

**VENDOR STANDARD TRADING TERMS for the SUPPLY OF GOODS OR SERVICES
("Conditions")**

1. Definitions

In these Conditions the words set out hereunder shall have the meanings assigned to them hereunder, unless the context clearly indicates the contrary:

- 1.1. Goods – any goods supplied by the Vendor to SABT;
- 1.2. Parties – SABT and the Vendor.
- 1.3. SABT – South African Bulk Terminals (Pty) Ltd with registration number 1994/004247/07 and principal place of business at 101 Maydon Road, Maydon Wharf, Durban, 4000, KZN, South Africa;
- 1.4. Services – any services supplied by the Vendor to SABT; and
- 1.5. Vendor – any entity supplying goods or services to SABT.

2. Interpretation

- 2.1. Headings of clauses shall be deemed to have been included for purposes of convenience only and shall not modify or affect the interpretation of the agreement.
- 2.2. Unless inconsistent with the context, words relating to any gender shall include the other genders, words relating to the singular shall include the plural and *vice versa* and words relating to natural persons shall include associations of persons having corporate status by statute or common law.
- 2.3. The rule which serves to restrict the meaning of general words to things or matters of the same kind as the preceding particular words (*eiusdem generis*) shall not apply, and whenever a term is followed by the word "including" which is then followed by specific examples, such examples shall not be construed as to limit the meaning of that term.
- 2.4. The rule of construction that the contract shall be interpreted against the party responsible for the drafting or preparation of These Conditions shall not apply.
- 2.5. These Conditions shall be interpreted and applied in accordance with South African law and under the jurisdiction of the South African courts.

3. Application

- 3.1. All and any Goods or Services provided to SABT are subject to these Conditions as updated from time to time.
- 3.2. In so far as the provisions of any written agreement between the Parties are inconsistent with these Conditions, the provisions of these Conditions shall prevail. Any standard trading terms of the Vendor, whether printed on the reverse of quotes, purchase order, invoices or otherwise, are specifically excluded.
- 3.3. No award of business to the Vendor shall be construed as a guarantee that any future work will be awarded of the same scope or at all. No guarantee is given of any volume.
- 3.4. No supply of Services or Goods may be subcontracted to any third party without the written consent of SABT. In any event, where supply of Services or Goods is outsourced, the Vendor will remain liable to SABT and carry the risk of loss of loss and insurance as if he himself performed the Services or supplied the Goods and will be responsible for ensuring that the Services are carried out in compliance with all statutory requirements.
- 3.5. The relationship between the Parties is a contract of service and does not constitute a contract of

agency, representation, employment or partnership.

4. Remuneration

- 4.1. SABT shall pay the rates as agreed and signed off by both Parties to the Vendor.
- 4.2. No additional charges shall be accepted unless agreed in advance, reduced to writing and signed by both Parties.
- 4.3. In the case of an ongoing relationship, the Parties shall negotiate annually and in good faith to agree any amendment to the rates. The existing rates shall remain in place with no retrospective increase until agreement is reached.

5. Payment

- 5.1. The Vendor shall invoice SABT monthly.
- 5.2. Invoices shall be due for payment 30 days from date of statement.
- 5.3. Should SABT agree to make an advance payment to a Vendor, such payment shall be made on the following basis:
 - the Vendor warrants that it will diligently and in good faith carry out all of its obligations;
 - the signatory to the Vendor Application Form personally guarantees the performance of the Vendor and will be jointly and severally liable to SABT therefor;
 - invoices received from the Vendor will be set off against the sum advanced until it is full depleted; and
 - should the Vendor default on any of its obligations, the Vendor will only be entitled to retain that portion of the advance payment in respect of which obligations have been duly performed to the satisfaction of SABT, and the balance shall be repayable to SABT immediately upon demand, failing which SABT may charge interest at prime plus 2% and the Vendor will be liable for all legal costs related to the recovery on an attorney and client scale as well as collection and tracing agent's fees.
- 5.4. In the case of the supply of Services, the Vendor shall not be entitled for any reason whatsoever to exercise a lien over any goods in its possession which belong to SABT or SABT's clients.

6. Liability

- 6.1. The Vendor indemnifies SABT against any liability which SABT may incur as a result of any claim against SABT by any client, authority or other third party in respect of loss, injury or damage directly arising from acts or omissions of the Vendor in negligently performing its obligations in terms of these Conditions.
- 6.2. Neither party shall be liable for any claim of whatsoever nature, whether for damages or otherwise and howsoever arising unless such claim arises from a negligent act or omission by it or its employees.
- 6.3. Neither party shall be liable for any special damages, indirect or consequential loss howsoever arising from any act or omission by it or its employees, whether negligent or otherwise.
- 6.4. In the case of supply of Goods, risk in and to the Goods shall pass on physical delivery to SABT or on such later date as may be agreed between the Parties in writing.

7. Claims

- 7.1. As soon as is reasonably practical after SABT becomes aware of any event or circumstance which

may give rise to a claim against the Vendor, SABT shall give the Vendor written notice of such event or circumstance, and the relevant facts known to it, to enable the Vendor to investigate the matter.

- 7.2. The Parties undertake to co-operate with, and to give all reasonable assistance to each other to enable any incident or claim to be fully investigated.

8. Insurance

- 8.1. The Vendor will obtain policies of insurance in its own name to cover its potential liability to SABT in the course of carrying out the Services or supplying the Goods.
- 8.2. Any failure to procure adequate insurance shall not affect the Vendor's liability in terms of these Conditions.
- 8.3. The Vendor must provide SABT with proof of renewal of cover annually. In addition, the Vendor is obliged to notify SABT whenever there is any material change to the conditions of its insurance cover.

9. Warranty

- 9.1. In case of the supply of Goods, the Vendor warrants to SABT that, at the time and place of delivery to SABT, all Goods will be fit for the purpose intended, merchantable, and free from all defects, and comply with all laws relating to the production, distribution, and sale of the Goods.

10. Termination

- 10.1. Unless otherwise agreed in a separate written agreement, either Party may without cause terminate the provision of Goods or Services on one month's written notice to the other Party.
- 10.2. If, at any time during the currency of these Conditions, either Party hereto shall be placed in business rescue, voluntary or compulsory sequestration or liquidation or under judicial management or seeks to make a compromise with its creditors, the other Party shall have the right to terminate any agreement relating to the provision of Goods or Services forthwith on written notice to the trustee or liquidator or judicial manager or business rescue practitioner as the case may be.
- 10.3. In the event of either Party breaching any of its obligations under these Conditions, which breach is capable of being remedied, and such Party failing to remedy such breach within a period of 14 days of receipt of written notice from the aggrieved Party calling upon it to do so, the aggrieved Party shall be entitled to cancel any agreement relating to the provision of Goods or Services; or to claim specific performance in either event without prejudice to the aggrieved Party's rights to claim damages or to claim such other remedy to which it may be entitled.
- 10.4. On termination, any claim for payment of outstanding amounts charges must be submitted in writing to SABT within 30 calendar days of receipt or acknowledgement of written notice of termination. SABT shall have the right to audit all elements of the termination claim, and Vendor shall make available to SABT on request all books, records and papers relating thereto. For the avoidance of doubt and notwithstanding the foregoing, SABT shall not by reason of the lawful termination of this order be liable to Vendor for compensation, reimbursement or damages on account of the loss of prospective profits on anticipated sales or on account of expenditures, investments, leases or commitments in connection with the business or goodwill of Vendor.

11. Dispute Resolution

- 11.1. The Parties shall negotiate in good faith with a view to settling any dispute arising out of or relating to these Conditions. For the purposes of this clause, a dispute will not include an unpaid account where there is no valid reason therefore.

- 11.2. If the dispute cannot be resolved, it will be referred to the Managing Director or Chief Executive Officer (or such other Director as designated by the foregoing) of each Party for determination, who will meet within 14 days of the referral.
- 11.3. If the dispute cannot be resolved within 14 days of this meeting, it may be referred for resolution by arbitration in terms of the Arbitration Act, 42 of 1965. The arbitrator or arbitrators shall be appointed by agreement by both Parties, and failing such agreement, by the President of relevant Law Society of South Africa. The decision of the Arbitrator is final and binding on the Parties and may be made an order of court at the instance of any party to the arbitration.
- 11.4. Nothing herein contained shall be deemed to prevent or prohibit the Parties from seeking urgent relief in a court of competent jurisdiction.

12. Compliance

- 12.1. The Vendor will perform the Services in compliance with all relevant legislation including, but not limited to, the Compensation for Occupational Injuries and Diseases Act, 130 of 1993, the Occupational Health and Safety Act 85 of 1993, the National Environmental Management Act 107 of 1998, the National Water Act 36 of 1998 and the National Road Traffic Act, 93 of 1996.
- 12.2. The Vendor must comply with any legislation applicable to either or both Parties, including but not limited to strictly complying with the letter and spirit of applicable local and international free competition and anti-corruption laws and regulations.
- 12.3. The Vendor represents and agrees that it, its affiliates, owners, directors, officers, employees, agents, intermediaries, subcontractors and service providers have not and will not engage in any communication, agreement or other form of co-ordination or co-operation with any competitor that is unlawful or otherwise restricted or prohibited in its dealings with SABT.
- 12.4. The Vendor, its affiliates, owners, directors, officers, employees, agents, intermediaries, subcontractors and service providers will not pay money, promise to pay money, authorise to pay money or offer or promise anything of value to a person in a position of trust to unduly influence the judgement or conduct of that person. There are no exceptions for small amounts or “facilitation” or “grease” payments. A person in a position of trust includes any public official, political candidate, political party, party official and private section employee or individual.
- 12.5. The Vendor represents and agrees that its owners, directors, officers, employees, agents, subcontractors and service providers do not have any personal relationships which might unduly influence the services provided to SABT.
- 12.6. The Vendor agrees that it will systematically implement adequate measures and controls ensuring full compliance with the applicable anti-corruption laws and the commitments made in this policy by its employees, agents, intermediaries, subcontractors and service providers.
- 12.7. The Vendor will keep accurate books, accounts and records related to SABT business. The Vendor agrees to make available for review its records and other documentation, and for interviews its owners, directors, officers, employees, agents, intermediaries, subcontractors and service providers relating to the services provided to SABT.
- 12.8. SABT shall be entitled to audit the Vendor for compliance to the relevant legislation, These Conditions and any other SABT requirements at any time on reasonable notice to the Vendor.
- 12.9. SABT does not engage in or condone any anti-competitive or corrupt behaviour in relation to any services provided to SABT. Should SABT in good faith believe a breach of this nature has occurred or may occur, SABT shall be entitled to suspend all services and / or terminate any contractual arrangements with the Vendor in whole or on part with immediate effect.

13. Force Majeure

- 13.1. A Party shall not be liable for a failure to perform any of its obligations hereunder due to a *force majeure* event (which includes but is not limited to war, civil war, civil violence, riots, revolutions, acts of piracy, acts of sabotage, terrorism, sabotage, natural disasters, epidemics, pandemics, destruction by lightning, explosions, fires, destruction of installations, industrial action or strike, changes of law, acts of Authority, whether lawful or unlawful) that is beyond its reasonable control and that it could not reasonably be expected to have taken into account at the time of the conclusion of these Conditions or any agreement between the Parties. Economic hardship shall not in and of itself constitute *force majeure*.
- 13.2. The Party subject to the *force majeure* event shall give prompt notice to the other Party of its nature and estimated duration.
- 13.3. Relief from liability for non-performance by reason of the provisions of this clause shall commence on the date upon which the Party seeking relief gives notice of the *force majeure* event relied upon and shall terminate upon the date which such event ceases to exist.
- 13.4. The Parties hereto shall co-operate and collaborate and use all reasonable efforts to overcome the *force majeure* event concerned and/or nullify its effect.
- 13.5. If the *force majeure* event substantially or permanently prevents the continued performance by either Party of its obligations in terms of these Conditions or any agreement between them for a period exceeding 30 consecutive days, then either Party shall be entitled, by giving notice in writing, to terminate the said agreement with effect from 7 days after giving of such notice.

14. Confidentiality & Restraint

- 14.1. Each Party agrees to treat as strictly confidential the operations, business and affairs of the other Party and not to divulge any information relating thereto to any third party, agent or employee, save as required by law, in respect of the execution of these Conditions or agreement between them, whether prior to, during or after the currency of these Conditions or the said agreement.
- 14.2. All documentation furnished by one Party to the other Party pursuant to these Conditions or any agreement between them will remain the property of that Party and upon the request of that Party will be returned to it.
- 14.3. Each Party acknowledges that all right, title and interest in and to any information which the other Party has an interest in being kept confidential vests in that Party and that neither Party has any claim of any nature in and to the confidential information of the other Party.
- 14.4. The Parties shall only process each other's personal information or that of their employees in accordance with the requirements of the Protection of Personal Information Act, 4 of 2013.
- 14.5. All intellectual property rights of any nature whatsoever whether capable of registration or not (and whether registered or not) in either Party's name including but not limited to either Party's trademarks, logos and images shall remain the sole property of that Party. The other Party shall not acquire any rights in relation thereto, and shall not make any use thereof without formal written consent.
- 14.6. The Vendor agrees and undertakes in favour of SABT that it will not, whilst providing the Goods or Services to SABT, hold direct discussions or enter into direct agreements with any of SABT's customers without SABT's knowledge and consent.

15. General

- 15.1. Notwithstanding the Electronic Communications and Transactions Act, 2002, no amendment or variation of these Conditions or any agreement between the Parties shall be of any force or effect unless reduced to writing and physically signed by a duly authorised director of SABT. Whilst correspondence for operational reasons may occur via email, no formal amendment or variation may

- be concluded via email.
- 15.2. No failure, refusal or neglect by a Party to exercise any rights under these Conditions or any agreement between the Parties, or to insist upon strict compliance with or performance of another Party's obligations under these Conditions or such agreement, shall constitute a waiver of the provisions of these Conditions or such agreement or of any of that Party's rights. A Party may at any time require strict compliance with the provisions of these Conditions or any agreement between the Parties, and shall not be prejudiced or estopped from exercising any of its rights which may have arisen in the past or may arise in the future.
 - 15.3. Each of the provisions of these Conditions and any agreement between the Parties shall be considered as separate terms and conditions. In the event that these Conditions or any such agreement are affected by any legislation or any amendment thereto, or if their provisions are by virtue of such legislation or otherwise held to be illegal, invalid, prohibited or unenforceable, then any such provisions shall be ineffective only to the extent of the illegality, invalidity, prohibition or unenforceability and each of the remaining provisions shall remain in full force and effect as if such illegal, invalid, prohibited or unenforceable provision was not a part of these Conditions or any agreement between the Parties.
 - 15.4. Neither Party may cede or assign any of its interest in, or its rights and obligations deriving from, these Conditions or any agreement to any third party without the other party's prior written consent, except for a cession or assignment made as part of an internal reorganization of either party, which will not affect their shareholding.
 - 15.5. The Party's *domicilia citandi et executandi* for all purposes under These Conditions shall be as set out in clause 1 hereof.
 - 15.6. Any party shall be entitled to change its *domicilium* by way of written notice to the other specifying its new *domicilium* provided that such new address shall be a street address within the Republic of South Africa. All notices by one Party to the other shall be delivered, to the chosen *domicilium citandi et executandi* of the addressee and shall be deemed to have been received on the date of delivery or dispatch unless the contrary is proved. Copies of all notices shall in addition be emailed to the relevant Party on the email address most recently provided.
 - 15.7. No agent of, or person employed by SABT, has any authority to alter or vary in any way these conditions unless he is expressly authorised in writing to do so by a Director or Senior Manager of SABT. Any agent of, or person employed by the Vendor who enters into an agreement with SABT will be deemed to do so on behalf of the Vendor and with his authority.