

# SAPPI SOUTHERN AFRICA LIMITED: PURCHASE ORDER STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

## 1 INTERPRETATION

- 1.1 In this document, except where the context clearly indicates a contrary intention –
- 1.1.1 “business day” means any day other than a Saturday, Sunday or public holiday in the Republic of South Africa;
- 1.1.2 “buyer” means Sappi Southern Africa Limited;
- 1.1.3 “calendar month” means one of the 12 named months of the year from the first to the last day of such month;
- 1.1.4 “COIDA” means the Compensation for Occupational Injuries and Diseases Act, 130 of 1993;
- 1.1.5 “contract” means an agreement between the buyer and the supplier for the supply of the services or the sale of goods and their design, manufacture, supply, delivery, installation and/or testing and commissioning by the supplier, as specified in a purchase order, and which is entered into on these terms and conditions as amended from time to time and read with that purchase order, on the earliest of the date when the supplier:
- 1.1.5.1 notifies the buyer in writing that it accepts the purchase order and/or that it will commence with the supply of the services and delivery of the goods;
- 1.1.5.2 commences with the execution of the purchase order;
- 1.1.5.3 commences with supply of the services and delivery of the goods to the buyer; or
- 1.1.5.4 accepts payment for the goods and services;
- 1.1.6 “day” means a calendar day, from 00:00 to 24:00;
- 1.1.7 “directive” means a directive issued by the Commissioner for SARS stipulating the rate at which employees tax is to be withheld from the supplier’s remuneration and includes an affidavit in the form prescribed by SARS to the effect that the supplier is an independent contractor and that the buyer need not withhold employees’ tax from any amount which it pays the supplier;
- 1.1.8 “equipment” means all equipment required for the supply of the services or in connection with the sale of goods, including, but not limited to, forklifts, machinery, tools, protective clothing, safety gear and all required computer systems;
- 1.1.9 “goods” means the goods and services or service product described in a purchase order and which the supplier designs, manufactures, supplies, sources, delivers, installs and/or tests and commissions for and/or to the buyer, as prescribed in the purchase order;
- 1.1.10 “invoice” means a tax invoice as defined in the Value Added Tax Act, 89 of 1991 where the supplier is a VAT vendor, and where it is not, a commercial invoice;
- 1.1.11 “IP” means any registered and unregistered intellectual property including any patent, trade secret, know-how, copyright, design, trademark or plant breeder’s rights;
- 1.1.12 “KPI’s” means the buyer’s minimum performance standards in respect of those of the requirements identified by the buyer as key performance indicators and which standards the supplier must achieve in order to avoid penalties and/or committing a material breach of a contract;
- 1.1.13 “law” means the common law, statutes and all subordinate legislation, including regulations, bylaws and collective agreements and “laws” has a corresponding meaning;
- 1.1.14 “materials” means all materials and substances and substances required for, or in connection with, the goods and services or service product;

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- 1.1.15 “notice of variation” means the notice given by the buyer to the supplier setting out any changes which the buyer requires to the contract;
- 1.1.16 “OHS Act” means the Occupational Health and Safety Act, 85 of 1993 and all Regulations made or deemed to be made thereunder;
- 1.1.17 “personnel” means the supplier’s members, directors, officers, employees, agents and contractors;
- 1.1.18 “purchase order” means a written order issued by the buyer to the supplier for the design, manufacture, supply, sourcing, delivery, installation and/or testing and commissioning of the goods and services or service product described in that purchase order;
- 1.1.19 “requirements” means the requirements, specifications and/or standards referred to in the applicable purchase order or contract documents and with which the services must comply, including any plans, diagrams, drawings, patterns, samples, brand names, methods and procedures;
- 1.1.20 “SARS” means the South African Revenue Services;
- 1.1.21 “service product” means the design, manufacture, supply, installation and/or commissioning of the goods and services which comply to the specifications (also known as the “works”) that form part of and as described in the purchase order, and anything (corporeal or incorporeal) and including IP, created as a consequence of, or in the course of providing, the goods and services;
- 1.1.22 “services” means any services described in the purchase order and which the supplier must provide to the buyer;
- 1.1.23 “site” or “sites” means the buyer’s premises or the place/s at the buyer’s premises, designated by the buyer, where the supplier is required to perform any of its obligations in respect of the goods and services or service product;
- 1.1.24 “site rules” means all the buyer’s rules, procedures, policies and regulations applied at each of the buyer’s sites, from time to time;
- 1.1.25 “specifications” means any specifications, standards and/or requirements referred to in a purchase order or contract documents and with which the goods and services or service product must comply including plans, diagrams, drawings, patterns, samples, brand names, methods and procedures;
- 1.1.26 “supplier” means the person or entity identified in the purchase order from whom the buyer purchases the goods and services or the service product in terms of a contract;
- 1.1.27 “variation proposal” means any change proposed by the supplier, to a contract, in response to a notice of variation;
- 1.1.28 “VAT” means value added tax charged or payable in terms of the Value Added Tax Act, 89 of 1991;
- 1.1.29 “VAT certificate” means a notice of registration as a vendor in terms of the Value Added Tax Act, 89 of 1991;
- 1.1.30 “vehicles” means any motor vehicles used by the supplier for, or in connection, with the goods and services or service product and which must be safe, roadworthy, licensed and must comply with the requirements, if applicable;
- 1.1.31 “week” means a period of 7 consecutive days;
- 1.1.32 “year” means a period of 365 consecutive days, and for the purposes of this clause, leap years will be ignored.

- 1.2 If a definition contains a substantive obligation, that obligation is enforceable even though it is included in that definition;
- 1.3 A reference to the singular includes the plural and vice versa and a reference to any particular gender includes the other gender and the neuter. Unless the context indicates otherwise, a reference to a person includes natural persons, juristic persons, partnerships, and trusts.
- 1.4 If any notice period prescribed in this contract expires on a Saturday, Sunday or a public holiday, it will be deemed to expire on the next business day thereafter;
- 1.5 A reference to any law means that law as it applies on the date a contract is concluded and as that law is amended or replaced from time to time thereafter.
- 1.6 All contracts shall be exclusively governed by and interpreted according to the laws of the Republic of South Africa.

## **2 APPLICATION OF THESE TERMS AND CONDITIONS**

- 2.1 No variation of these terms and conditions signed with electronic signatures will be valid or effective. Variations to these terms and conditions must be in writing and signed by the authorised representatives of both the buyer and the supplier.
- 2.2 If these terms and conditions and the provisions of the purchase order differ or conflict, then these standard terms and conditions prevail over the purchase order.
- 2.3 The buyer is not obliged to buy the goods and services or service product exclusively from the supplier.
- 2.4 The buyer gives no undertaking as to the quantity of the goods and services or service product to be purchased from the supplier in terms of the contract at any time or from time to time;
- 2.5 The supplier shall at its own cost and at all times have all resources, permits, vehicles and equipment necessary to supply the goods and services or service product;
- 2.6 Each contract comprises the whole contract between the supplier and the buyer and contains all the express provisions agreed by the parties, about the subject matter of that contract.
- 2.7 No failure to enforce, or delayed or partial enforcement of, a right by any party shall prejudice or derogate from the rights of such party under a contract, nor shall it constitute a waiver or novation of that party's rights under the contract and it shall not estop or otherwise prevent such party from enforcing at any time all its rights arising out of the contract.
- 2.8 THE SUPPLIER'S STANDARD TRADING TERMS AND CONDITIONS DO NOT APPLY UNDER ANY CIRCUMSTANCES.
- 2.9 SHOULD THE BUYER SIGN OR ACKNOWLEDGE RECEIPT OF ANY DOCUMENT RECEIVED FROM THE SUPPLIER WHICH CONTAINS (OR REFERS TO) TERMS AND CONDITIONS, SUCH SIGNATURE OR ACKNOWLEDGEMENT SHALL UNDER NO CIRCUMSTANCES AMOUNT TO ANY ACCEPTANCE OF THE TERMS CONTAINED, OR REFERRED TO, THEREIN AND THESE SAPPI SOUTHERN AFRICA PURCHASING TERMS AND CONDITIONS SHALL ALWAYS PREVAIL.
- 2.10 NO ACTION BY THE BUYER SHALL ENTITLE THE SUPPLIER TO ASSERT THAT THE SUPPLIER'S STANDARD TERMS AND CONDITIONS APPLY TO THIS PURCHASE ORDER.
- 2.11 To the extent that the purchase order is deemed in any way to be an acceptance of a quotation or any other offer by the supplier, any such acceptance by the buyer, and the resultant contract, is subject to these terms and conditions, and may not thereafter be varied, amended or substituted by the supplier by way of its acceptance of purchase order, delivery note, invoice, or other documentation.

- 2.12 The buyer may cancel a purchase order or any amendment to the purchase order at any time by sending a notice of termination in writing to the supplier. The supplier shall comply with any such termination instruction issued by the buyer in terms of this contract.
- 2.13 Should the buyer terminate the purchase order or any amendment thereto after the supplier has commenced the with the execution of the process of delivery of the goods and services or service product, then supplier may submit a termination claim and the buyer may consider such claim and may pay to the supplier the direct cost of any commitments, liabilities or expenditure which in the buyer's reasonable opinion are a direct consequence of the terminated purchase order at the time of termination. The buyer's opinion will take due account of the supplier's obligation to mitigate any of the supplier's losses so arising.
- 2.14 The buyer's maximum liability so arising shall not exceed the price of any undelivered goods and services or the service product on the relevant purchase order.
- 2.15 The buyer shall have no liability for purchase orders or amendments thereto canceled prior to the commencement of the execution of the process of delivery of the goods and services or service product.
- 2.16 Should the supplier fail to submit a termination claim for the direct costs related to the commencement of execution of the purchase order or amendment to such purchase order within fourteen (14) days of the date of any notice of termination issued by the buyer then the buyer shall have no further liability under the terms of the cancelled purchase order.
- 2.17 Since the provisions of these terms and conditions have been settled by negotiation and each party has been free to secure independent legal advice, the rule of construction that clauses must be interpreted against the party principally responsible for drafting does not apply.

### **3 PRICE**

- 3.1 The price of the goods and services or service product (or, where the price is determined by applying rates set out in a purchase order, those rates) shall:
- 3.1.1 be firm and fixed and shall not, unless expressly agreed to the contrary in writing by an authorised representative of the buyer, be escalated or otherwise increased for any reason;
- 3.1.2 include all charges of and associated with delivering the goods and services or service product to the delivery destination specified by the buyer, including the costs of any applicable packaging materials, loading and unloading, carriage, transshipment, storage, insurance, licence fees, royalties and all applicable duties, excise and taxes.
- 3.2 Goods sold by mass shall be purchased on a "net mass" basis, that is excluding the mass of any packaging, vehicle or tank in which they are delivered or the mass of any diluting agent.
- 3.3 The buyer must pay the supplier the price of the services within 60 days after the end of the calendar month in which the buyer receives the supplier's VAT invoice for that price and the buyer's authorised representative has signed acceptance and approval of such invoice.
- 3.4 The buyer does not have to pay any amount to the supplier unless and until the supplier has complied with all its obligations then due in terms of the applicable contract.
- 3.5 A request from the supplier for an advance payment may be granted within the buyer's discretion and on such terms and conditions as the buyer may request, which request may include the provision of security on terms acceptable to the buyer.

#### 4 REQUIREMENTS, SPECIFICATIONS, DEADLINES AND DELIVERY

- 4.1 Time is of the essence of each contract. The supplier must perform its obligations at the sites designated by the buyer, if applicable, and in accordance with the specifications and any applicable deadlines.
- 4.2 All goods and services or service product must be securely packed so as to prevent loss or deterioration of, and/or damage thereto. All packaging materials become the property of the buyer on delivery of the goods and services or service product.
- 4.3 The supplier must deliver the goods and services or service product, unloaded, at the sites designated by the buyer.
- 4.4 The supplier must only deliver the goods and services or service product to a representative of the buyer who is actually authorised to take delivery thereof.
- 4.5 Unless otherwise specified in the purchase order, delivery takes place when the buyer signs an acceptance certificate in respect of the goods and services or service product.
- 4.6 Before the supplier takes any chemical or hazardous substance onto any of the buyer's sites, the supplier must provide the buyer with a Material Safety Data Sheet in respect thereof.
- 4.7 The supplier must participate in any review of the KPI's conducted by the buyer and provide the buyer with all information and documents reasonably required by the buyer in this regard. If, at any review of the KPI's, the supplier fails to achieve any of the KPI's, then, without prejudice to any of its other rights or remedies the buyer may recover from the supplier (including by deduction from any amount owed by the buyer to the supplier for any reason) a penalty amounting to 1% of the price set out in the purchase order, for each week that the services fail to meet the KPI's, up to a maximum of 10% of that price. In lieu of such penalty, the buyer may recover from the supplier such damages as the buyer actually suffers because of the supplier's failure to achieve the KPI's.
- 4.8 If the supplier fails to deliver timeously the service product, then, without prejudice to any of its other rights or remedies, the buyer may recover from the supplier (including by deduction from any amount owed by the buyer to the supplier for any reason), a penalty amounting to 1% of the price set out in the purchase order, for each week of the delay, up to a maximum of 10% of that price. In lieu of such penalty, the buyer may recover from the supplier such damages as the buyer actually suffers because of the delay.
- 4.9 No party shall be liable for any failure to meet any of its obligations in terms of a contract or any delay in meeting them, to the extent to which the failure or delay is caused by any circumstances whatsoever which is beyond its reasonable control and for which it is not responsible (an event of "force majeure") which if qualifying shall include without limitation an act of God, war or warlike hostility, accidental or malicious damage, fire, flood, explosion, epidemic, riot, civil commotion, including but not limited to any labour dispute (save for labour disputes confined to the employees of the affected party) or any order or regulation of any government or other lawful authority and which was not in force at the time of acceptance of the purchase order.
- 4.10 Any inability to meet a payment due by a party to the other because of lack of funds shall in those circumstances not be treated as an event of force majeure.
- 4.11 The supplier shall give notice thereof to the buyer immediately upon the occurrence of an event of force majeure.
- 4.12 Should an event of force majeure prevent the supplier from delivering and of the goods or performing any of the services or service product and subsist for a continuous period of 3 days, the buyer shall be entitled to terminate the contract.
- 4.13 If agreed in writing between the parties that the supplier is obliged to transport the goods to the buyer's site and unless otherwise agreed in writing, then:

- 4.13.1 any carrier transporting goods to the buyer is the agent of the supplier and transport is at the supplier's risk;
- 4.13.2 unless otherwise stated in the purchase order, the supplier must pre-pay all transportation costs, duties, excise and all other imposts necessary to effect delivery of goods, unloaded at the sites designated by the buyer;
- 4.13.3 delivery of the goods shall take place once the unloading of the goods has been completed by the supplier at the buyer's premises.
- 4.14 A delivery note must accompany all goods delivered to the buyer. That delivery note must reflect the buyer's purchase order number relating to the goods delivered, a description of those goods, their quantity and net and gross masses, and item or part number/s, if applicable. Part deliveries must be indicated as such. Invoices must also include all this information.
- 4.15 Should there appear to be any conflict, inconsistency, discordance or want of agreement between requirements, descriptions, dimensions, specifications or quantities specified in the purchase order, the matter shall be referred by the supplier to the buyer for a decision before proceeding to execute the purchase order of any part thereof. The buyer's decision shall be final and binding.
- 4.16 The buyer reserves the right to call for certificates of raw materials and test certificates for materials and equipment used in the manufacture of the goods, and/or service product.
- 4.17 The supplier shall not make any changes to the goods and services or the service product that will impact on the performance, safety, quality, appearance or brand image of the goods and/or service product without the prior approval of the buyer.
- 4.18 On completion of the services, the supplier must promptly remove from the site where the services are carried out its equipment such as but not limited to forklifts, machinery, tools, protective clothing, safety gear and required computer systems used for the purposes of delivering the goods or performing the services or service product.
- 4.19 The supplier shall in supplying the service product favour the appointment of ancillary service providers required by the buyer to effect the supply of the service product from local small and medium enterprises listed with the buyer's site Enterprise Supplier Development Unit.

## **5 COMPLIANCE, PERSONNEL AND HEALTH AND SAFETY**

- 5.1 The supplier must comply with all applicable laws, including, but not limited to, the OHS Act, COIDA, the Protection of Personal Information Act, 2013 and the Electronic Communications and Transaction Act, 2002, the employment laws, health and safety laws, road transport and traffic laws, environmental laws and customs and excise and other tax laws.
- 5.2 The supplier is an "employer" in its own right as defined in the OHS Act and it accepts that it must fulfil all its obligations as an employer in terms of the OHS Act and comply with all the requirements of this clause 5 in respect of the supply of the goods and services or service product.
- 5.3 The supplier warrants that it is familiar with all the relevant sections of the OHS Act and that whilst it supplies the goods and services or service product, it will take all the steps necessary to comply with the OHS Act and all collective agreements, awards and determinations applicable to the supplier and/or its personnel.
- 5.4 The supplier must before commencing any activity related to the supply of the service product on the buyer's site sign an agreement acceptable to the buyer, in terms of section 37(2) of the OHS Act.
- 5.5 The supplier undertakes to ensure that its personnel do not do or omit to do anything which would be an offence in terms of the OHS Act and to take all reasonable steps to prevent any such act or omission.

- 5.6 The supplier must immediately, and in writing, advise the buyer's safety, health and environmental representatives of any dangerous situation which may arise from any work which it performs at the buyer's sites.
- 5.7 The supplier must:
- 5.7.1 ensure that none of the personnel are under the influence of alcohol of any drug, medicine or other substance which could detrimentally affect their performance or safety when they are on the buyer's site and/or performing any of the supplier's obligations in terms of any contract;
  - 5.7.2 remove any of the personnel from the buyer's site or stop them performing any of the supplier's obligations in terms of any contract if they are found to be under the influence of alcohol or any drug, medicine or other substance which detrimentally affects their performance or safety;
  - 5.7.3 ensure that all personnel entering the buyer's site submit to such alcohol testing and searches of their persons, possessions and vehicles as required by the buyer from time to time.
- 5.8 If at any time, the supplier does not comply with any of its obligations in terms of a contract, the buyer may stop the supplier from entering and/or working on its site.
- 5.9 The procedures and arrangements in these terms and conditions, read with the site rules, are intended to satisfy the requirements of the OHS Act, including section 37(2) of the OHS Act.
- 5.10 The supplier shall obtain any permits or authorisations which it is required in law obliged to obtain to supply the service product and shall report any emergency incident related to the supply of the goods and/or service product which it is under environmental law obliged to report to the prescribed authorities within the prescribed period and if whilst performing any of its obligations, the supplier creates any environmental pollution or contamination in any way, it must do whatever is necessary to clean it up to the higher of the standards required by the buyer or the applicable authorities, and the supplier must pay all the costs of doing so.
- 5.11 The supplier must when on the buyer's site performing the services and/or delivering the goods:
- 5.11.1 ensure that the personnel are suitably qualified, experienced and competent;
  - 5.11.2 on request by the buyer, furnish the buyer with documentary proof of any qualification of any of the personnel and proof that the supplier has verified that qualification;
  - 5.11.3 ensure that all the personnel wear uniforms which clearly identify them as the supplier's personnel;
  - 5.11.4 ensure that all its personnel undergo the buyer's safety induction procedures before entering the buyer's site;
  - 5.11.5 comply with, and procure that each of its personnel comply with, all of the applicable site rules;
  - 5.11.6 ensure compliance with the OHS Act by the supplier and the personnel, including identifying potential health and safety hazards, taking precautions to eliminate or mitigate those hazards and instructing, training and supervising the personnel;
  - 5.11.7 on receiving a request therefor from the buyer, remove any of the personnel from the buyer's premises or stop them performing any of the supplier's obligations;
  - 5.11.8 without derogating from any obligation or liability of the supplier, before commencing any of its obligations and thereafter whenever requested by the buyer to do so, provide proof to the buyer, in the form of a certificate of good standing issued by the Compensation Commissioner that:
    - 5.11.8.1 the supplier is registered as an employer with the Compensation Commissioner in terms of COIDA;
    - 5.11.8.2 the supplier has arranged, at the supplier's cost, insurance in terms of COIDA in respect of all the personnel;

- 5.11.8.3 the supplier has paid all its assessments due in terms of COIDA; and
- 5.11.8.4 that the supplier has taken out, and maintains, the insurance required in terms of clause 13.
- 5.12 At all times during a contract, the supplier must hold a valid, current certificate of good standing from the Compensation Commissioner and must provide the buyer with a certified copy thereof. Whenever the current certificate terminates, the supplier must provide the buyer with the new certificate.
- 5.13 The supplier shall maintain a consistently high standard of integrity in all its business relationships with the buyer and foster the highest possible standards of professional competence in all its dealings with the buyer. The supplier acknowledges that the buyer has a code of ethics and a Group Supplier Code of Conduct (and jointly referred to in this contract as the "Code"). A copy of the Code may be viewed on [www.sappi.com](http://www.sappi.com) and is available from the supplier on request. In supplying goods and services or the service product to the buyer, the supplier agrees that it shall not knowingly take any action which violates the Code. Further, no employee of the buyer is authorised to propose to the supplier or approve conduct inconsistent with the Code.
- 5.14 The buyer shall have the right to terminate a contract and any other contract with the supplier if the supplier is in breach of the Code.

## **6 OWNERSHIP / RISK**

- 6.1 The supplier will not acquire ownership of any service product, or any other right in and to, any thing (corporeal or incorporeal) provided by the buyer to the supplier in order to facilitate the provision of the services and/or the supply of the goods.
- 6.2 The buyer will become the owner of any of the goods and services or service product on the earlier of the date when it is delivered to the buyer or when all or part of the price of the services is paid, irrespective of the location of the goods or the service product. If ownership of a service product passes to the buyer before delivery, the supplier will thereafter hold it on behalf of the buyer and must, if possible, tag or stamp it with the words "Property of" and the buyer's full name so as to make it clear that the service product belongs to the buyer. Unless otherwise specified in the purchase order, delivery of any service product takes place on completion of unloading at the sites designated by the buyer.
- 6.3 Risk of loss of, or damage to, or caused by, the goods and/or service product remains with the supplier until they have been delivered to the buyer and signed for on or behalf of the buyer by a duly authorised representative of the buyer.
- 6.4 The supplier may not remove anything belonging to the buyer from any of the sites without the buyer's prior written consent, on each occasion. If, in order to provide the services or supply the goods, the supplier removes anything belonging to the buyer from any of the sites, the supplier will bear all risk in and to that item until it is returned and unloaded at the site from which it was removed.

## **7 VARIATIONS**

- 7.1 At any time during a contract, the buyer may issue a notice of variation to the supplier.
- 7.2 Within 7 days of receiving the notice of variation, the supplier must notify the buyer of any changes to the contract that may be required to give effect to the notice of variation, by way of a variation proposal.
- 7.3 The variation proposal must set out any changes which the supplier proposes to the contract and the reasons for those changes, including any increases or reductions in the supplier's costs.
- 7.4 The buyer may, within 7 days of receiving the variation proposal:

- 7.4.1 require the supplier to perform in accordance with the contract as it stood prior to the notice of variation; or
- 7.4.2 notify the supplier in writing of its acceptance of the variation proposal, in which case the contract, will be deemed to have been amended in accordance with the variation proposal, with effect from the date of the buyer's notice, subject always to these terms and conditions.
- 7.5 Within 2 days of the buyer accepting the variation proposal, the supplier must, at its cost, return any obsolete specifications to the buyer, at the site.
- 7.6 At all times, the supplier must only use the current specifications to comply with its obligations.
- 7.7 The buyer will not be liable to pay the supplier for time and/or materials wasted because the supplier uses obsolete specifications.

## **8 INSPECTION**

- 8.1 The supplier must procure that, at any time before delivery, on reasonable request by the buyer, the buyer's representatives have access to the supplier's premises and books and records relating to the goods and services or service product and those of the supplier's contractors or suppliers who are working on, or in connection with, the goods or services, to conduct inspections, audits and, if applicable, test the goods.
- 8.2 The supplier must notify the buyer on completion or availability of the goods and/or service product so that the buyer may inspect and/or test the goods and/or service product before delivery.
- 8.3 No inspection, test, approval, certificate of acceptance, acknowledgement of delivery, receipt or payment will under any circumstances relieve the supplier from complying fully with its obligations in terms of a contract nor prejudice any of the buyer's rights to enforce same.

## **9 CONFIDENTIALITY**

- 9.1 No Information relating to a contract or the buyer's know-how and any other information which the supplier obtains from the buyer or about the buyer and the buyer's operations which is not public knowledge may be disclosed or communicated by the supplier to any third party for any reason, including publication or advertising, without the prior written consent thereto of the buyer in each instance. The supplier must ensure that the personnel comply with these confidentiality obligations as if they were the supplier.
- 9.2 The supplier must not reverse engineer any sample or software with which it is provided by the buyer.
- 9.3 Any information provided by the buyer including specifications, processes, methods, plans, drawings, patterns, formulations, recipes and/or samples:
  - 9.3.1 may not be copied in any way by the supplier without the buyer's prior written consent, in each instance;
  - 9.3.2 remains the property of the buyer;
  - 9.3.3 must, together with any copies thereof, be returned by the supplier to the buyer in good order and conditions, on the earlier of the request of the buyer, the termination of the contract, or as soon as they are updated; and
  - 9.3.4 may be used only for the purpose of performing the supplier's obligations in terms of a contract.
- 9.4 Where the buyer has purchased the IP rights in and to the goods or attach to the services, the supplier must provide the buyer with all documents of title in respect thereof and all electronic and hard copies of all the supplier's information about, and records relating to, that IP, including processes, methods, plans, drawings, patterns, specifications, formulations, recipes and/or samples and/or, where applicable, source and object code. All electronic copies and records must

be provided to the buyer in a format reasonably acceptable to the byer. Where the IP vests in a member of the personnel, the supplier must procure that that person transfers to the buyer, on demand, all right, title and interest in and to that IP.

9.5 The provisions of clauses 9.1 to 9.4 shall survive the termination of the contract.

## **10 SUPPLIER'S WARRANTIES**

10.1 The supplier represents and warrants, in addition to any warranty implied by law, that:

10.1.1 the services, materials, equipment and vehicles comply with the specifications and requirements;

10.1.2 upon delivery to the buyer, the goods and/or service product comply with the requirements;

10.1.3 the services will be performed by the supplier in a good, proper, efficient, safe and workmanlike manner and to the extent that no higher standard is stipulated in the applicable contract, in accordance with that degree of skill, care and diligence normally practised by a competent and prudent expert contractor whilst supplying services of a similar nature;

10.1.4 upon delivery to the buyer, the goods and/or service product are new, unused, not reconditioned and of good quality;

10.1.5 upon delivery to the buyer, the goods and/or service product are free from any latent or patent defect, including any defect in any materials, workmanship, design, engineering or technology, provided by, or on behalf of, the supplier;

10.1.6 the services will at least achieve the KPI's;

10.1.7 upon delivery to the buyer, the goods and/or service product are capable of properly fulfilling the purpose for which they are ordinarily intended to be used and are suitable for any particular purpose disclosed by the buyer to the supplier for which the buyer intends using such goods and/or service product;

10.1.8 upon delivery to the buyer, the goods and/or service product are fully paid for, unencumbered and not subject to any right in favour of, or any claim by, any third party, and ownership and undisturbed possession and enjoyment of the goods and/or service product will pass to the buyer in terms of clause 6;

10.1.9 upon delivery of the goods and/or service product they will conform to all laws and regulations affecting the manufacture, sale, use, packaging and labelling of the goods and/or service of the products, which are in force and effect on the date of delivery, and that each good and/or service product has attached to it, or is accompanied by, appropriate instructions, warnings and/or labelling in relation to transporting, storing, operating, using, consuming or disposing of the goods and/or service product;

10.1.10 the supplier and the services will comply with all applicable laws whilst performing pursuant to any contract, including sections 10(1), (2) and (3) of the OHS Act.

10.2 In addition the supplier shall:

10.2.1 specify full details regarding the extent of immediate and long term potential hazards or dangers, including but not limited to, toxicity, flammability, harmful effect due to inhalation or direct contact or due to direct or indirect use of the goods and/or service product;

10.2.2 furnish full details and specifications regarding the most appropriate safety precautions to be taken in respect of the goods and/or service product or the use and handling thereof;

10.2.3 label all packages and/or receptacles containing the goods and/or service product in order to protect those who handle them or who are exposed to them.

- 10.3 For a period of 12 months commencing from the date the goods and services are performed are delivered and/or the service product is delivered or the period set out in the purchase order (whichever date occurs last), the supplier must free of any charge to the buyer remedy any part or all of the service which does not comply with the requirements or specifications or any of the supplier's warranties repair or replace the goods and services or the service product or any part thereof which is defective or which fails to comply with any specifications or any of the supplier's warranties.

## **11 INCOME TAX**

- 11.1 Unless otherwise agreed with the buyer, in writing, the supplier must provide the buyer with the directive and keep it current at all times while the supplier supplies any goods and services and/or service product to the buyer. Until the supplier has done so, the buyer may withhold employees' tax from any amount which it pays the supplier and pay the employees' tax to SARS.
- 11.2 Every time the directive is renewed, the supplier must provide the buyer with the new directive within 1 business day of its renewal.
- 11.3 If the directive is cancelled, withdrawn or not renewed, for any reason, the supplier must notify the buyer thereof, in writing, within 2 days of such cancellation, withdrawal or expiry.
- 11.4 If, at any time during any contract, the directive becomes invalid or the supplier fails to provide to the buyer a valid directive, then without prejudice to any of the buyer's other rights, the buyer may deduct employees' tax plus any interest and/or penalties levied in respect thereof, at the maximum rate applicable, from any amount payable to the supplier, for any reason.

## **12 INDEMNITY, INSURANCE AND LIMITATION OF LIABILITY**

- 12.1 The supplier indemnifies the buyer against all loss, damages, claims, costs of any nature (including costs on the attorney and own client scale on a full indemnity basis), interest, fines and/or penalties, which the buyer or any of its members, directors, officers, employees or agents may sustain or incur and arising from, or in connection with:
- 12.1.1 any claim, by any person, arising out of any negligent or intentional act or omission by the supplier of any of its personnel and which is connected to a contract in any way;
  - 12.1.2 any injury, death and/or property damage caused in any way, directly or indirectly, by the supplier and/or its personnel while performing the services or any latent or patent defect in the goods and/or service product;
  - 12.1.3 any contravention by the supplier of any applicable law including, but not limited to, the OHS Act, COIDA, other employment laws, health and safety laws, road transport and traffic laws, environmental laws and customs and excise and other tax laws;
  - 12.1.4 any infringement and/or unauthorised use of any IP in respect of any goods supplied, or services performed, by the supplier;
  - 12.1.5 the buyer's failure to deduct employees or any other tax from any payment made to the supplier.
- 12.2 The supplier warrants that it will be adequately insured in respect of its risk from or in connection with each contract, including appropriate insurance in respect of compensation for occupational injuries, death and disease, public liability insurance to the value of at least R10 million in respect of any 1 occurrence. The supplier's obligation to obtain such insurance cover must not be interpreted as limiting any claim which the buyer may have against the supplier, in any way.
- 12.3 On demand, the supplier must provide the buyer with copies of any insurance policies taken out in terms of a contract or an underwriter's certificate confirming the nature and duration of cover, any exclusions and deductibles, and, in both cases, proof that the premiums for that insurance cover have been paid.

- 12.4 Other than for breaches of a contract, the buyer is only liable to the supplier for claims which the supplier may have against the buyer and which arise from, or in connection with, any act or omission by the buyer or any of its agents or employees, that is grossly negligent or is an intentional and unlawful act or omission.
- 12.5 Despite any other applicable provisions, neither the buyer nor its members, directors, employees and/or agents are liable to the supplier for any loss of profit or indirect, consequential, or special damages (including but not limited to a loss of profits, loss of production or business interruption) arising from any cause, including a breach of contract, a delict or from strict liability.

### **13 INTELLECTUAL PROPERTY**

- 13.1 Copyright in respect of anything that is eligible for copyright protection and which is created by the supplier for the buyer within the scope of a contract will vest exclusively in the buyer. The supplier hereby assigns to the buyer such copyright or where that copyright vests in the supplier's employees or contractors, the supplier must procure that they assign to the buyer, that copyright. Where the goods include any software, the supplier hereby grants to the buyer a perpetual, non-exclusive and unconditional licence to use that software and warrants that it is entitled to do so.
- 13.2 The supplier warrants that no third party will have any valid claim against the buyer for infringement and/or unauthorised use of any IP in respect of any goods, software, service, process, method, design or technology supplied or performed by or on behalf of the supplier in terms of a contract.
- 13.3 Should any such claim succeed, then, should the buyer so require, the supplier must, at its cost, either acquire from the holder of the IP concerned, the right for the buyer to continue using the IP or the supplier must modify or substitute the infringing item, as approved by the buyer, so that the item no longer infringes that IP.
- 13.4 The supplier hereby confers on the buyer and on any contractor engaged by the buyer the free and unrestricted right to maintain, repair, manufacture and/or replace any lost, broken, worn and/or obsolete component part of the goods and/or to modify the goods or service product.

### **14 BREACH**

- 14.1 If the supplier breaches any provision of a contract, then without prejudice to any of its other rights in that contract or in law, the buyer may suspend all payments to the supplier and, if the contract is then cancelled, set off against those payments, a reasonable estimate of any damages suffered by the buyer.
- 14.2 If the supplier delivers goods and services or the service product which are defective (including goods damaged because of improper and/or inadequate packaging) or if such goods and services or the service product otherwise do not comply with any of the provisions of the applicable contract, then, in addition, and without prejudice to any of its other rights in terms of the contract or in law (including its rights to claim damages and/or specific performance and/or in respect of latent defects in the goods and/or service product) the buyer may:
- 14.2.1 refuse to accept delivery of such goods and services or the service product, or having accepted delivery thereof, reject such goods and services or the service product within a period of 12 (twelve) months after delivery thereof and either return such goods and/or service product to the supplier or require the supplier to remove such goods and/or service product at the expense and risk of the supplier, and recover from the supplier any payment already made in respect thereof; or
- 14.2.2 require the supplier to immediately rectify the defective goods and services or the service product or replace them at the supplier's cost with goods and/or service product complying with the applicable contract (pending which such goods and/or service product will be held at the supplier's risk and expense); or

- 14.2.3 rectify such goods and services or service product itself or to instruct a third party to rectify such goods and services or service products or purchase from any other source goods and services or service product complying with the applicable contract and recover from the supplier the cost of such rectification or the purchase price of the goods so purchased from another source plus any applicable duty, excise, tax and the costs of carriage, delivery, installation, testing and commissioning.
- 14.3 If the supplier breaches any provision of a contract and, where the breach can be remedied, fails to remedy that breach within 10 days of receiving notice to do so, then without prejudice to any of its other rights in a contract or in law, the buyer may:
- 14.3.1 cancel the contract; or
- 14.3.2 claim specific performance; and
- 14.3.3 in either case, claim damages.
- 14.4 The buyer may, without prejudice to any of its other rights or remedies in terms of this contract or in law, with immediate effect, terminate the whole or any part of a contract and any other contract which it then has with the supplier, whether or not performed, of the supplier:
- 14.4.1 commits a material breach of a contract which cannot be remedied. Failing to meet a deadline is deemed to be a material breach;
- 14.4.2 being a partnership, is dissolved; or
- 14.4.3 effects or attempts to effect a compromise with all, or any significant class of, its creditors; or
- 14.4.4 prior to fulfilment of all of its obligations, in terms of a contract, disposes of the whole or greater part of its assets, or transfers the majority or controlling shareholding or members' interest in the supplier to a third party; or
- 14.4.5 being a natural person, dies; or
- 14.4.6 any employee or agent of the supplier gives or offers any valuable consideration or benefit to any employee of the buyer to obtain or attempt to obtain any favour or advantage, or perpetrates or participates in any fraud which prejudices or might prejudice the buyer.
- 14.5 The supplier may not cancel a contract by virtue of any breach thereof by the buyer unless such breach is material and the buyer has failed to rectify such breach within 30 days after receiving written notice from the supplier requiring it to do so.
- 14.6 The buyer may, but is not obliged to, institute any legal proceedings against the supplier arising out of a contract in any Magistrates' Court having jurisdiction over the person of the supplier notwithstanding that the claim or the value of the matter in dispute may exceed the jurisdiction of such Court. The supplier is liable for all legal costs, including costs on the attorney and own client scale on a full indemnity basis and collection charges (including tracing costs), which may be incurred by the buyer, irrespective of whether or not court proceedings have been instituted.
- 14.7 Should the buyer at any time during or after the termination of a contract, reasonably suspect that the supplier or any employee or agent of the supplier has behaved dishonestly or unlawfully in respect of such contract and has caused prejudice to the buyer as a result thereof, the buyer may have any books, records and documents in the possession of or under the control of the supplier relating to transactions pursuant to such contract examined by the buyer's internal or external auditors for the purpose of verifying whether or not any such behaviour occurred.

## **15 LIENS**

- 15.1 The supplier waives irrevocably any lien or other right of retention which it may have or which it may acquire in the future, in respect of any goods and services or the service product provided,

any IP relating to the services, service product and/or the the goods and any documents relating to those goods or service product and IP.

- 15.2 The supplier waives irrevocably any lien or right to retain possession of any thing or document of title belonging to the buyer which lien or right the supplier may have or acquire in the course of a contract.
- 15.3 If the supplier leases its premises and has any of the buyer's property on its premises, it must notify its landlord in writing that the buyer's property belongs to the buyer and mark the buyer's property with the words "Property of" and the buyer's full name and prove to the buyer that it has done so. The supplier must on request therefor furnish the buyer with a copy of the written notice given to the supplier's landlord of the buyer's property, failing which the buyer may furnish the said notice to supplier's landlord. If the supplier's landlord changes, the supplier must immediately give a notice in terms of this clause to its new landlord and the buyer.

## 16 TRANSFER OF RIGHTS AND OBLIGATIONS

No cession, delegation, assignment or sub-contract of all or any of the rights and/or obligations of either party under a contract is of any force or effect unless and until the other party thereto expressly consents thereto in writing, save and except that the supplier agrees to favourably consider subcontractors from the local small and medium enterprises listed with the buyer's site Enterprise Supplier Development Unit before submitting its request for approval and further consents to the cession, delegation, assignment or subcontract of this contract by the buyer to Sappi Limited and its successor in title, or any subsidiary company of Sappi Limited.

## 17 DISPUTE RESOLUTION

- 17.1 Any dispute which arises out of or in connection with this contract may be referred by a Party in writing to the other Party for resolution.
- 17.2 The Parties or their representatives must attempt to meet within 10 days of the date of receipt of the dispute referral and should they fail to resolve the dispute or to meet or to agree in writing on an alternative dispute resolution process (including but not limited to arbitration or mediation) within such 10 day period, or within such extended date as may be agreed to, either Party may take whatever lawful action it deems appropriate to resolve the dispute.
- 17.3 This clause 17 does not prevent either Party from applying to any court having jurisdiction for appropriate urgent relief.

## 18 NOTICES AND ADDRESSES FOR SERVICE

- 18.1 Unless otherwise specified any notice or communication in terms of a contract:
- 18.1.1 must be in writing to be effective;
- 18.1.2 must be sent by hand to the buyer at its address set out in the purchase order;
- 18.1.3 must be sent by hand or telefax to the supplier at any address/email which the supplier has given to the buyer.
- 18.2 The buyer's *domicilium citandi et executandi* is 108 Oxford Road, Houghton Estate, 2198, Johannesburg, Republic of South Africa or any other physical address of which the buyer notifies the supplier. The supplier's *domicilium citandi et executandi* is any address with which the supplier has provided the buyer.
- 18.3 Either party may change its address to any other address within South Africa. Such change will only take effect upon receipt or deemed receipt of such notice by the other party.

**PURCHASE ORDER STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES**

- 18.4 Any notice or communication shall, if delivered by hand between 08:00 and 16:30 on a business day, to the person apparently in charge of the premises selected by the addressee for the delivery of notices, be deemed to have been received on the date of delivery.
- 18.5 Any written notice or communication which has actually been received by a party shall be regarded as sufficient notice even if it has not been sent in the manner or to the address provided for above.

**SPECIAL TERMS AND CONDITIONS TO THE SAPPI SOUTHERN AFRICA LIMITED: PURCHASE ORDER STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES FOR THE DESIGN, MANUFACTURE, SUPPLY, INSTALLATION AND COMMISSIONING OR TESTING OF THE SERVICE PRODUCT**

1. These special terms and conditions apply to the design, manufacture, supply, installation and commissioning of the service product and modify as follows the terms of the purchase order to which the Sappi Southern Africa Limited: Purchasing Conditions for the Supply of Goods and Services:
  - 1.1 The equipment as defined in clause 1.1.8 of the purchasing terms and conditions for the supply of the goods and services shall include motor vehicles, cranes, rigging and scaffolding;
  - 1.2 The buyer may retain an amount equivalent to 10% (the retention amount) of the price referred to in clause 3.1. for a period of one year (the retention period) commencing from the date the buyer certifies in writing that it is reasonably satisfied that the service product are complete and comply with the specifications;
  - 1.3 In addition to those obligations contained in clause 4 (requirements, specifications, deadlines and delivery):
    - 1.3.1 Unless otherwise specified in the purchase order, delivery of the service product takes place when the buyer certifies in writing that the service product has been completed to its reasonable satisfaction and that they comply with the specifications or, in the absence of certification pays the price thereof;
    - 1.3.2 the supplier shall also be responsible to:
      - 1.3.2.1 ensure the pre-payment of all transportation costs, necessary to effect delivery of goods or service product, unloaded at the sites designated by the buyer
      - 1.3.2.2 provide the buyer with operating and maintenance manuals in sufficient detail to enable the buyer to operate, maintain, dismantle, re-assemble, adjust and repair the service product which shall be delivered on the buyer's certification that the service product is complete and complies with the specifications;
      - 1.3.2.3 submit to the buyers representative responsible for the day to day management of the service product before commencing any work such drawings and copies thereof as are listed in the purchase order in sufficient detail for the purpose of executing any part of the service product.
    - 1.3.3 The supplier shall be liable for any loss or damage arising from any discrepancy, error or omission in all drawings and information supplied by the supplier reduced to the extent caused by any error communicated by the buyer or the buyer's representative to the supplier.
    - 1.3.4 Only the dimensions shown on a drawing shall be used for the execution of the service product and no dimension thereon may be scaled without the prior express written consent of the buyer's representative in each instance.

**NO OTHER TERMS AND CONDITIONS SHALL APPLY TO THE PURCHASE ORDER STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES FOR THE DESIGN, MANUFACTURE, SUPPLY, INSTALLATION AND COMMISSIONING OR TESTING OF THE SERVICE PRODUCT**