the infringing Products after Supplier's prior written request to remove the same.

#### **6. PROPRIETARY INFORMATION**

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

#### **7. DEVELOPMENT WORK IN THE PRODUCTION OF PRODUCTS**

If the production or provision of any Products involves research and/or development which is wholly or partly funded by Transnet, then all intellectual property or other rights in the results thereof shall be the property of Transnet on creation.

#### **8. PUBLICITY**

The Supplier shall not name Transnet or use its trademarks, service marks (whether registered or not) or Products in connection with any publicity without Transnet's prior written consent.

#### **9. AFTER SALES SERVICE**

The Supplier shall provide replacement parts necessary to ensure the uninterrupted operation of the Products supplied for the duration of the warranty period, from delivery of any particular item of the Products and if requested by Transnet shall make these parts available to a third party maintainer of Transnet's choice at the same price as if the parts had been supplied to Transnet. The Supplier undertakes to provide a maintenance service for Products, should Transnet so request, on terms to be agreed. If the Order so indicates, the Supplier will provide a warranty service for the Products at a level to be agreed with Transnet.

**10. TERMINATION OF ORDER**

Transnet may cancel an Order in whole or in part at any time upon at least 7 (seven) days' written notice to the Supplier, or when there is a change in control of the Supplier or the Supplier commits any serious breach or any repeated or continued material breach of its obligations under these Terms and/or Order or shall have been guilty of conduct tending to bring itself into disrepute, on written notice to the Supplier when such work on the Order shall stop. Transnet shall pay the Supplier a fair and reasonable price for justified work in progress, where such price reflects only those costs not otherwise recoverable by the Supplier, at the time of termination, and the Supplier shall give Transnet full assistance to check the extent of such work in progress. Payment of such price shall be in full and final satisfaction of any claims arising out of such termination and upon such payment the Supplier shall deliver to Transnet all work, including any materials, completed or in progress. The sum payable to the Supplier under this clause will not in any event exceed the total amount that would have been payable to the Supplier had the Order not been terminated. In the event of termination the Supplier must submit all claims within 2 (two) months of termination after which time claims will only be met in what Transnet considers exceptional circumstances. If the Products are not provided in accordance with an Order, the Order shall be deemed terminated and the Supplier shall compensate Transnet for any costs incurred in obtaining substitute Products or any damage caused due to the failure or delay in the delivery.

**11. ACCESS**

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

**12. WARRANTY**

The Supplier warrants that it is competent to supply the Products in accordance with these Terms to the reasonable satisfaction of Transnet and that all Products delivered under the Order: (a) conform and comply in all relevant legislation, standards, directives and orders related to (inter alia) the supply, manufacture and use of the Products in force at the time of delivery, and to any specifications referred to in the Order; (b) will not cause any deterioration in the functionality of any



Transnet equipment; and (c) do not infringe any third party rights of any kind. The Supplier hereby indemnifies Transnet against all losses, liabilities, costs, claims, damages, expenses and awards of any kinds incurred or made against Transnet in connection with any breach of this warranty.

**13. INSOLVENCY**

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

**14. ASSIGNMENT**

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

**15. NOTICES**

Notices under these Terms shall be delivered by hand to the relevant address/es of the parties in the Order or may be served by facsimile, in which event notice shall be deemed served on receipt by the sender of such confirmation.

**16. LAW**

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

**17. GENERAL**

Completion or termination of an Order shall be without prejudice to any Term herein which by its nature would be deemed to continue after completion or termination, including but not limited to clauses 5,6,7,8, and 12 Headings are included herein for convenience only. If any Term herein be held illegal or unenforceable, the validity or enforceability of the remaining Terms shall not be affected. No failure or delay by Transnet to enforce any rights under these Terms will operate as a waiver thereof by Transnet. All rights and remedies available to either party under these Terms shall be in addition to, not to the exclusion of, rights otherwise available at law.

**18. COUNTERPARTS**

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

**19. DISCLAIMERS**

Respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFP and/or its receipt of a Proposal in response to it. In particular, please note that Transnet reserves the right to:

- modify the RFP's Goods and request Respondents to re-bid on any changes
- reject any Proposal which does not conform to instructions and specifications which are detailed herein
- disqualify Proposals submitted after the stated submission deadline
- not necessarily accept the lowest priced Proposal
- reject all Proposals, if it so decides
- award a contract in connection with this Proposal at any time after the RFP's closing date
- conduct post-tender negotiations with the preferred tenderer
- award only a portion of the proposed Goods which are reflected in the scope of this RFP
- split the award of the contract between more than one Supplier
- make no award of a contract

Kindly note that Transnet will not reimburse any Respondent for any preparatory costs or other work performed in connection with this Proposal, whether or not the Respondent is awarded a contract.



iCLM HQ 0624