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|  | Supply Chain Management |
| Document Number: | SCM006 |
| Document Title: | Supply Contract |
| Version: | 01 |
| Purpose: | Standard contract for all supplies of goods |

PREFACE

The Contract for the Supply and Delivery of Goods has been prepared for use in supplies contracts which have the following characteristics:

- Simple, regional purchase of readily available materials or commodities;
- Requires almost no management of the buying and delivery process and may only need simple cross border formalities;
- Minimal testing, installation and commissioning on delivery.

This document is intended to be used with the procurement documents prepared in accordance with the provisions of SANS 10403: Formatting and Compilation of Construction Procurement Documents.

GENERAL CONDITIONS OF CONTRACT FOR THE SUPPLY & DELIVERY OF GOODS

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GENERAL CONDITIONS OF CONTRACT

1 DEFINITIONS

In these conditions, except where the context otherwise requires:

Contract: the Contract signed by the Parties and of which these General Conditions of Contract form part;

Contract Data: specific data, which together with these General Conditions of Contract, collectively describe the risks, liabilities and obligations of the contracting Parties and the procedures for the administration of the contract.

Firm price: the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax which, in terms of a law or regulation is binding on the Supplier and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;

Goods: the articles and things described and to be supplied and provided under the Contract.

Parties: the Purchaser and the Supplier.

Pricing Data: data that establishes the criteria and assumptions that were taken into account when developing the Contract Price and the record of the components that make up of the Contract Price; Price adjustment

Purchaser: the contracting party named in the Contract Data who purchases supplies from the Supplier;

Scope of work: the specification and description of the Goods which are to be provided and any other requirements and constraints relating to the manner in which the Contract work is to be performed

Supplier: the contracting party named in the Contract Data who is engaged by the Purchaser to provide the Goods described in the Contract.

2. INTERPRETATION

- 2.1 Unless inconsistent with the context, an expression which denotes :
- a) any gender includes the other genders;
 - b) a natural person includes a juristic person and vice versa;
 - c) the singular includes the plural and vice versa.
- 2.2 If there is any conflict between the provisions of these General Conditions of Contract and the Contract Data, the provisions of the Contract Data shall prevail.
- 2.3 The clause headings shall not limit, alter or affect the meaning of the Contract.

3. GENERAL

3.1 Governing law

Law governing the Contract shall be the law of the Republic of South Africa.

3.2 Language

The language of the Contract and of all communications between the Parties shall be English.

3.3 Notices

- 3.3.1 Any notice, request, consent, or other communication made between the Parties pursuant to the Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by e-mail or facsimile to such Party at the address specified in the Contract, or one week after having been sent by registered post.
- 3.3.2 If the sender requires evidence of receipt, he shall state such requirement in his communication and, wherever there is deadline for the receipt of the communication, he may demand evidence of receipt of his communication. In any event, the sender shall take all the necessary measures to ensure receipt of communications.
- 3.3.3 A Party may change its address for receipt of communications by giving the other Party 30 days advance notice of such change.

3.4 Confidentiality

Both parties shall keep all commercially sensitive information obtained by them in the context of the Contract confidential and shall not divulge it without the written approval of the other Party.

3.5 Sole agreement

3.5.1 The Contract constitutes the sole agreement between the Parties for the provision of Goods and no representation not contained therein shall be of any force or effect. No amendments will be of any force or effect unless reduced to writing and signed by both Parties.

3.5.2 No purported amendments to the terms and conditions of the Contract included in delivery notes shall be of any force or effect.

3.6 Indemnification

The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, costs, charges and expenses arising in connection therewith from the negligence, infringement of intellectual or legal rights or breach of statutory duty of the Supplier, his subcontractors, agents or servants, or from the Supplier's defective design, materials or workmanship.

3.7 Weights and measures

The quantities of Goods delivered shall be according to South African standard weights and measures

3.8 Title and risk

Without prejudice to rights of rejection under these conditions, title to and risk in the Goods passes to the Purchaser when the Goods are off-loaded and accepted by the Purchaser at the address given in the delivery instructions.

4 MAIN RESPONSIBILITIES OF THE PARTIES

4.1 The Supplier shall, in accordance with the requirements of the Scope of Work, provide the Goods in the quantity, on or before the due date determined in accordance with 3.6, stated in a written order issued by the Purchaser.

5 PACKAGING, MARKING AND DELIVERY

- 5.1 All Goods shall be packaged in accordance with the provisions of the Scope of Work. Where no provisions are made in the Scope of Work for packaging, the Goods shall be properly packed for long term storage in containers suitable to protect the contents against damage through rough handling and for over-storage in transit or whilst in store.
- 5.2 Unless otherwise stated in the Special Conditions of Contract, all containers (including packing cases, boxes, tins drums and wrappings) supplied by the Supplier shall be considered as non-returnable, and their cost having been included in the price of the Goods.
- 5.3 The Supplier shall:
- a) clearly mark the outside of each consignment or package with the Supplier's name and full details of the destination in accordance with the Purchaser's order and include a packing note stating the contents thereof;
 - b) on dispatch of each consignment, send to the Purchaser at the address for delivery of the Goods, an advice note specifying the means of transport, weight, number or volume as appropriate and the point and date of dispatch;
 - c) send to the Purchaser a detailed priced invoice as soon as is reasonably practical after dispatch of the Goods, and
 - d) state on all communications in the relevant order number and code number (if any).
- 5.4 Goods shall be delivered on the days, between the times and at the address stated in the Special Conditions of Contract.
- 5.5 Delivery, unless otherwise provided for in the Special Conditions of Contract shall be effected within 7 days from receipt of the Purchaser's order. Should the Supplier have reason to suspect delays in delivery, the Supplier shall advise the Purchaser upon receipt of an order in writing of any anticipated delays citing reasons therefore and put forward a new anticipated delivery. The Purchaser may then extend the delivery date if

and as it seems fit. Unless and until the Supplier receives a notification of the new, extended delivery date, there shall be no extension to the date.

- 5.6 Should the Supplier fail to supply any of the Goods on the date or dates or within the period or periods specified thereof, or should he fail to replace any rejected Goods as required by the Contract, the Supplier shall be liable to make good to the Purchaser all loss and damage occasioned by such failure, including any reasonable price (whether greater than the appropriate Contract price or not) paid by the Purchaser in purchasing the Goods on which default has been made, from a source other than the Supplier. In such an event the Purchaser shall be at liberty to retain the amount of any such loss or damage from any money due by the Purchaser to the Supplier but without prejudice to other methods of recovery open to the Purchaser.

6 QUALITY

- 6.1 All Goods supplied shall comply with the requirements of the Scope of Work, or shall conform in all respects to the sample which form part of the Contract.
- 6.2 All Goods covered by this Contract shall be the subject of the Purchaser's inspection and test at all times before, during or after manufacture. The Supplier shall furnish without extra charge all reasonable facilities and assistance for the safe and convenient inspection or test required by appointed inspectors. Such inspections may be carried out on the Supplier's premises or at such other place as deemed appropriate by inspectors.
- 6.3 If the Supplier fails to supply Goods, materials, workmanship or services in accordance with the provisions of the Contract, the Purchaser may reject any part of the Goods by giving written notice to the Supplier specifying the reason for rejection and whether replacement Goods are required and within what time.
- 6.4 All rejects shall be held at the Supplier's risk and expense including all transportation and handling costs until returned to or collected by the Supplier. All rejects shall be replaced or rectified and made good at the Supplier's expense within the specified

replacement period to the full satisfaction of the inspectors and in conformity with the standards, specification or samples specified in this Contract.

6.5 In the event of the Supplier failing to remove such rejected Goods within 5 days of notification of the rejection, the Purchaser shall be at liberty to return them at the Supplier's risk, the cost of carriage being recoverable from the Supplier. In the event that the Supplier considers himself aggrieved he may, within 5 day of the receipt of notification of rejection give the Purchaser notice of objection, whereupon the Goods shall not be removed until the Purchaser so directs.

7 WARRANTY

Without prejudice to any other rights of the Purchaser under these conditions, the Supplier warrants that:

- a) all Goods delivered will be free from defective materials or workmanship;
- b) this warranty shall survive any inspection, delivery, acceptance or payment by the Purchaser; and
- c) the goods will remain free from defects for a period of one year (unless otherwise stated in the Special Conditions of Contract), from acceptance of the Goods by the Purchaser.

8 ASSIGNMENT AND SUBCONTRACTING

The Supplier shall **not** assign or subcontract any part of this Contract without the written consent of the Purchaser.

9 TERMINATION

9.1 The Employer may terminate the Contract without prejudice to any right of action or remedy which has accrued or thereafter accrues to the Purchaser if the Supplier:

- (a) does not remedy a failure in the performance of his obligations under the Contract within thirty (30) Days after having been notified thereof, or within any further period as the Purchaser may have subsequently approved in writing;

(b) if the Supplier becomes insolvent or liquidated or otherwise in the opinion of the Purchaser is in financial circumstances as to prejudice the proper performance of the contract.

9.2 The Purchaser shall give the Supplier not less than thirty (30) days written notice of any termination made in terms of 9.1 (a) or (b)

9.3 The Supplier may terminate the Contract, by giving not less than thirty (30) Days written notice to the Purchaser after the occurrence of any of the following events:

(a) if the Purchaser fails to pay any monies due to the Supplier in terms of the Contract and not subject to dispute pursuant to Clause 12 within forty-five (45) Days after receiving written notice from the Supplier that such payment is overdue;

(b) if the Purchaser is in material breach of a term of the Contract and fails to rectify such breach within 30 Days of the receipt of written notice requiring him to do so.

9.4 Upon termination of this Contract pursuant to Clauses 9.1 the Purchaser shall remunerate the Service Provider in terms of the Contract for Services satisfactorily performed prior to the effective date of termination.

9.5 Should the supplier, being an individual or the last surviving principal of a partnership or body corporate, die or be prevented by illness or any other circumstances beyond his control from performing the obligations implied by the Contract, the Contract shall be terminated without prejudice to the accrued rights of either Party against the other.

10 PAYMENT

10.1 Payment of invoices for local Suppliers will be effected 30 (thirty) days from the date of the receipt of the correct statement. Invoices/statements should be submitted after the Employer has, in writing, acknowledged receipt of the products supplied. A correct and original monthly statement reflecting the above invoices must be submitted to Umgeni Water.

10.2 Payment will be effected directly to the foreign Supplier subject to SA Reserve Bank approval. Payment to the foreign Supplier will be effected in the relevant foreign currency by means of

telegraphic transfer, 30 (thirty) days after receipt of a correct and original monthly statement, or where statements are not submitted, 45 (forty five) days from receipt of a correct and original invoice. Where statements are not submitted, a certificate should be issued to the Employer reconciling the amount outstanding for the month.

10.3 All payments will be made by the Employer to the foreign Suppliers account. The following particulars of the foreign Supplier's banking details must be furnished:

- a) account name;
- b) account number;
- c) routing number; and
- d) bank name and country.

10.4 The monthly statements, invoices and all supporting documentation must be received before payment can be effected. If the Suppliers documentation is incomplete or incorrect, payment of these documents will only be effected the month following the month during which the correct documents were received and in the case of foreign contractors, payment will be effected 30 (thirty) days from receipt of a correct statement or 45 (forty five) days from receipt of a correct invoice.

10.5 For VAT registered contractors, all invoices on the Supplier's statement must comply with the VAT Act, No. 89 of 1991, or any Act replacing it, before payment can be effected.

10.6 Settlement discounts, if any, agreed upon will be deducted from payments.

10.7 The Employer may set-off any amounts owed by the Supplier from any amount due.

10.8 Payment will be effected by bank transfer or by cheque, Umgeni Waters' liability towards the Supplier will be deemed to be met when the cheque is posted or with Bank Transfer being made. The Supplier assumes the entire risk for cheques from the moment of posting, or with Bank Transfer, upon transfer being made. The Supplier will ensure that Employer at all times has the correct banking information of the Supplier in order to make a bank transfer.

10.9 If the cheque is to be collected, it will be at the Supplier's sole risk and risk will pass to the Supplier upon handing over of the cheque to the proposed Supplier's representative

10.10 All original invoices must be forwarded to Employer on a continuous basis throughout the month to the address stated below:

UMGENI WATER

The Creditors Department

P O Box 9

Pietermaritzburg

3200

10.11 All payments are provisional and are subject to audit by Umgeni Water. The Supplier will preserve its records for such a period as the South African Revenue Services may require, or 5 (five) years from date of payment by Umgeni Water, whichever is the longer.

10.12 All correspondence (relating to matters other than invoices) must reflect the relevant Contract Number and be addressed to the Employer's agent and sent to

P.O.Box 9

Pietermaritzburg, 3200

11. RESOLUTION OF DISPUTES

11.1 Settlement

11.1.1 The parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to the Contract and may not initiate any further proceedings until either Party has, by written notice to the other, declared that such negotiations have failed.

11.1.2 Any dispute or claim arising out of or relating to the Contract which cannot be settled between the Parties shall in the first instance be referred by the Parties to either mediation or adjudication as provided for in the Special Conditions of Contract.

11.2 Mediation

11.2.1 If the Contract Data does not provide for the dispute resolution by adjudication, not later than 14 days after having advised the other party, in terms of Clause 12.1, that

negotiations in regard to a dispute have failed, an aggrieved party may require that the dispute be referred, without legal representation, to mediation by a single mediator. The mediator shall be selected by agreement between the Parties, or, failing such agreement, by the person named for this purpose in the Special Conditions of Contract. The costs of mediation shall be borne equally by the Parties.

11.2.2 The mediator shall convene a hearing of the Parties and may hold separate discussions with any Party and shall assist the Parties in reaching a mutually acceptable settlement of their differences through means of reconciliation, interpretation, clarification, suggestion and advice. The Parties shall record such agreement in writing and thereafter they shall be bound by such agreement.

11.2.3 The mediator is authorized to end the mediation process whenever in his opinion further efforts at mediation would not contribute to a resolution of the dispute by the Parties.

11.2.4 If either Party is dissatisfied with the opinion expressed by the mediator or should the mediation fail, then such Party may require that the dispute be referred to arbitration or litigation in a competent legal civil court, as provided for in the Contract Data.

11.3 Adjudication

11.3.1 If the Contract Data does not provide for dispute resolution by mediation, an aggrieved Party may refer the dispute to adjudication. Adjudication shall be in accordance with the latest edition of the separately published CIDB Adjudication Procedures.

11.3.2 The adjudicator shall be appointed in terms of the Adjudicator's Agreement bound in the Construction Industry Board's Adjudication Procedure.

11.3.3 The Adjudicator shall be any person agreed to by the Parties or, failing such agreement, shall be nominated by the person named in the Contract Data. The Adjudicator shall be appointed shall be in accordance with the Adjudicator's Agreement contained in the CIDB Adjudication Procedure.

11.3.4 If a Party is dissatisfied with the decision of the Adjudicator, the Party may give the other Party notice of dissatisfaction within 28 days of the receipt of that decision and refer the

dispute to arbitration or litigation in a competent civil court as provided for in the Contract Data. If no notice of dissatisfaction is given within the specified time, the decision shall be final and binding to the Parties.

11.4 Arbitration

11.4.1 Arbitration, where provided for in the Contract Data, shall be by a single arbitrator in accordance with the provisions of the Arbitration Act of 1965 as amended and shall be conducted in accordance with such procedure as may be agreed between the Parties, or failing such agreement, in accordance with the Rules for the Conduct of Arbitrators published by the Association of Arbitrators current at the date the arbitrator is appointed.

11.4.2 The arbitrator shall be mutually agreed upon or, failing agreement, to be nominated by the person named in the Contract Data.