



TRANSNET FREIGHT RAIL, a division of

**TRANSNET SOC LTD**

Registration Number 1990/000900/30

[hereinafter referred to as **Transnet**]

**REQUEST FOR QUOTATION [RFQ] No TPG CON 013/2013**

**FOR THE HIRE OF:      EQUIPMENT AND ELECTRICAL TOOLS ON AN AS AND  
WHEN REQUIRED BASIS**

**FOR DELIVERY TO:      PORT ELIZABETH AREA**

**ISSUE DATE:              08 APRIL 2013**

**CLOSING DATE:          19 APRIL 2013**

**CLOSING TIME:          12:00**



**RFQ CON 013/2013**

**SCHEDULE OF DOCUMENTS**

**HIRE OF EQUIPMENT AND ELECTRICAL TOOLS ON AN AS AND WHEN REQUIRED BASIS**

Section

1. Notice to Bidders
2. Quotation Form
3. Standard Terms and Conditions for the Supply of Goods or Services to Transnet
4. Vendor Application Form

Annexures:

Annexure A – Technical criteria:

Technical Submission/Questionnaire

1. Availability of Equipment and Other Resources
2. Quality Plan
3. Capacity and Ability to meet Delivery Schedule
4. Previous Experience

5. Master Agreement

## Section 1

### NOTICE TO BIDDERS

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Quotations which must be completed as indicated in Section 2 of this RFQ are to be submitted as follows:

**METHOD:** Tender box

**CLOSING VENUE:** Bellville Square, off Modderdam Road, behind Transnet Park, Bellville South

**E-MAIL ADDRESS:** **TCPTENDERSCAPETOWN@TRANSNET.NET**

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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 Broad-Based Black Economic Empowerment [B-BBEE]

Transnet fully endorses and supports the Government's Broad-Based Black Economic Empowerment Programme and it would therefore prefer to do business with local business enterprises who share these same values. Transnet will accordingly allow a "preference" to companies who provide a valid B-BBEE Verification Certificate. All procurement transactions will be evaluated accordingly.

##### 2.1 B-BBEE Scorecard and Rating

As prescribed in terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note the following:

- Functionality is included at a pre-qualification stage with a prescribed percentage threshold of **60%**
- Proposals will be evaluated on price which will be allocated 80 points and preference which will be allocated 20 points, dependent on the value of the Services.
- The 80/20 preference point system applies where acquisition of the Goods or Services will be less than R1 000 000.00
- If the 80/20 preference point system is stipulated and all Bids received exceed R1 000 000.00, the RFQ will be cancelled.
- In this RFQ, Transnet will apply **80/20** preference point system prescribed in the PPPFA.

In compliance with the Government Gazette No 34612, Notice No. 754 dated 23 September 2011, as from 1 October 2011 valid B-BBEE Verification Certificates must be issued by:

- (i) Verification Agencies accredited by the South African National Accreditation System [SANAS]; or
- (ii) Registered Auditors approved by the Independent Regulatory Board of Auditors [IRBA], in accordance with the approval granted by the Department of Trade and Industry.

Enterprises will be rated by such agencies based on the following:

**a) Large Enterprises [i.e. annual turnover greater than R35 million]:**

- Rating level based on all seven elements of the B-BBEE scorecard

**b) Qualifying Small Enterprises – QSE [i.e. annual turnover between R5 million and R35 million]:**

- Rating based on any four of the elements of the B-BBEE scorecard

**c) Exempted Micro Enterprises – EME [i.e. annual turnover less than R5 million]:**

In accordance with B-BBEE Codes of Good Practice [Statement 000, Section 4], any enterprise with an annual total revenue of R 5 million or less qualifies as an EME.

- Automatic rating of B-BBEE Level 4 irrespective of race or ownership
- Black ownership greater than 50% or Black Women ownership greater than 50% automatically qualify as B-BBEE Level 3

Sufficient evidence to qualify as an EME would be a certificate (which may be in the form of a letter) from an auditor or accounting officer or a certificate from a Verification Agency accredited by SANAS. The certificate must confirm the company's turnover, black ownership / black female ownership, B-BBEE status level and validity date.

*Respondents are required to furnish proof of the above to Transnet. [i.e. a valid detailed scorecard as stipulated above in respect of Large Enterprises and QSEs, or a valid certificate in respect of EMEs].*

Transnet will accordingly allocate a maximum of **20 [twenty] points** in accordance with the **80/20** preference point system prescribed in the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations to the Respondent's final score based on an entity's B-BBEE scorecard rating. *[Refer **Annexure A- B-BBEE Preference Points Claim Form** for further details].*

N.B. Failure to submit a B-BBEE certificate, which is valid as at the Closing Date of this RFQ, will result in a score of zero being allocated for B-BBEE.

*[Refer clause **Error! Reference source not found.** below for Returnable Documents required]*

### **3 Communication**

Respondents are warned that a response will be liable for disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer(s) or employee of Transnet in respect of this RFQ between the closing date and the date of the award of the business.

A Respondent may, however, before the closing date and time, direct any written enquiries relating to the RFQ to the following Transnet employee:

Name: Ms N Ncamane

Email: [Nomsikelelo.ncamane@transnet.net](mailto:Nomsikelelo.ncamane@transnet.net)

Respondents may also, at any time after the closing date of the RFQ, communicate with the Secretariat of the Transnet Acquisition Council on any matter relating to its RFQ response:

Telephone 021 940 1934

Email [Nomsikelelo.ncamane@transnet.net](mailto:Nomsikelelo.ncamane@transnet.net)

**4 Tax Clearance**

The Respondent's original valid Tax Clearance Certificate must accompany the Quotation. Failure to provide this document with the RFQ submission will result in disqualification.

**5 VAT Registration**

The valid VAT registration number must be stated here: \_\_\_\_\_ *[if applicable]*.

**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 Changes to Quotations**

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

**8 Pricing**

All prices must be quoted in South African Rand on a fixed price basis, excluding VAT.

**9 Prices Subject to Confirmation**

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

**10 Negotiations**

Transnet reserves the right to undertake post-tender negotiations with selected Respondents or any number of short-listed Respondents.

**11 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.

**12 Disclaimers**

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;
- reject all Quotations, if it so decides;
- 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 / service/s which are reflected in the scope of this RFQ;
- split the award of the order/s between more than one Supplier/Service Provider; or
- make no award at all.

In addition, Transnet reserves the right to exclude any Respondent from the bidding process who has been convicted of a serious breach of law during the preceding 5 [five] years, including but not limited to breaches of the Competition Act 89 of 1998. Respondents are required to indicate below whether or not they have been found guilty of a serious breach of law during the past 5 [five] years:

I/We \_\_\_\_\_ do hereby certify that I/we **have/have not been** 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.

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.

### 13 Evaluation Criteria

Transnet will utilise the following criteria [not necessarily in this order] in choosing a Supplier/Service Provider, if so required:

- Administrative responsiveness - Completeness of response and returnable documents
- Substantive responsiveness – Prequalification criteria, if any, must be met and whether the Bid materially complies with the scope and/or specification given
- Technical threshold of 60%: availability and condition of equipment, quality plan, previous experience, capacity and ability to meet delivery schedule
- Weighted evaluation based on 80/20 preference point system as indicated in paragraph 2:
  - Pricing and price basis [firm] - whilst not the sole factor for consideration, competitive pricing and overall level of unconditional discounts<sup>1</sup> will be critical
  - B-BBEE status of company

Preference points will be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

<sup>1</sup> Only unconditional discounts will be taken into account during evaluation. A discount which has been offered conditionally will, despite **not being taken into account for evaluation purposes, be implemented when payment is affected.**

-BBEE Status Level of Contributor	Number of points (90/10 system)
1	20
2	18
3	16
4	12
5	8
6	6
7	4
8	2
Non-compliant contributor	0

**14 Validity Period**

Transnet desires a validity period of 60 [sixty] days from the closing date of this RFQ.

This RFQ is valid until \_\_\_\_\_.

**15 Banking Details**

BANK: \_\_\_\_\_

BRANCH NAME / CODE: \_\_\_\_\_

ACCOUNT HOLDER: \_\_\_\_\_

ACCOUNT NUMBER: \_\_\_\_\_

**16 Company Registration**

Registration number of company / C.C. \_\_\_\_\_

Registered name of company / C.C. \_\_\_\_\_

**17 Disclosure of Prices Quoted**

Respondents must indicate here whether Transnet may disclose their quoted prices and conditions to other Respondents:

YES ☐ NO ☐

**18 Returnable Documents**

**Returnable Documents** means all the documents, Sections and Annexures, as listed in the tables below.

- a) Respondents are required to submit with their Quotations the **mandatory Returnable Documents**, as detailed below.

***Failure to provide all these Returnable Documents at the Closing Date and time of this RFQ will result in a Respondent's disqualification. Respondents are therefore urged to ensure that all these Documents are returned with their Quotations.***

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. Please confirm submission of these mandatory Returnable Documents by so indicating [Yes or No] in the table below:

Returnable Documents	Submitted [Yes or No]
SECTION 2 : Quotation Form	
- Original valid Tax Clearance Certificate [Consortia / Joint Ventures / Sub-contractors must submit a separate Tax Clearance Certificate for each party]	
ANNEXURE A: Technical Submission/Questionnaire	

- b) In addition to the requirements of section (a) above, Respondents are further required to submit with their Quotations the following **essential Returnable Documents** as detailed below.

***Failure to provide all these Returnable Documents may result in a Respondent's disqualification. Respondents are therefore urged to ensure that all these documents are returned with their Quotations.***

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. Please confirm submission of these essential Returnable Documents by so indicating [Yes or No] in the table below:

Returnable Documents	Submitted [Yes or No]
SECTION 1 : Notice to Bidders	
- Valid B-BBEE Verification Certificate [RSA Large Enterprises and QSEs] Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard	
- Valid B-BBEE certificate from auditor, accounting officer or SANAS accredited Verification Agency [RSA EMEs] Note: failure to provide a valid B-BBEE Verification Certificate at the closing date and time of the tender will result in an automatic score of zero being allocated for B-BBEE scorecard	
- 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 : Standard Terms and Conditions of Contract for the Supply of Goods or Services to Transnet	
SECTION 4 : Vendor Application Form	
- Original cancelled cheque or bank verification of banking details	
- Certified copies of IDs of shareholder/directors/members [as applicable]	
- Certified copy of Certificate of Incorporation [CM29/CM9 name change]	
- Certified copy of share certificates [CK1/CK2 if C.C.]	
- Entity's letterhead	
- Certified copy of VAT Registration Certificate [RSA entities only]	
- Certified copy of valid Company Registration Certificate [if applicable]	
- A signed letter from Respondent's auditor or accountant confirming most recent annual turnover figures	



**Section 2****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 Terms and Conditions for the Supply of Goods or Services to Transnet [Section 3 hereof]; and
- any other standard or special conditions mentioned and/or 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.

## Overview of the services

### 1. Scope of work

This contract covers the hire to Transnet Freight Rail of various items of Small Plant / Electrical Tools and Equipment on an as and when required basis for use at various construction sites in the Port Elizabeth area for a period of 24 months.

Items that would be required, but not limited to, are for example electric drills, skill saws, angle grinders, and most small electrically powered hand tools. Furthermore small plant items such as concrete mixers, compressors, water pumps, welding plants and general construction equipment would also form part of this contract.

Transnet Freight Rail reserves the right to award plant to different suppliers and not necessarily the whole contract to one supplier

### 2. Basis of hire

Prices tendered must be a daily rate and should include delivery to site.

Suppliers will be issued with an official Purchase Order on which the required hire period will be stipulated. Suppliers must restrain themselves from issuing equipment without an official Purchase Order as no payments will be effected for equipment without a Purchase order.

If and when required, equipment will be delivered to site within 1 days of the time the Supplier has been notified of the requirements.

It is a requirement of this tender that the equipment tendered for will be available as above. Should the Contractor not have the required equipment available, he shall obtain equipment from another source at his own cost and provide it to Transnet within the required time at the same rate as was tendered for in his original tender.

### 3. Area of operation

The area of operation will be as and when required on various sites in the greater Port Elizabeth area.

### 4. Contract price adjustment factor

Please note that Contract Price will be fixed for the duration of the contract and that all increases in cost from whatsoever cause shall be at the Contractor's risk and all decreases in cost shall be to his benefit

### 5. Sufficiency of tender

The Contractor shall be held to have satisfied himself before quoting as to the correctness and sufficiency of his quotation and of the rates and prices stated in the schedule of quantities and prices. These rates and prices shall be sufficient and shall be deemed to cover all the Contractor's obligations under the contract and everything necessary for the proper completion and maintenance of the Works.

### 6. Use of equipment

Transnet reserves the right to use the equipment supplied in terms of clause 1 hereof while it is so supplied for its own purposes only, and the Contractor shall perform no work or service for himself or for any other party with such plant during the hours of duty defined, but shall perform only such work or service as directed by the Project Manager.

Supplier need to provide informal training on the correct and safe use of the equipment and also certification of training by the supplier's competent person on delivery of the equipment.

**7. Fuelling, servicing and maintenance**

Maintenance, servicing and mechanical repairs of the equipment, including all adjustments necessary to keep the plant and equipment in an operational condition arising from normal wear and tear, are included in the Agreement and shall be provided by the Contractor at its own cost and in his own time.

When plant is paid for on a daily basis, the time spent on fuelling, servicing, maintenance and repairing by the Contractor shall not be included in the hours standing or hours worked, and will not be paid for. Plant shall not be withdrawn from work for servicing during normal hours of duty except when agreed to by the Project Manager.

**8. Price structure and payment**

The fees payable by Transnet to the Contractor for the plant and equipment shall be in accordance with the schedule of prices agreed to.

The invoiced amount payable to the Contractor shall be the sum of the charges as set out in the clause above, which shall be determined in accordance with the records, time sheets and such other documents kept by the parties, and which shall be invoiced monthly.

The Contractor shall, after the end of each month, submit to Transnet invoices, certified as correct, specifying the services rendered during the preceding month and detailing the amount due.

Transnet shall effect payment thirty (30)-days after receipt of a valid TAX-invoice from the Contractor.

The aforementioned rates, which are exclusive of Value Added Tax, shall remain firm for the duration of this Agreement and no further review of basic rates shall be entertained during this period.

The Contractor shall correct any error in the invoiced amount per credit note.

No payment whatsoever will be made for any plant except for periods when working as directed by the Technical Officer, or covered by standing time.

“PREVIEW COPY”

**Price Schedule**

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

Item No.	Description	Unit	Quantity	Rate	Price
001	HIRE, CABLE EXTENTION REEL;20M;2.5A	1		Day	
002	HIRE, CHISEL CHIPPING,FOR USE WITH COMPRESSOR	1		Day	
003	HIRE, CHISEL ATTACHMENT FOR ELECTRIC BREAKER;LG 150 X WD 40MM	1		Day	
004	HIRE, CHISEL LG 300MM	1		Day	
005	HIRE, COMPACTOR BOMAG 65 ROLLERS;13HP;732KG	1		Day	
006	HIRE, COMPACTOR BOMAG 75 ROLLERS;13HP;910KG	1		Day	
007	HIRE, COMPACTOR BOMAG 90 ROLLER;13HP;1250KG	1		Day	
008	HIRE, COMPACTOR PLATE ;WD 450 X LG 500 MM;8 HORSE POWER	1		Day	
009	HIRE, COMPACTOR PLATE; REVERSABLE;DIESEL;5.5HP;90KG	1		Day	
010	HIRE, COMPACTOR PLATE;ROUND;HONDA	1		Day	
011	HIRE, COMPACTOR RAMMER, 2 STROKE, WD 230MM X LG 300MM	1		Day	
012	HIRE, COMPACTOR RAMMER, 4 STROKE, WD 230MM X LG 300MM	1		Day	
013	HIRE, COMPRESSOR, AIR 800 CFM	1		Day	
014	HIRE, COMPRESSOR, AIR 185CFM	1		Day	
015	HIRE, COMPRESSOR, AIR 280CFM	1		Day	
016	HIRE, COMPRESSOR, AIR DIESEL, 140CFM	1		Day	
017	HIRE, COMPRESSOR, AIR DIESEL, 190CFM	1		Day	
018	HIRE, COMPRESSOR, AIR DIESEL, 250CFM	1		Day	
019	HIRE, COMPRESSOR, AIR DIESEL, 300CFM	1		Day	

020	HIRE, COMPRESSOR, AIR DIESEL, 360CFM	1		Day	
021	HIRE, COMPRESSOR, AIR DIESEL, 450CFM	1		Day	
022	HIRE, COMPRESSOR, AIR DIESEL, 750CFM	1		Day	
023	HIRE, COMPRESSOR, AIR ELECTRIC, 170CFM	1		Day	
024	HIRE, COMPRESSOR, AIR ELECTRIC, 250CFM	1		Day	
025	HIRE, COMPRESSOR, AIR ELECTRIC, 600CFM	1		Day	
026	HIRE, COMPRESSOR, AIR ELECTRIC, 750CFM	1		Day	
027	HIRE, CUTTER BRUSH;2.5 HORSE POWER	1		Day	
028	HIRE, CUTTER CONCRETE SAW;13HP	1		Day	
029	HIRE, CUTTER CONCRETE SAW;15HP	1		Day	
030	HIRE, CUTTER DIAMOND BLADE, DIA 350MM, MILLIMETER USED	1		MM Used	
031	HIRE, CUTTER SPADE, 100MM, ASPHALT	1		Day	
032	HIRE, DRILL 13MM HAMMER; 690 WATT	1		Day	
033	HIRE, DRILL 13MM;690 WATT	1		Day	
034	HIRE, DRILL 32MM MAGNETIC BASE;1800 WATT	1		Day	
035	HIRE, DRILL SLOTTED DRIVE SYSTEM, PLUS, HAMMER, 950W	1		Day	
036	HIRE, DRILL HIRE OF MEDIUM DUTY HAMMER DRILL; 800 WATT	1		Day	
037	HIRE, DRILL SDS BIT SET 20MM-40MM	1		Day	
038	HIRE, DRILL STEEL, 36MM X 1.6M, COMPRESSOR	1		Day	
039	HIRE, DRILL STEEL, 38MM X 1.2M, COMPRESSOR	1		Day	
040	HIRE, DRILL STEEL, 0.8M X 44MM, USED WITH COMPRESSOR	1		Day	
041	HIRE, GENERATOR, ELECTRIC 5KVA;13HP;SINGLE PHASE;	1		Day	

Respondent's Signature

Date &amp; Company Stamp

	220V;PETROL				
042	HIRE, GENERATOR, ELECTRIC 10KVA PETROL;18 HP; SINGLE PHASE	1		Day	
043	HIRE, GENERATOR, ELECTRIC 180 AMP; WELDER; HONDA; PLUS CABLES	1		Day	
044	HIRE, GENERATOR, ELECTRIC 380; DIESEL WELDER; 10KVA	1		Day	
045	HIRE, GENERATOR, ELECTRIC 5KVA;13HP; SINGLE PHASE;220V;PETROL	1		Day	
046	HIRE, GENERATOR, ELECTRIC 6KVA; 13HP; SINGLE PHASE; 220V; PETROL	1		Day	
047	HIRE, GRINDER 4.5 IN, 1200W, 115MM	1		Day	
048	HIRE, GRINDER 9 IN, 2500W, 230MM	1		Day	
049	HIRE, HAMMER, PNEUMATIC JACK;TEX11	1		Day	
050	HIRE, HOSE LG 30M X DIA 20MM	1		Day	
051	HIRE, LABOR ERECT AND DISMANTLE MOBILE CONVEYOR	1		Per setup	
052	HIRE, LIGHT UNIT, PORTABLE HALOGEN TOWER, 2500 WATT	1		Day	
053	HIRE, LIGHT UNIT FLOOD LIGHT;220V X 500W	1		Day	
054	HIRE, MACHINE BREAKER CHIPPER, 950W, LIGHT DUTY	1		Day	
055	HIRE, MACHINE BREAKER, 1700W, HEAVY DUTY, MODEL 11304	1		Day	
056	HIRE, MACHINE CHECK,WIP, FOR USE WITH COMPRESSOR	1		Day	
057	HIRE, MACHINE DRIVE UNIT, 5.5HP, PETROL	1		Day	
058	HIRE, MACHINE ELECTRIC SCABBLER; 220V	1		Day	
059	HIRE, MACHINE FLOOR SANDER; 9 HP	1		Day	
060	HIRE, MACHINE HEAVY DUTY BREAKER;T66	1		Day	
061	HIRE, MACHINE MOTORISED	1		Day	

	BLOWER; STIHL; 120DB				
062	HIRE, MACHINE LAWNMOWER; 2 STROKE	1		Day	
063	HIRE, MACHINE LAWNMOWER; 4 STROKE	1		Day	
064	HIRE, MACHINE MOIL, CHIPPING, FOR USE WITH COMPRESSOR	1		Day	
065	HIRE, MACHINE VIBRATING NEEDLE; ELECTRIC; HIGH FREQUENCY; DIA 57MM	1		Day	
066	HIRE, MACHINE SCARIFIER; 13HP	1		Day	
067	HIRE, MACHINE SCRABBLER FOR COMPRESSOR AND PNEUMATIC EQUIPMENT	1		Day	
068	HIRE, MACHINE VIBRATING NEEDLE; DIA 26MM; LG 5M	1		Day	
069	HIRE, MACHINE VIBRATING NEEDLE; DIA 48MM; LG 5M	1		Day	
070	HIRE, MACHINE VIBRATING NEEDLE; DIA 62 MM X LG 5M	1		Day	
071	HIRE, MIXER CONCRETE, INDUSTRIAL, LARGE	1		Day	
072	HIRE, MIXER CONCRETE; 175/210 LT; DIESEL	1		Day	
073	HIRE, MOBILE UNIT CONVEYOR; 10 METER LONG; 8HP; 3 PIECE; 450 MM	1		Day	
074	HIRE, MOBILE UNIT CONVEYOR; 13M; 4 PIECE; WD 450MM	1		Day	
075	HIRE, PUMP, CENTRIFUGAL 2 INCH, 5HP, 50MM	1		Day	
076	HIRE, PUMP, CENTRIFUGAL 3 INCH, 6.5HP, 80MM, TRASH	1		Day	
077	HIRE, PUMP, CENTRIFUGAL 4 INCH, 7.5HP, TRASH	1		Day	
078	HIRE, PUMP 2 IN; SUBMERSIBLE PUMP ATTACHMENT; LG 5M	1		Day	
079	HIRE, ROLLER SIT ON; 2 1/2 TON; EXCLUDING OPERATOR AND FUEL	1		Day	
080	HIRE, SAW CHAIN ; 350MM	1		Day	
081	HIRE, SAW CIRCULAR, 2000W,	1		Day	



	235MM, SKILL				
082	HIRE, SAW JIGSAW, 720W, 110MM	1		Day	
083	HIRE, SPRAY OUTFIT MOTORISED TAR SPRAYER; 5.5HORSE POWER	1		Day	
084	HIRE, SWEEPER ROAD BROOM;TWO STROKE;3 HORSE POWER;700MM	1		Day	
085	HIRE, TESTER PIPE, 5HP, 35 BAR, MOTORIZED	1		Day	
086	HIRE, TESTER PIPE, SEWER LINE	1		Day	
087	HIRE, TOOL ASPHALT CUTTER, USED WITH COMPRESSOR	1		Day	
088	HIRE, TOOL ATTACHMENT FOR ELECTRIC BREAKER;MOIL;LG 150MM	1		Day	
089	HIRE, TOOL BOULDER BURSTER, USED WITH COMPRESSOR	1		Day	
090	HIRE, TOOL CHIPPING HAMMER, USED WITH COMPRESSOR	1		Day	
091	HIRE, TOOL CLAY SPADE, USED WITH COMPRESSOR	1		Day	
092	HIRE, TOOL MOIL;LG 300MM	1		Day	
093	HIRE, TOOL PAVING BREAKER, USED WITH COMPRESSOR	1		Day	
094	HIRE, TOOL PLUG AND FEATHER, USED WITH COMPRESSOR	1		Day	
095	HIRE, TOOL ROCK DRILL, USED WITH COMPRESSOR	1		Day	
096	HIRE, TOOL SAND RAMMER, USED WITH COMPRESSOR	1		Day	
097	HIRE, TOOL SPADE ATTACHMENT FOR PHEUMATIC BREAKER;LG 270 X WD 150MM	1		Day	
098	HIRE, TORCH BLOW, WITH GAS BOTTLE	1		Day	
099	HIRE, WASHER, PRESSURE CLEANING MOTORISED; 180/200 BAR	1		Day	
100	HIRE, WASHER, PRESSURE CLEANING ELECTRIC; 180/200 BAR; 220V	1		Day	
101	HIRE, FLOAT POWER	1		Day	



102	HIRE, DRILL CORE	1		Day	
103	HIRE, MIXER CONCRETE, INDUSTRIAL, SMALL	1		Day	
104	HIRE, DRILL SDS BIT SET 10MM- 20MM	1		Day	
105	HIRE, SAW ALL PURPOSE	1		Day	
106	HIRE, SANDER BELT	1		Day	
107	HIRE, GUN HEAT	1		Day	

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

**Notes to Pricing:**

- a) All Prices must be quoted in South African Rand, exclusive of VAT
- b) 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 could result in a bid being disqualified.
- c) 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.

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp

### Section 3

#### STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS OR SERVICES TO TRANSNET

A Supplier/Service Provider shall be obliged to adhere to the Standard Terms and Conditions for the Supply of Goods and Services to Transnet as expressed hereunder. Should the Respondent find any condition(s) unacceptable, it should indicate which condition(s) is/are unacceptable and offer an alternative(s). A Quotation 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.

#### 1 SOLE AGREEMENT

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

#### 2 CONFORMITY WITH ORDER

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

#### 3 DELIVERY AND TITLE

- 3.1 The delivery dates and addresses are those in the Order. Time shall be of the essence in respect of the Supplier's/Service Provider's obligations under the Order.
- 3.2 The Supplier/Service Provider will not be excused for delay in delivery or performance except due to circumstances outside its control and then only subject to the Supplier/Service Provider having notified Transnet in writing on becoming aware of such circumstances. Transnet may terminate an Order, in whole or in part, without incurring any liability to the Supplier/Service Provider if such a delay becomes, in Transnet's absolute opinion, significant.
- 3.3 If on delivery, the Goods/Services do not conform to the Order, Transnet may reject the Goods/Services and the Supplier/Service Provider shall promptly rectify any defects or in Transnet's opinion, supply appropriate replacement Goods/Services at the Supplier's/Service Provider's expense within the specified delivery times, without any liability due by Transnet.

#### 4 PRICE AND PAYMENT

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

- 4.2 Payment of the Supplier's/Service Provider's valid Tax Invoice(s) will be made by Transnet in the South African currency and on the terms stated in the Order, the standard payment terms being 30 [thirty] days from date of receipt by Transnet of a month-end statement, unless otherwise agreed to in writing. Transnet shall arrange for payment of such Tax Invoices and any pre-authorised additional expenses incurred, provided that the authorised expenses are supported by acceptable documentary proof of expenditure incurred [where this is available]. Any amounts due in terms of these Terms shall be paid to the Supplier/Service Provider, taking into account any deduction or set-off and bank charges.

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

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

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

## **6 PROPRIETARY INFORMATION**

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

## 7 PUBLICITY

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

## 8 TERMINATION OF ORDER

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

## 9 ACCESS

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

## 10 WARRANTY

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

**11 INSOLVENCY**

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

**12 ASSIGNMENT**

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

**13 NOTICES**

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

**14 LAW**

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

**15 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.

**16 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.

By signing this RFQ document, the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with all the conditions governing this RFQ, including those contained in any printed form stated to form part hereof and Transnet SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed to properly take it into account for the purpose of calculating quoted prices or otherwise.

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

.....  
SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE

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

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

REGISTERED NAME OF COMPANY: \_\_\_\_\_

PHYSICAL ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Respondent's contact person:** *[Please complete]*

Name	:	
Designation	:	
Telephone	:	
Cell Phone	:	
Facsimile	:	
Email	:	
Website	:	

**Transnet urges its clients, suppliers and the general public  
to report any fraud or corruption to  
TIP-OFFS ANONYMOUS : 0800 003 056**

\_\_\_\_\_  
Respondent's Signature

\_\_\_\_\_  
Date & Company Stamp



**Section 4**  
**VENDOR APPLICATION FORM**

	<b>SUPPLIER DECLARATION FORM</b> 19	Tender schedule: T2.2-21
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The Financial Director or Company Secretary

Transnet Vendor Management has received a request to load your company as a Transnet vendor. We would like to take this opportunity to welcome you as a potential vendor and request that you assist with the following to enable us to process this request:

1. Complete the "Supplier Declaration Form" (SDF) on page 2 of this letter
2. Copy of cancelled cheque **OR** letter from the bank verifying banking details (**with bank stamp**)
3. Certified copy of Identity document of Shareholders/Directors/Members (where applicable)
4. Certified copy of certificate of incorporation, CM29 / CM9 (name change)
5. Certified copy of share Certificates of Shareholders, CK1 / CK2 (if CC)
6. A letter with the company's letterhead confirming physical and postal address
7. Original or certified copy of SARS Tax Clearance certificate and Vat registration certificate
8. A signed letter from the Auditor / Accountant confirming most recent annual turnover and percentage black ownership in the company **AND/OR** BBBEE certificate and detailed scorecard from a SANAS Accredited Verification Agency.

**NB:**

- **Failure to submit the above documentation will delay the vendor creation process.**
- *Where applicable, the respective Transnet business unit processing your application may request further information from you. E.g. proof of an existence of a Service/Business contract between your business and the respective Transnet business unit etc.*

**IMPORTANT NOTES:**

- a) **If your annual turnover is less than R5 million,** then in terms of the DTI codes, you are classified as an Exempted Micro Enterprise (EME). If your company is classified as an EME, please include in your submission, a signed letter from your Auditor / Accountant confirming your company's most recent annual turnover is less than R5 million and percentage of black ownership in the company **AND/OR** BBBEE certificate and detailed scorecard from a SANAS Accredited Verification Agency.
- b) **If your annual turnover exceeds R5 million,** and you claim a specific BEE level, please include your BEE certificate in your submission as confirmation of your status.
- c) **To avoid PAYE tax being automatically deducted from any invoices received from you,** you must also contact the Transnet person who lodged this request on your behalf, so as to be correctly classified in terms of Tax legislation.
- d) Unfortunately, **No payments can be made to a vendor** until the vendor has been registered, and no vendor can be registered until the vendor application form, together with its supporting documentation, has been received and processed.

Regards,  
Transnet Supplier Management

### SUPPLIER DECLARATION FORM

Company Trading Name							
Company Registered Name							
Company Registration Number Or ID Number If A Sole Proprietor							
Form of entity	CC	Trust	Pty Ltd	Limited	Partnership	Sole Proprietor	
VAT number (if registered)							
Company Telephone Number							
Company Fax Number							
Company E-Mail Address							
Company Website Address							
Postal Address							
Physical Address							
Contact Person							
Designation							
Telephone							
Email							
Annual Turnover Range (Last Financial Year)		< R5 Million		R5-35 million		> R35 million	
Does Your Company Provide		Products		Services		Both	
Area Of Delivery		National		Provincial		Local	
Is Your Company A Public Or Private Entity		Public		Private			
Does Your Company Have A Tax Directive Or IRP30 Certificate		Yes		No			
Main Product Or Service Supplied (E.G.: Stationery/Consulting)							

#### BEE Ownership Details

% Black Ownership		% Black women ownership		% Disabled person/s ownership	
Does your company have a BEE certificate		Yes		No	
What is your broad based BEE status (Level 1 to 8 / Unknown)					
How many personnel does the firm employ		Permanent		Part time	
Name of person procuring your services/products					
Contact number					
Transnet operating division					

#### Duly Authorised To Sign For And On Behalf Of Firm / Organisation

Name		Designation	
Signature		Date	

#### Stamp And Signature Of Commissioner Of Oath

Name		Date	
Signature		Telephone No.	

**NB: Please return the completed form, with all the supporting documentation to the person procuring your services/material/goods**



TRANSNET



## SUPPLIER CODE OF CONDUCT

Transnet aims to achieve the best value for money when buying or selling goods and obtaining services. This however must be done in an open and fair manner that supports and drives a competitive economy. Underpinning our process are several acts and policies that any supplier dealing with Transnet must understand and support. These are:

- The Transnet Detailed Procurement Procedure (DPP);
- Section 217 of the Constitution - the five pillars of Public PSCM (Procurement and Supply Chain Management): fair, equitable, transparent, competitive and cost effective;
- The Public Finance Management Act (PFMA);
- The Broad Based Black Economic Empowerment Act (BBBEE); and
- The Anti Corruption Act.

This code of conduct has been included in this contract to formally appraise Transnet Suppliers of Transnet's expectations regarding behaviour and conduct of its Suppliers.

### **Prohibition of Bribes, Kickbacks, Unlawful Payments, and Other Corrupt Practices**

Transnet is in the process of transforming itself into a self-sustaining State Owned Enterprise, actively competing in the logistics industry. Our aim is to become a world class, profitable, logistics organisation. As such, our transformation is focused on adopting a performance culture and to adopt behaviours that will enable this transformation.

*Transnet will not participate in corrupt practices and therefore expects its suppliers to act in a similar manner.*

- Transnet and its employees will follow the laws of this country and keep accurate business records that reflect actual transactions with and payments to our suppliers.
- Employees must not accept or request money or anything of value, directly or indirectly, to:
  - Illegally influence their judgement or conduct or to ensure the desired outcome of a sourcing activity;
  - Win or retain business or to influence any act or decision of any decision stakeholders involved in sourcing decisions; or
  - Gain an improper advantage.
- There may be times when a supplier is confronted with fraudulent or corrupt behaviour of Transnet employees. We expect our Suppliers to use our "Tip-offs Anonymous" Hot line to report these acts. (0800 003 056).

*Transnet is firmly committed to the ideas of free and competitive enterprise.*

- Suppliers are expected to comply with all applicable laws and regulations regarding fair competition and antitrust.
- Transnet does not engage with non-value adding agents or representatives solely for the purpose of increasing BBBEE spend (fronting)

*Transnet's relationship with suppliers requires us to clearly define requirements, exchange information and share mutual benefits.*

- Generally, Suppliers have their own business standards and regulations. Although Transnet cannot control the actions of our suppliers, we will not tolerate any illegal activities. These include, but are not limited to:
  - Misrepresentation of their product (origin of manufacture, specifications, intellectual property rights, etc);
  - Collusion;
  - Failure to disclose accurate information required during the sourcing activity (ownership, financial situation, BBBEE status, etc.);
  - Corrupt activities listed above; and
  - Harassment, intimidation or other aggressive actions towards Transnet employees.
- Suppliers must be evaluated and approved before any materials, components, products or services are purchased from them. Rigorous due diligence is conducted and the supplier is expected to participate in an honest and straight forward manner.
- Suppliers must record and report facts accurately, honestly and objectively. Financial records must be accurate in all material respects.

### **Conflicts of Interest**

*A conflict of interest arises when personal interests or activities influence (or appear to influence) the ability to act in the best interests of Transnet.*

- Doing business with family members
- Having a financial interest in another company in our industry

**This is to confirm that I/We the undersigned accepts and understood the Code of Conduct**

SUPPLIER'S SIGNATURE

Respondent's Signature

Date & Company Stamp

**ANNEXURE A**

The Technical criteria and maximum score in respect of each of the criteria are as follows:

<b>Technical criteria</b>	<b>Sub-criteria Maximum number of points</b>
Availability and condition of equipment	50
Capacity and ability to meet delivery schedule	10
Quality Plan, Compliance Certificates and Check lists	20
Previous Experience	20
Maximum possible score for quality (Ms)	100

Quality shall be scored in accordance with the following Annexures:

- Availability of equipment
- Capacity and ability to meet delivery schedule
- Quality Plan, Compliance Certificates and Check lists
- Previous Experience

The minimum number of evaluation points for Technical criteria is 60

Each evaluation criteria will be assessed in terms of five indicators – no response, poor, satisfactory, good and very good. Scores of 0, 40, 70, 90 or 100 will be allocated to no response, poor, satisfactory, good and very good, respectively. The scores of each of the evaluators will be averaged, weighted and then totalled to obtain the final score for quality.

Respondent's Signature

Date & Company Stamp

## Technical Submission/Questionnaire

### 1. Availability of Equipment and Other Resources

Tenderers to submit a list of all Equipment that he proposes to use to execute the work as described in the Goods Information, as well as the availability and details of ownership for each item.

Number of Equipment Owned	Equipment Type – Description	Age of equipment in months	Service Record of equipment

Signed

Date

Name

Position

Tenderer

Respondent's Signature

Date &amp; Company Stamp

## 2. Quality Plan

Due consideration must be given to the deliverables required to execute and complete the contract as per the Quality Management Standard stated in the overview of service and should include **compliance with Occupational Health and Safety Act (OHSA) 85 of 1993 as amended and Construction Regulations** but not be limited to:

1. The Contractor's Quality Policy.
2. Index of procedures to be used during the contract.
3. Typical Quality Manual.
4. Typical Quality Control Plan.
5. Compliance Certificate to the OHS Act 85 of 1993 as amended and check list

**Attached submissions to this schedule:**

Signed \_\_\_\_\_

Date \_\_\_\_\_

Name \_\_\_\_\_

Position \_\_\_\_\_

Tenderer \_\_\_\_\_

### 3. Capacity and Ability to meet Delivery Schedule

**Note to tenderers:**

The Tenderer is required to demonstrate to the Purchaser that he has sufficient current and future capacity to carry out the work as detailed in the Pricing Schedule and Goods Information and that he has the capacity and plans in place to meet the required delivery schedule as required. To this end, the following must be provided by the Tenderer:

- 1) Maximum quantity of work concurrently performed by the Tenderer in the recent past in order to illustrate his potential to full fill the requirements of this tender.
- 2) Current and future work on his order book, showing quantity.
- 3) Quantity of work for which the Tenderer has tenders in the market or is currently tendering on.

Index of documentation attached to this schedule:

Signed

Date

Name

Position

Tenderer

**Note to tenderers:**

[illegible]

Tenderer

Date & Company Stamp

## MASTER AGREEMENT

entered into by and between

### TRANSNET SOC LTD

Registration Number 1990/000900/30

and

.....  
Registration Number .....

**FOR HIRE OF EQUIPMENT AND ELECTRICAL TOOLS ON AN AS AND WHEN  
REQUIRED BASIS IN THE PORT ELIZABETH AREA**

**Agreement Number**

**TPG CON: 013-2013**

**Commencement Date**

**01.05.2013**

**Expiry Date**

**30.04.2015**

Respondent's Signature

Date & Company Stamp

## TABLE OF CONTENTS

1	<u>INTRODUCTION</u> .....	33
2	<u>DEFINITIONS</u> .....	33
3	<u>INTERPRETATION</u> .....	36
4	<u>NATURE AND SCOPE</u> .....	36
5	<u>AUTHORITY OF PARTIES</u> .....	37
6	<u>DURATION AND CANCELLATION</u> .....	37
7	<u>GENERAL OBLIGATIONS OF THE SUPPLIER</u> .....	37
8	<u>INVOICES AND PAYMENT</u> .....	39
9	<u>PRICE ADJUSTMENTS</u> .....	40
10	<u>WARRANTIES</u> .....	41
11	<u>THIRD PARTY INDEMNITY</u> .....	41
12	<u>INSPECTION</u> .....	41
13	<u>DEFECTIVE GOODS</u> .....	42
14	<u>TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SUPPLY</u> .....	43
15	<u>RIGHTS ON CANCELLATION</u> .....	43
16	<u>BREACH AND TERMINATION</u> .....	43
17	<u>CESSION</u> .....	44
18	<u>FORCE MAJEURE</u> .....	44
19	<u>CONFIDENTIALITY</u> .....	45
20	<u>INSURANCES</u> .....	46
21	<u>LIMITATION OF LIABILITY</u> .....	47
22	<u>INTELLECTUAL PROPERTY RIGHTS</u> .....	47
23	<u>NON-WAIVER</u> .....	49
24	<u>PARTIAL INVALIDITY</u> .....	50
25	<u>DISPUTE RESOLUTION</u> .....	50
26	<u>ADDRESSES FOR NOTICES</u> .....	50
27	<u>WHOLE AND ONLY AGREEMENT</u> .....	51
28	<u>AMENDMENT AND CHANGE CONTROL</u> .....	51
29	<b><u>GENERAL</u></b> .....	<b>51</b>



## 1. INTRODUCTION

This Agreement is entered into by and between:

**Transnet SOC Ltd** [Registration Number 1990/000900/30] whose registered address is Carlton Centre,  
150 Commissioner Street, Johannesburg 2001, Gauteng, Republic of South Africa [**Transnet**]

and

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

### NOW THEREFORE, IT IS AGREED:

3. Transnet hereby appoints the Supplier to provide, and Transnet undertakes to accept the supply of Goods provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements issued as a schedule to this Agreement; and
4. the Supplier hereby undertakes to provide the Goods provided for herein, as formally agreed between the Parties and in accordance with the Schedule of Requirements issued as a schedule to this Agreement.

## 2. 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, the technical specifications for the Goods 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 the actual stating date of the contract, 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. **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;
- i. **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to this Agreement;
- j. **Goods** means equipment and electrical tools, the material / products specified in the Schedule of Requirements as Schedule 1 hereto;
- k. **ICC Incoterms 2010** means the set 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. Incoterms do not deal with the transfer of ownership of the Goods. 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>;
- l. **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;
- m. **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;
- n. **Parties** mean the Parties to this Agreement together with their subsidiaries, divisions, business units, successors-in-title and assigns;
- o. **Party** means either one of these Parties;
- p. **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;
- q. **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;
- r. **Price(s)** means the agreed Price(s) for the Goods to be purchased from the Supplier 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;
- s. **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Supplier for the supply of Goods or ancillary Services;

- t. **Services** means Services provided to Transnet including activities such as consultation, advisory services, implementation services and day-to-day assistance provided by the Supplier, pursuant to the Schedule of Requirements in terms of this Agreement;
- u. **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;
- v. **Schedule of Requirements** means Schedule 1 hereto;
- w. **Subcontract** means any contract or agreement or proposed contract or agreement between the Supplier 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;
- x. **Subcontractor** means the third party with whom the Supplier enters into a Subcontract;
- y. **Tax Invoice** means the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- z. **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; and
- aa. **VAT** means Value-Added Tax chargeable in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

### 3. 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.

### 4. NATURE AND SCOPE

- a. This Agreement is an agreement under the terms and conditions of which the Supplier will arrange for the supply to Transnet of the Goods 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 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.

- 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 in accordance with procedures set out in clause 28 [*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 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.

## 5. 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:
  - enter into an agreement in the name of the other; or
  - give any warranty, representation or undertaking on the other's behalf; or
  - create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

## 6. DURATION AND CANCELLATION

- a. Notwithstanding the date of signature hereof, the Commencement Date of this Agreement is 01 May 2013 and the duration shall be for a twenty four months [2] year period, expiring on 30 April 2015, 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 16 [*Breach and Termination*], either Party may cancel this Agreement without cause by giving 30 [thirty] 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.

## 7. GENERAL OBLIGATIONS OF THE SUPPLIER

- a. The Supplier 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 and the Supplier's products;

keep full records clearly indicating all transactions concluded by the Supplier relating to the delivery of the Goods 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 and ancillary Services and the conduct of the business and activities of the Supplier;

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;

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 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 Tax Clearance Certificate and B-BBEE Accreditation Certificate, throughout the entire term of this Agreement. Should the Supplier 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.

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

render the supply of the Goods and ancillary Services and perform all its duties with honesty and integrity;

communicate openly and honestly with Transnet regarding the supply and performance of the Goods 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 and/or ancillary Services with courtesy and respond to all enquiries promptly and efficiently. Where the Supplier is unable to comply with the provisions of this clause, the Supplier 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 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; and

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 or ancillary Services to Transnet.

- 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 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.

## **8. INVOICES AND PAYMENT**

- a. Transnet shall pay the Supplier the amounts stipulated in each Purchase Order, subject to the terms and conditions of this Agreement.
- b. Transnet shall pay such amounts to the Supplier upon receipt of a correct and undisputed Tax Invoice together with the supporting documentation, as specified in the Schedule of Requirements appended hereto, once the undisputed Tax Invoices or such portions of the Tax Invoices which are undisputed become due and payable to the Supplier for the delivery of the Goods ordered, in terms of clause d below.
- c. All Prices set out in this Agreement and the Schedule of Requirements hereto are exclusive of VAT.
- d. 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] days after date of receipt by Transnet

of the Supplier's statement together with the relevant undisputed Tax Invoice(s) and supporting documentation.

- e. 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 8, the Supplier 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.
- f. The Supplier 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 and rights of use] 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.

## 9. PRICE ADJUSTMENTS

- a. All prices must be quoted in South African Rand on a fixed basis, excluding VAT
- b. If during the period of this Agreement Transnet can purchase similar Goods 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 purchased hereunder from the Supplier, Transnet may notify the Supplier of such total delivered cost and the Supplier shall have an opportunity to adjust the Price of the Goods 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 fails to do so or cannot legally do so, Transnet may (i) purchase the Goods 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 hereunder shall be reduced accordingly; (ii) terminate this Agreement without any penalty, liability or further obligation; or (iii) continue purchases under this Agreement.
- c. If during the period of this Agreement the Supplier sells any materials which are the same as, equivalent to, or substantially similar to the Goods herein, at a total delivered cost to a third party lower than the total delivered cost to a Transnet facility, then the Supplier has an opportunity to adjust its Price for the Goods 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 fails to do so or cannot legally do so, Transnet may (i) purchase the Goods 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 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 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.



## 10. WARRANTIES

The Supplier warrants that:

- a. pursuant to clause 7.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.

## 11. THIRD PARTY INDEMNITY

The Supplier hereby indemnifies and shall hold Transnet harmless against any direct damages suffered by or claims arising against Transnet in respect of clause 10.b above.

## 12. INSPECTION

- 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 12.

### 13. 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.

#### 14. TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SUPPLY

- 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 shall thereupon, as soon as possible after such date, deliver to Transnet the Goods [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. Where an integral or essential part of the work has not been completed, the amount to be paid to the Supplier will be calculated on the basis of Transnet's enrichment. The Supplier 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 as required by the terms of this Agreement or Purchase Order, or if any Goods are rejected on any of the grounds mentioned in clause 13 [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, and in such event, the supply of the remaining portion shall remain subject in all respects to these conditions.

#### 15. RIGHTS ON CANCELLATION

- a. If this Agreement or Purchase Order is cancelled in whole or in part in terms of clause 14 [Total or Partial Failure to Perform the Scope of Supply], 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 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 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 default.
- b. Any amount which may be recoverable from the Supplier 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.

#### 16. BREACH AND TERMINATION

- a. If either Party [the Defaulting Party] commits a material breach of this Agreement and fails to remedy such breach within 10 [ten] Business 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.

- b. 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, or
  - any similar action, application or proceeding in any jurisdiction to which it is subject.
- c. Transnet may terminate this Agreement at any time within 2 [two] months of becoming aware of a change of control of the Supplier by notice in writing to the Supplier. 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.
- d. The provisions of clauses 2 [Definitions], 10 [Warranties], 15 [Rights on Cancellation], 19 [Confidentiality], 21 [Limitation of Liability], 22 [Intellectual Property Rights], 25 [Dispute Resolution] and 29.a [Governing Law] shall survive termination or expiry of this Agreement.

## 17. CESSION

- a. Upon written notice to the Supplier, Transnet shall be entitled:
  - to appoint Transnet's financier of the Goods 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 to such financier as part of the funding consideration for the Goods.
- b. The Supplier 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.

## 18. 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, strike, lockout, industrial dispute, government action, laws or regulations, riots, terrorism or civil disturbance, defaults, delays or discontinuance on the part of independent contractors, 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.
- 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] days of the act of *force majeure* first occurring, either Party may thereafter terminate this Agreement with immediate notice.

## 19. 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 19 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 19 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 by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation, all corporate identity equipment including dies, blocks, labels, advertising matter, printing matter and the like.

## **20. INSURANCES**

a. Without limiting the liability of the Supplier under this Agreement, the Supplier shall take out insurance in respect of all risks for which it is prudent for the Supplier to insure against including any liability it may have as a result of its activities under this Agreement for theft, destruction, loss of or damage to Goods, 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.

- b. The Supplier 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] days after date of policy renewals.
- c. Subject to clause d below, if the Supplier fails to effect adequate insurance under this clause 20, 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. The Supplier shall promptly reimburse Transnet for any premiums paid provided such insurance protects the Supplier's liability. Transnet assumes no responsibility for such insurance being adequate to protect all of the Supplier's liability.
- d. In the event that the Supplier 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 shall immediately notify Transnet in writing of such termination and/or unavailability, where after either the Supplier or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] days prior written notice to that effect.

## **21. LIMITATION OF LIABILITY**

- a. The Supplier's liability under this clause 21 shall be in addition to any warranty or condition of any kind, express or implied by law or otherwise, relating to the Goods or ancillary Services, including the quality of the Goods 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.
- c. Neither Party accepts liability for damages and claims of a special, indirect or consequential nature arising as a result of the performance or non-performance of this Agreement, provided that such loss, damages or claims are not the direct result of the wilful acts or omissions and/or negligence or of any event which could reasonably have been foreseen and avoided on the part of the other Party. The phrase, "special, indirect or consequential" is deemed to include economic loss, loss of opportunity, loss of profit or revenue, and loss or damage in connection with claims against the principal by third parties.
- d. Nothing in this clause 21 shall be taken as limiting the liability of the Parties in respect of clauses 19 [Confidentiality] and 22 [Intellectual Property Rights].

## **22. 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 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's Background Intellectual Property shall remain vested in the Supplier.

Transnet shall grant to the Supplier 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 to sub-license to other parties.

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

The Supplier shall grant Transnet access to the Supplier'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.

**b. Title to Intellectual Property**

All right, title and interest in and to Foreground Intellectual Property prepared, conceived or developed by the Supplier, its researchers, agents and employees shall vest in Transnet and the Supplier acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. The Supplier 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 shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.

Where the Foreground Intellectual Property was created by the Supplier 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 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 for the assignment of any Foreground Intellectual Property from the Supplier to Transnet, over and above the sums payable in terms of this Agreement. The Supplier 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 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 shall disclose promptly to Transnet all such improvements, developments, adaptations and/or modifications, inventions or discoveries. The Supplier 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 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 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 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 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 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 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 award 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 award arising out of proceedings.

**23. 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.

## 24. 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.

## 25. 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 25.
- e. This clause 25 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 25 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

## 26. ADDRESSES FOR NOTICES

- a. The Parties to this Agreement select the physical addresses and facsimile 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 facsimile number, as may be, by written notice to the other:

### Transnet

1. For legal notices:  
.....  
.....  
.....  
Fax No. ....  
Attention: Legal Department
2. For commercial notices: Foyer, Bellville Square  
Behind Transnet Park  
Off Modderdam Road  
Bellville South  
Fax No. 021 810 0000 / 021 940 1938  
Attention: Ms N Ncamane

### 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 facsimile.
- c. Any notice shall be deemed to have been given:
- if hand delivered, on the day of delivery; or
- if sent by facsimile, on the date and time of sending of such facsimile, as evidenced by a facsimile confirmation printout, provided that such notice shall be confirmed by prepaid registered post on the date of dispatch of such facsimile, or, should no postal facilities be available on that date, on the next Business Day.

### 27. 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.

### 28. AMENDMENT AND CHANGE CONTROL

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.

### 29. 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 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 25 [*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.

**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: