

# SAPPI SOUTHERN AFRICA LIMITED: PURCHASING TERMS AND CONDITIONS FOR THE DESIGN, MANUFACTURE, SUPPLY, INSTALLATION AND/OR TESTING AND COMMISSIONING OF WORKS

## 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 Limited or any subsidiary thereof as defined in the Companies Act, 71 of 2008, to which goods and/or services are supplied by the supplier;

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 a sale agreement between the buyer and the supplier for the supply of the works, by the supplier to the buyer, and which is entered into on these terms and conditions read with that order, on the earliest of the date when:

1.1.5.1 the supplier notifies the buyer in writing that it accepts the order; or

1.1.5.2 the supplier supplies the works to the buyer; or

1.1.5.3 the supplier accepts payment for the works;

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:

1.1.7.1 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 and/or

1.1.7.2 where the supplier is providing a LB service, a valid and current IRP 30, that is a certificate of exemption issued by SARS in terms of paragraph 2(5) of the Fourth Schedule to the Income Tax Act 58 of 1962;

1.1.8 “equipment” means all equipment required for the performance of the works, including, but not limited to, motor vehicles, cranes, rigging, forklifts, construction equipment and machinery, tools, protective clothing, safety gear and all scaffolding;

1.1.9 “goods” means any goods which form part of the works and/or any materials required for, or in connection with, the works;

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 “LB service(s)” means labour broking services, that is, the procurement and provision, from time to time, of people who are employed and paid by the supplier and who will render services to, or perform work for, the buyer;
- 1.1.15 “materials” means all materials and substances and substances required for, or in connection with, the goods and/or services;
- 1.1.16 “notice of variation” means the notice given by the buyer to the supplier setting out any changes which the buyer requires to the contract;
- 1.1.17 “OHS Act” means the Occupational Health and Safety Act, 85 of 1993 and all Regulations made or deemed to be made thereunder;
- 1.1.18 “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 described in that order;
- 1.1.19 “personnel” means the supplier’s members, directors, officers, employees, agents and contractors;
- 1.1.20 “retention amounts” means the amounts of the price which the buyer may retain for the retention period and which, unless specified otherwise on the order, will be 10% of any payment made to the supplier for the works;
- 1.1.21 “retention period” means the period for which the buyer may retain the retention amount which, unless specified otherwise on the order, will be a period of 1 year commencing on the date on which the buyer certifies in writing, that it is reasonably satisfied that the works are complete and comply with the specifications;
- 1.1.22 “SARS” means the South African Revenue Services;
- 1.1.23 “services” means any services described in the order and which the supplier must provide to the buyer;
- 1.1.24 “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;
- 1.1.25 “site rules” means all the buyer’s rules, procedures, policies and regulations applied at each of the buyer’s sites, from time to time;

- 1.1.26 “specifications” means any specifications, standards and/or requirements referred to in an order or contract documents and with which the goods must comply including plans, diagrams, drawings, patterns, samples, brand names, methods and procedures;
  - 1.1.27 “supplier” means Supplier Name, being the person from whom the buyer purchases the goods or the services in terms of a contract;
  - 1.1.28 “variation proposal” means any change proposed by the supplier, to a contract, in response to a notice of variation;
  - 1.1.29 “VAT” means value added tax charged or payable in terms of the Value Added Tax Act, 89 of 1991;
  - 1.1.30 “VAT certificate” means a notice of registration as a vendor in terms of the Value Added Tax Act, 89 of 1991;
  - 1.1.31 “works” means the design, manufacture, supply, installation and/or commissioning of the works described in an order, including any goods and services that form part of those works;
  - 1.1.32 “week” means a period of 7 consecutive days;
  - 1.1.33 “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 agreement expires on a Saturday, Sunday or a public holiday, it will be deemed to expire on the next business day thereafter;
  - 1.5 Any notice period will be calculated by excluding the first day, and including the last day, thereof;
  - 1.6 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.
  - 1.7 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. Only a director or general manager of the buyer is authorised to vary these terms and conditions.
- 2.2 If these terms and conditions and the provisions of any order differ or conflict, then as long as a director or general manager of the buyer has approved the order by signing it with a hand-written signature, the order prevails. If someone other than a director or general manager of the buyer signs the order and it differs from or conflicts with these terms and conditions, these terms and conditions prevail over that order.

- 2.3 Each contract comprises the whole agreement between the supplier and the buyer, and contains all the express provisions agreed by the parties, about the subject matter of that contract.
- 2.4 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.
- 2.5 THE SUPPLIER'S STANDARD TRADING TERMS AND CONDITIONS DO NOT APPLY UNDER ANY CIRCUMSTANCES.
- 2.6 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.
- 2.7 NO ACTION BY THE BUYER SHALL ENTITLE THE SUPPLIER TO ASSERT THAT THE SUPPLIER'S STANDARD TERMS AND CONDITIONS APPLY TO THIS ORDER.
- 2.8 To the extent that the 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 order, delivery note, invoice, or other documentation.
- 2.9 Since the provisions of this agreement 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 works (or, where the price is determined by applying rates set out in an 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 the works, including the costs of goods, services, any applicable packaging materials, loading and unloading, carriage, transshipment, storage, insurance, licence fees, royalties and all applicable duties, excise and taxes.
- 3.2 The buyer may retain the retention amount for the retention period. If, at the end of the retention period, any defects in the works have not been remedied to the buyer's reasonable satisfaction, the buyer may withhold payment of the retention amount. The buyer may deduct from the retention amount a reasonable estimate of its damages caused by the defect. Any such deduction is made without prejudice to the buyer's right to recover from the supplier any damages which exceed that deduction.

- 3.3 Unless otherwise specified in any payment schedule set out in the order, the buyer must pay the supplier the price of the works (less the retention amount) within 60 days after the end of the calendar month during which the buyer receives the supplier's invoice for that price or any portion of it which is due, owing and payable for the works, or that part of the works, which have been completed to the buyer's reasonable satisfaction.
- 3.4 The buyer does not have to pay any amount to the supplier unless and until the supplier has complied with all of its obligations then due in terms of the applicable contract and the buyer has received a certified copy of the supplier's VAT certificate, where applicable.
- 4 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 Unless otherwise specified in the order, delivery of the works takes place when the buyer certifies, in writing, that the works have been completed to his reasonable satisfaction and that they comply with the specifications or, in the absence of that certification, pays the whole price thereof.
- 4.3 All goods 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.
- 4.4 The supplier must deliver the goods, unloaded, at the sites designated by the buyer.
- 4.5 The supplier must only deliver the works to a representative of the buyer who is actually authorised to take delivery thereof.
- 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 If the supplier fails to complete the works timeously, then, without prejudice to any of its other rights or remedies and subject to any penalties prescribed in the order, 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 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.
- 4.8 Any carrier transporting goods to the buyer is the agent of the supplier and transport is at the supplier's risk.
- 4.9 Unless otherwise stated in the 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.
- 4.10 A delivery note must accompany all goods delivered to the buyer. That delivery note must reflect the buyer's 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.
- 4.11 Where the supplier's obligations include LB services, at the end of each week, the supplier must supply the buyer with a copy of their time sheets prepared by each of the personnel for that week showing the hours during which they worked for the buyer.

## 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, other 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 works.
- 5.3 The supplier warrants that it is familiar with all the relevant sections of the OHS Act and that performing the works, 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 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.
- 5.5 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.
- 5.6 The supplier must:
- 5.6.1 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;
  - 5.6.2 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;
  - 5.6.3 ensure that all personnel entering the buyer’s site submit to such alcohol and medical testing and searches of their persons, possessions and vehicles as required by the buyer from time to time.
- 5.7 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.
- 5.8 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.
- 5.9 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.
- 5.10 The supplier must:
- 5.10.1 ensure that the personnel are suitably qualified, experienced and competent;

- 5.10.2 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;
- 5.10.3 supply each of the personnel with everything required to enable them to perform the supplier's obligations including tools, protective clothing, safety equipment, transport, accommodation and meals;
- 5.10.4 ensure that all the personnel wear uniforms which clearly identify them as the supplier's personnel;
- 5.10.5 ensure that all its personnel undergo the buyer's safety induction procedures before entering the buyer's site;
- 5.10.6 comply with, and procure that each of its personnel comply with, all of the applicable site rules;
- 5.10.7 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;
- 5.10.8 on receiving a request therefor by the buyer, remove any of the personnel from the buyer's premises or stop them performing any of the supplier's obligations, provided that such a request arising from any failure by a member of the personnel to comply with any of the site rules is deemed to be reasonable;
- 5.10.9 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:
  - 5.10.9.1 the supplier is registered as an employer with the Compensation Commissioner in terms of COIDA;
  - 5.10.9.2 the supplier has arranged, at the supplier's cost, insurance in terms of COIDA in respect of all the personnel;
  - 5.10.9.3 the supplier has paid all its assessments due in terms of COIDA; and
  - 5.10.9.4 that the supplier has taken out, and maintains, the insurance required in terms of clause 13.
- 5.11 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.
- 5.12 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 (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 the works, 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.

- 5.13 The buyer shall have the right to terminate this contract and any other contract with the supplier if the supplier is in breach of the Code.

## 6 OWNERSHIP / RISK

- 6.1 Unencumbered sole ownership of the works and any goods which are, or will be part of the works, passes to the buyer upon delivery thereof to the buyer, provided that if all or a party of the price thereof is paid before delivery, then ownership passes when such payment is made, irrespective of the location of such works and/or goods. If ownership of the works and/or goods passes before delivery, the supplier will thereafter hold the works and/or goods on behalf of the buyer and must, if possible, tag or stamp them with the words "Property of" and the buyer's full name so as to make it clear that they belong to the buyer.
- 6.2 Risk of loss of, or damage to, or caused by, the works and/or the goods which are, or will be part of the works, 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.

## 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 amendment 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 amendment, 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 works and those of the supplier's contractors or suppliers who are working on, or in connection with, the works, to conduct inspections, audits and, if applicable, test the goods.



- 8.2 The supplier must notify the buyer on completion of manufacture of the works so that the buyer may inspect the works 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, 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 this clause 9 shall survive the termination of the contract.

## 10 DATA PROTECTION

- 10.1 The performance of both Parties' obligations in terms of this Agreement shall be strictly in compliance with the Protection of Personal Information Act, the Electronic Communications and Transaction Act 2002, and all other laws, policies, and procedures relating to the protection, storage, handling, privacy, processing and destruction of personal data. In particular, and without limiting the generality of the foregoing, each of the Parties shall:
- 10.1.1 comply with each of the Conditions 1 to 8 contained in Chapter 3 of POPI;

- 10.1.2 comply with section 18 of POPI, in that it shall secure the integrity of any Personal Information in its possession or under its control by taking appropriate, reasonable technical and organisational measures to prevent loss of, damage to or unauthorised destruction of Personal Information and/or unlawful access to or processing of Personal Information; and
- 10.1.3 take all reasonable measures to—
  - 10.1.3.1 identify all reasonably foreseeable internal and external risks to Personal Information in its possession or under its control;
  - 10.1.3.2 establish and maintain appropriate safeguards against the risks identified;
  - 10.1.3.3 regularly verify that the safeguards are effectively implemented; and
  - 10.1.3.4 ensure that the safeguards are continually updated in response to new risks or deficiencies in previously implemented safeguards.
- 10.2 The Parties shall at all times during the performance of their obligations in terms of this Agreement:
  - 10.2.1 ensure that no data collected from any person during the supply of the Services is sold, disclosed, commercially exploited, or used in any way other than as expressly authorised in this Agreement;
  - 10.2.2 ensure that it is able to identify all data relating to this Agreement and persons making use of the Services separately from other data under its control;
  - 10.2.3 ensure that it processes data for only the express purpose for which it was obtained;
  - 10.2.4 ensure that, once processed for the purposes for which it was obtained, all data will be destroyed to an extent that it cannot be reconstructed to its original form;
  - 10.2.5 ensure that all usernames and passwords affording access to the Personal Information remain secure, confidential and exclusively attributable to a specific employee;
  - 10.2.6 notify the other Party of any actual or suspected breach of its security measures; and
  - 10.2.7 have due regard to any applicable industry codes of practice relating to information security management.

## 11 SUPPLIER'S WARRANTIES

- 11.1 The supplier represents and warrants, in addition to any warranty implied by law, that:
  - 11.1.1 upon delivery to the buyer, the works comply with the specifications;
  - 11.1.2 upon delivery to the buyer, the works and any goods which are part of the works, are new, unused, not reconditioned and of good quality;
  - 11.1.3 upon delivery to the buyer, the works and any goods which are part of the works, are free of any latent or patent defect including any defect in any materials,

workmanship, design, engineering or technology, provided by, or on behalf of, the supplier;

- 11.1.4 upon delivery to the buyer, the works 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 works;
  - 11.1.5 upon delivery to the buyer, the works 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 works will pass to the buyer in terms of clause 6;
  - 11.1.6 the works will be performed by the supplier in a good, proper, efficient 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 practiced by a competent and prudent expert contractor whilst performing works of a similar nature;
  - 11.1.7 the supplier complies with all applicable laws whilst performing pursuant to any contract, including sections 10(1), (2) and (3) of the OHS Act.
- 11.2 For the longer of 1 year commencing on the date the works are delivered or the period set out in the order, any free of any charge to the buyer, the supplier must repair or replace the goods or any part thereof which is defective or which fails to comply with any specifications or any of the supplier's warranties.

## 12 INCOME TAX

- 12.1 Unless otherwise agreed with the buyer, in writing, the supplier must provide the buyer with the directive and keep it current at all times during every contract. 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.
- 12.2 Every time the directive is renewed, the supplier must provide the buyer with the new directive within 1 business day of its renewal.
- 12.3 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.
- 12.4 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.

## 13 PROVISIONS SPECIFIC TO A LABOUR BROKING SERVICE

- 13.1 Where the works include LB services, the supplier hereby indemnifies the buyer against any claims, damages, costs of any nature (including costs on an attorney and own client scale on a full indemnity basis), interest and/or penalties and other liabilities incurred or suffered by the buyer on the basis of the provisions contained in section 198(4) of the Labour Relations Act, 66 of 1995, section 82(3) of the Basic conditions of Employment Act 75 of 1997 and section 57 of the Employment Equity Act 55 of 1998.

- 13.2 The supplier hereby waives any claim which it may have against the buyer or any of the buyer's members, directors, officers, employees or agents and which arises from, or in connection with, any of the provisions of section 198(4) of the Labour Relations Act, 66 of 1995, section 82(3) of the Basic Conditions of Employment Act, 75 of 1997 and section 57 of the Employment Equity Act, 55 of 1998.
- 13.3 The buyer is not obliged to assist the supplier in respect of any disputes involving the supplier or any of its personnel.
- 13.4 The supplier must pay all expenses incurred by the buyer in dealing with any dispute in which the buyer is cited as the employer of any of the personnel.

#### 14 INDEMNITY, INSURANCE AND LIMITATION OF LIABILITY

- 14.1 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:
  - 14.1.1 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;
  - 14.1.2 any injury, death and/or property damage caused by any latent or patent defect in the works;
  - 14.1.3 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;
  - 14.1.4 any infringement and/or unauthorised use of any IP in the works and any goods or services which will become part of the works;
  - 14.1.5 the buyer's failure to deduct employees or any other tax from any payment made to the supplier.
- 14.2 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.
- 14.3 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.
- 14.4 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.

- 14.5 Despite any other applicable provisions, neither the buyer nor its members, directors, employees and/or agents are liable to the supplier for any 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.

## 15 INTELLECTUAL PROPERTY

- 15.1 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.
- 15.2 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.
- 15.3 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.
- 15.4 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.

## 16 BREACH

- 16.1 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.
- 16.2 If the works are defective (including goods which will form part of the works and are damaged because of improper and/or inadequate packaging) or if the works 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 works) the buyer may:
- 16.2.1 refuse to accept delivery of such works, or having accepted delivery thereof, reject such works within a period of 12 (twelve) months after delivery thereof and either return such works to the supplier or require the supplier to remove such works at the expense and risk of the supplier, and recover from the supplier any payment already made in respect thereof; or

- 16.2.2 require the supplier to immediately rectify the defective works or replace them at the supplier's cost with works complying with the applicable contract (pending which such works will be held at the supplier's risk and expense); or
  - 16.2.3 rectify such works itself or to instruct a third party to rectify such works or purchase from any other source, work 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.
- 16.3 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:
- 16.3.1 cancel the contract; or
  - 16.3.2 claim specific performance; and
  - 16.3.3 in either case, claim damages.
- 16.4 The buyer may, without prejudice to any of its other rights or remedies in terms of this agreement 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:
- 16.4.1 commits a material breach of a contract which cannot be remedied. Failing to meet a deadline is deemed to be a material breach;
  - 16.4.2 being a partnership, is dissolved; or
  - 16.4.3 effects or attempts to effect a compromise with all, or any significant class of, its creditors; or
  - 16.4.4 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
  - 16.4.5 being a natural person, dies; or
  - 16.4.6 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.
- 16.5 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.
- 16.6 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.

- 16.7 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.

## 17 LIENS

- 17.1 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, any IP relating to the works and any documents relating to those works and IP.
- 17.2 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.
- 17.3 If the supplier leases its premises and has any of the buyer's property on its premises, it must notify its landlord that the buyer's property belongs to the buyer and mark the buyer's property with the words "Property of" an the buyer's full name and prove to the buyer that it has done so. If the supplier's landlord changes, the supplier must immediately give a notice in terms of this clause to its new landlord.

## 18 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 hereby consents to any such cession, delegation, assignment or subcontract by the buyer to Sappi Limited and its successor in title, or any subsidiary company of Sappi Limited.

## 19 ARBITRATION

- 19.1 Should any dispute arise between the parties in connection with the interpretation; effect; or implementation of the provisions of this agreement or any other matter arising directly or indirectly out of this agreement or the termination of this agreement, either party may demand that the dispute be determined in terms of this clause by written notice given to the other(s).
- 19.2 The arbitration shall be held in Johannesburg and conducted in accordance with the Supreme Court Act, No. 59 of 1959, and the rules made under it, provided that the arbitrator shall be entitled to dispense with or vary the rules so that the hearing of the matter may be expedited.
- 19.3 If the dispute is principally:
- 19.3.1 a legal matter, the arbitrator shall be a practising advocate or attorney of at least ten years' standing;
  - 19.3.2 an accounting matter, the arbitrator shall be a practising chartered accountant of at least ten years' standing;
  - 19.3.3 any other matter, the arbitrator shall be any independent person, agreed upon between the parties to the dispute.

- 19.4 The parties shall jointly nominate the arbitrator. If the parties are unable to agree on an arbitrator within seven days of written request for nominations, the arbitrator shall be nominated by the President of the Law Society of the Province in which the arbitration is to be held or his/her successor-in-title.
- 19.5 The decision of the arbitrator shall be final and binding on the parties to the dispute and may be made an order of court at the instance of any of the parties to the dispute.
- 19.6 The provisions of this clause are severable from the rest of this agreement and shall remain in effect despite the termination or invalidity of this agreement.
- 19.7 The provisions of this clause shall not preclude a party from approaching the High Court for urgent interim relief.

## 20 NOTICES AND ADDRESSES FOR SERVICE

- 20.1 Unless otherwise specified any notice or communication in terms of a contract:
- 20.1.1 must be in writing to be effective;
  - 20.1.2 must be sent by hand to the buyer at its address set out in the order;
  - 20.1.3 must be sent by hand or telefax to the supplier at any address/email which the supplier has given to the buyer.
- 20.2 The buyer's *domicilium citandi et executandi* is 48 Ameshoff Street, Braamfontein, 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.
- 20.3 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.
- 20.4 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.
- 20.5 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.