



SPECIAL CONDITIONS OF CONTRACT

SERVICE LEVEL AGREEMENT

Entered into by and between

TRANSNET ENGINEERING

(Herein represented by

TRANSNET ENGINEERING WHEELS BUSINESS

(Hereinafter referred to as “the Purchaser”)

And

.....
(Herein represented by in his capacity as the)

(Hereinafter referred to as “Supplier”)

WHEREBY THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

In this Agreement:

- 1.1 Clause headings are for convenience only and are not to be used in the interpretation of the clauses to which they relate.
- 1.2 Unless the context clearly indicates a contrary intention, an expression which denotes-
 - a. gender includes the other gender;
 - b. a natural person includes a juristic person and vice versa;
 - c. a singular includes the plural and vice versa.
- 1.3 Any reference to an enactment is to that enactment as at the date of signature hereof and as amended or re-enacted from time to time.
- 1.4 In this Agreement, unless the context indicates otherwise the following words and expressions will have the meaning assigned to them in this clause.
- 1.5 **“Agreement”** means terms and conditions of this Agreement and any Appendix hereto as may be amended in writing from time to time subject to the mutual consent of both Parties;
- 1.6 TE means Transnet Limited trading as Transnet Engineering, Registration No. 1990/000900/06, a public company with limited liability registered and incorporated in terms of the Company laws of the Republic of South Africa, carrying on business at 19 Lynette Road, Koedoespoort, Pretoria.
- 1.7 **“Supplier”** means the Service Provider for the Transportation of Wheels.
- 1.8 **”Services”** means the services described in this Agreement and such other services To be provided by TE as mutually agreed.
- 1.9 **“Purchaser” means the TRANSNET ENGINEERING.**
- 1.10 **“ITM” means Integrated Transport Management**
- 1.11 **“LBM”** Transnet Engineering’s Local Business Manager
- 1.12 **“SLA” The Service Level Agreement**
- 1.13 **“Day(s)”** means calendar days of the week including weekends and public holidays;
- 1.14 **“Depot”** means TE Depots;
- 1.15 **“Force Majeure”** means any event beyond the reasonable control of the party claiming the occurrence of an event of Force Majeure, the occurrence of which could

not have been reasonably foreseen at the time of conclusion of this Agreement. This includes but is not limited to war (declared or not), revolution, riots, insurrection, civil commotion, invasion, act of terrorism, sabotage, flood, tsunami or any other act of God.

1.16 **“Standing Time”** means any event where a truck(s) have been standing in any of TE premises for the period of 24 hours without being loaded/off-loaded with goods.

2. DURATION AND SCOPE

2.1 This Agreement shall commence on the Commencement Date and shall, subject to the provisions of clause 2.1 below, endure for a fixed period of 24 (twenty four) months.

2.2 Notwithstanding anything to the contrary contained in this Agreement, any party to this agreement shall be entitled to cancel this Agreement:

2.2.2 On three months written notice to the Supplier at any time during the duration of this Agreement (and without having to provide reasons for the cancellation of this Agreement);

2.2.3 forthwith (and without notice), if:

2.2.3.1 Any provisional or final liquidation or judicial management proceedings, whether voluntary or not, are instituted by or against the Supplier, as the case maybe;

2.2.3.2 the Supplier commits an act of insolvency as contemplated in the Insolvency Act, 24 of 1936;

2.2.3.3 the Supplier commits an act of fraud or dishonesty or is guilty of conduct that is prejudicial to Transnet Engineering’s interests, as determined in the sole and absolute discretion of Transnet Engineering;

2.2.3.4 the Supplier breaches the terms of this Agreement on any 3 (three) occasions;

2.2.3.5 5 (Five) or more NCR’s are raised against the Supplier within any running 2 months’ period

2.2.3.6 the Supplier has a judgment entered against it, and does not enter an appeal against such decision within the time period allowed therefore under the applicable court rules; and

- 2.3 The parties agree that the provisions of this Agreement shall only apply to the Transportation of Wheels from and to the specified TE depot in this Agreement, for the duration of this Agreement.
- 2.4 The parties agree that the Specifications for the Handling and Transportation of Rail Rolling Stock Wheels (Doc. No. PD_COMP_NAT_SPEC_531B Revision 4) as per Annexure A will be applied in conjunction with the Agreement.

3. SERVICES PROVIDER'S OBLIGATIONS

- 3.1 The Supplier shall render the following services to the Purchaser on the terms and conditions set out in this Agreement:
- 3.1.1 The "AS and WHEN" transportation of wheels as per instruction from the business (ITM/Wheels)
- 3.1.2 The Supplier is expected to provide dedicated and suitable vehicles, super links and tri-axle trucks (fitted with twist locks) as needed for the transportation of wheels. If a supplier is sub-contracting truck(s), supplier will have to provide TE with a sub-contracting agreement.
- 3.1.3 The Supplier is expected to maintain these vehicles in a roadworthy condition in accordance with the necessary South African Road/Transport ordinances and make available these maintenance records on request from TE.
- 3.1.4 The Supplier is required to provide this service during normal working hours as well as after hours, including weekends and public holidays as required by TE. The Vehicles must be made available within 2 hours of instruction/request, unless previously arranged with TE.
- 3.1.5 In case of a truck breakdown the supplier should immediately inform the business and also make alternative arrangement to replace the truck within 24hrs.
- 3.1.6 The Supplier must communicate any and all delays in collection and delivery of wheels within 2 hours of the delay occurring.
- 3.1.7 The Supplier is required to install vehicle tracking devices to all vehicles and to grant ITM with reasonable access to their vehicle tracking system.
- 3.1.8 The Supplier is required to provide ITM with the vehicle registration details and driver Contact details. When a vehicle is due for maintenance, the Supplier must provide ITM with the vehicle registration of the replacement vehicle.
- 3.1.9 TE standing time is applicable only to the truck(s) that is currently being used by Wheels Business.

Under what circumstances can Supplier claim Standing Time?

- In the event that truck(s) contracted have been standing in any of TE premises for the period of 24 hours without being loaded/off-loaded with Wheels.
- A Standing time of **R 4 800** can be claimed by the service provider where the truck(s) have been standing for the duration of 24 hours irrespective of the shift pattern.
- A proof of truck tracking report/Global Positioning System (GPS) report should be provided for any standing time claimed. TE will not accept any other document except GPS report.
- All released truck(s) due to reduction in demand cannot claim for standing time.

3.1.0 Due to changes in demand the business can request for additional trucks or reduction as per requirements from TE. The supplier must be notified before 48 hours to provide additional trucks.

TE together with the Local wheel business will conduct a quarterly survey against the supplier to rate and monitor the performance of the transport company with an aim to improve the service provided to the business.

4. LOADING AND OFF LOADING OF WHEELS

- 4.1 TE will ensure that all loading and off-loading of wheels are done in accordance with the Specifications for the Handling and Transportation of Rail Rolling Stock Wheels (Doc. No. PD_COMP_NAT_SPEC_531B Revision 4) as per Annexure A.
- 4.2 The Supplier is responsible to provide TE with a completed safety file before Wheels contract commencement date. The supplier/contractor and sub-contractor is required by the Occupational Health and **Safety Act** 85 of 1993 and the Construction Regulations 2014, to have a **Safety File** that must be available at all times.
- 4.3 TE will do in house truck(s) inspection as per Quality Assurance roadworthy check list.
- 4.4 The Supplier will undertake to inspect all loads prior to dispatch to ensure that the cradles and wheels are secured on the vehicle and will be responsible for the safe transportation and guarding of the wheels.

5. TERMS OF PAYMENT

- 5.1 The Supplier will provide tax invoices for all movements of wheels. Each invoice to include the details of Freight Order (FO) number and TE vat number.
- 5.2 The Supplier will receive payment 30 days after date of statement.

- 5.3 The tax invoices to be delivered within 7 days after 30th of each month.
- 5.4 For payment purposes the following documents must be submitted to ITM:
 - 5.4.1 Official TE Freight Order (FO) (hard copy)
 - 5.4.2 Signed G16 Document
 - 5.4.3 Supplier Waybill as POD (signed, stamped and date with time)
 - 5.4.4 Supplier tax invoice with Freight Order as reference
- 5.5 All original invoices and statements of account, detailing TE VAT number 4720103177, shall be forwarded to the following address:

Attention: Yamkela Gcaba

Integrated Transport Management
19 Voortrekker Road
Transnet Engineering
Salt River

- 5.6 A monthly reconciliation will be done between the parties in order to ensure that all Freight Orders (FO's) have been correctly loaded with contract prices.
- 5.7 The Supplier undertakes to abide by the following conditions and requirements as set out below.
 - 5.7.1 Confirmation and authorisation for collection will only be done via an official Freight Order (FO)
 - 5.7.2 At the collection depot a G16 gate exit permit will be provided at the collection point.
 - 5.7.3 Ensure that the respective Waybill POD is stamped and signed with dates, times and Freight Order (FO) number at the collection site.
- 5.7.4 Ensure that the respective Waybill POD and G16 is stamped and signed with dates, times and Freight Order (FO) number at the delivery site.

6. **BREACH**

Should either party ("the defaulting party") breach any of the material terms and conditions of this Agreement and fail to remedy such breach within 7 (seven) days after receipt of a written notice from the other party ("the aggrieved party") requiring the defaulting party to rectify the breach, (where the breach is remediable within such period, or within such further period as may be reasonable in the circumstances in the event that such breach is not remediable

within such period), the aggrieved party shall be entitled to terminate this Agreement and/or to claim damages arising from such breach, without prejudice and in addition to the aggrieved party's other rights and remedies in law or in terms of this Agreement.

7. APPLICABLE LEGISLATION AND JURISDICTION

7.1 This Agreement shall be governed by the laws of South Africa.

7.2 Subject to the provisions of clause 8, the South African courts shall have jurisdiction with respect to the enforcement of the provisions of this Agreement and for such purpose the parties expressly submit to the jurisdiction of such courts.

8. FORCE MAJEURE

The parties shall review the Agreement should an event of Force Majeure occur during the subsistence of this Agreement, and such event has a negative impact on the delivery of wheels. Such review will be affected by amending the relevant clauses of this Agreement but shall be subject to the provisions of clause 9.2. Both parties reserve the right to terminate this Agreement by notice to the other party should the event of Force Majeure prevail continuously for a period of more than 3 (three) months.

9. DISPUTE RESOLUTION

9.1 In the event of any dispute between the parties arising from this Agreement, the parties undertake to meet forthwith to try and resolve or settle such dispute.

9.2 In the event that the parties fail to resolve the dispute within 30 (thirty) days calculated from the date on which one of the parties requests in writing a meeting as contemplated in clause 8.1, then the dispute shall be referred for arbitration to the Arbitration Foundation of South Africa (AFSA). The arbitration shall be governed by the latest addition of the commercial rules of AFSA as in effect at the date of commencement of the arbitration.

9.3 The parties shall agree on the arbitrator who shall be a practising advocate who is a Senior Counsel of not less than ten years standing as such. If agreement is not reached within 14 (fourteen) days after any party in writing calls for agreement, the arbitrator shall be appointed by the Chairman for the time being of the Society of Advocates of the Cape Provincial Division.

9.4 The arbitrator shall have the powers conferred upon an arbitrator under the AFSA rules aforesaid.

- 9.5 An order or award of the arbitrator that has a monetary value in excess of one million Rand (1 000 000, 00 South African Rand) is subject to the right of appeal by either party to a panel of two arbitrators (“the Panel”) acting, mutates mutandis, on the terms and conditions set out in this clause 8, provided that such appeal is lodged with the arbitrator within 20 (twenty) days after the decision of the arbitrator was made known to the parties.
- 9.6 The Panel shall be appointed by the Chairman for the time being of the Society of Advocates of the Cape Provincial Division at the request of any party, provided that the Panel shall be appointed from practising advocates who are Senior Counsel, of not less than 10 (ten) years standing as such.
- 9.7 An order or award that may be made by the arbitrator that is not appealed in accordance with the provisions of this clause, or if appealed, an order or award that may be made by the Panel, shall be carried into effect and shall, in the absence of any manifest error, be final and binding upon the parties and may be made an order of court of any competent jurisdiction.
- 9.8 The provisions of this clause 8 shall not prevent or preclude either party from access to any High Court of South African having jurisdiction for:
- 9.8.1 Interim relief in the form of an interdict, mandamus or order for specific performance pending the outcome of an arbitration in terms hereof or in respect of such arbitration in terms hereof as the case may be;
- 9.8.2 any other form of relief on the basis of facts which are not disputed, provided that a bona fide dispute arises in the court hearing such proceeding, it shall be stayed pending an arbitration; or
- 9.8.3 An order for the payment of money on the basis of facts which are not bona fide in dispute at the commencement of such proceedings.
- 9.9 The parties undertake to keep the evidence in any arbitration proceedings and any decision or award of the arbitrator hereunder, private and confidential.
- 9.10 This clause shall in the event that the dispute concerns the termination for whatever reason of this Agreement, be severable from the rest of the Agreement.

10. REPORTING

The Service provider will report directly to the: National Transport & Planning Manager, ITM (Integrated Transport Manager) in terms of the contract. For day-to-day operations he

must report to the Local Customer Service Manager (Wheels plant – Salt River & Saldanha)

11. DUTIES OF TRANSNET

- 11.1 Transnet Engineering hereby entrusts all such powers and duties to the Supplier as which are required to enable the Supplier to lawfully perform its duties in terms of this Agreement effectively and competently.
- 11.2 Transnet Engineering shall provide the Supplier with timeous access to the premises as Reasonably required by the Supplier to perform its duties under this agreement.
- 11.3 Transnet Engineering shall advise the Supplier as soon as reasonably possible of any Amendments to legislation or Regulations affecting the services provided by the Supplier.
- 11.4 The Supplier shall not be liable for any regulatory non-compliance and/or any penalties, claims or actions resulting from Transnet Engineering not notifying the Supplier of any of the above amendments and/or new legislation and Regulations.

12. INDEPENDENT SUPPLIER

- 12.1 The Supplier is appointed as an independent contractor, and not as an employee, and at all Relevant times during the currency of this Agreement no employer/employee relationship Shall exist between the parties.
- 12.2 This Agreement replaces any other previous verbal or written agreement entered into between the parties.

13. ENTIRE AGREEMENT

- 13.1 This Agreement constitutes the entire agreement between the Parties and no amendment, alternation, addition or variation of any right, term or condition of this Agreement well be of any force or effect unless reduced to writing and signed by the parties to this Agreement.
- 13.2 The Parties agree that no other terms or conditions, variations or representations, whether oral or written, and whether express or implied, or otherwise, other than those contained in this Agreement.

14. INSURANCE

- 14.1 The Supplier shall at its own risk and cost insure its vehicles, equipment and working tools against all normal commercial risks including fire, explosion, special perils, theft, riots and strikes, malicious damage, earth quakes, and political risk, and including those risks covered by SASRIA.
- 14.2 All premiums due in respect of the aforesaid insurances during the period of this Agreement shall be *borne* by the Supplier.
- 14.3 The Supplier shall indemnify Transnet Engineering against any loss or damage to property belonging to Transnet Engineering and against any liability arising out of the death of or injury to any person (including a servant or appointed representative of Transnet Engineering) and any loss of profit, consequential, special or indirect damages of whatsoever nature and howsoever arising (without limitation) suffered by Transnet Engineering where such loss, damage, death or injury results from any act or omission of the Supplier, its servants or sub-contractors which occurred in and during the course of the carrying out of the Services and whether or not such act or omission amounted to negligence on the part of the Supplier, its servants or sub-contractors.
- 14.4 The Supplier shall at its own cost make provision for insurance of the wheels when in transit between the loading and off-loading points.
- 14.5 For purposes of eliminating any doubt, the Supplier will be held liable for all intentional or negligent damage caused to Transnet Engineering's assets, property and or buildings. Without limiting any of its rights, Transnet Engineering, may at its own discretion, appoint a service provider to remedy the damage caused by the Supplier and deduct such costs from the monies which may be due and owing to the Supplier for services rendered. By signing this SLA the Supplier is undertaking to comply with any demand for payment or deduction.

15. WAIVER

- 15.1 No waiver of any of the terms and conditions of this Agreement shall be binding unless expressed in writing and signed by the party giving the same, and any such waiver shall be affected only in the specific instance and for the purpose given.
- 15.2 No failure or delay on the part of either party in exercising any right, power or privilege

Precludes any other or further exercising thereof or the exercising of any other right, power or privilege.

- 15.3 No indulgence, leniency or extension of time which any party (*"the Grantor"*) may grant or show the other party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in terms of this Agreement.

16. CONFIDENTIAL INFORMATION

16.1 The Supplier shall not, during the currency of this agreement, or at any time thereafter, utilise or cause to be utilised, and/or directly or indirectly publish or cause to be published or otherwise disclose or cause to be disclosed to any third party, any of the Confidential Information of the Purchaser, government in any other sphere, or any government institution or organ of state.

16.2 For purposes of this clause "Confidential Information" shall mean -

16.2.1 any information disclosed, revealed or exchanged and which pertains to, but is not limited to, all intellectual property rights, all trade secrets, all agreements (whether in writing or not) which exists at the time of revealing the content thereof to the Supplier, the content of all possible future agreements which may be entered into with any other party, all knowledge obtained by way of research and development, irrespective of whether the aforementioned information that is revealed is applicable to technical, operational or financial aspects of the Purchaser, government in any other sphere, or any government institution or organ of state;

16.2.2 any information of whatever nature, which has been or may be obtained by the Supplier, whether in writing or in electronic form or pursuant to discussions between the parties, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, scientific, business or financial data or information, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, studies, findings, computer software, inventions or ideas;

16.2.3 Analyses, concepts, compilations, studies and other material prepared by or
In possession or control of the Supplier which contain or otherwise reflect or
Are generated from any such information as is specified in this definition;

16.2.4 All information which a third party has in terms of any agreement made
Available to the Purchaser and which has become known to the Supplier in
The course of rendering the Services; and

16.2.5 Any dispute between the parties resulting from this Agreement;

16.3 The Supplier shall -

16.3.1 Use the Confidential Information only for the purpose of rendering the Services;

16.3.2 And safeguard the Confidential Information as private and confidential; and

16.3.3 Ensure proper and secure storage of all Confidential Information.

16.3.4 Any documents or records (including written instructions, notes or memorandam) relating to the Services which are to be provided to the Supplier or which come into the Supplier's possession during the currency of this Agreement, are deemed to be the property of the Purchaser and shall be surrendered to the Purchaser on demand, and in the event of the expiry or termination of this Agreement, the Supplier will not retain any copies There of or extracts there from without obtaining the prior written Permission of the Purchaser.

16.4 The Supplier –

16.4.1 acknowledges that he/she has carefully considered the provisions of the clause;

16.4.2 agrees that this clause is, after taking all relevant circumstances into account, reasonable and necessary for the proper protection of the interests of the Purchaser and that if he/she should at any time dispute the reasonableness of this clause, then the onus of proving such unreasonableness shall be on the Supplier; and

16.4.3 acknowledges that he/she has entered into this Agreement freely and voluntarily and that no circumstances exist and/or existed for him/her alleging, either now or at any future time, that he was at a disadvantage in agreeing to the restraints set out in this clause, or was not in an equal bargaining position with the Purchaser in agreeing thereto.

17 NOTICES AND DOMICILIUM

17.1 The Parties hereto select as their respective *domicilia citandi et executandi* the following Physical addresses, and for the purpose of giving or sending any notice provided for or Required hereunder:

The PURCHASER:

Transnet Engineering Division Acquisition Council

Transnet Engineering

Kilner Park

160 Lynette Street
Pretoria
0186

SERVICE PROVIDER:

Name: _____

Physical Address: _____

Tel: _____

Fax: _____

Or such other address or telefax number as may be substituted by notice given as herein required. Each of the parties shall be entitled from time to time by written notice to the other, to vary its domicilium to any other address within the Republic of South Africa which is not a post office box or *poste restante*.

17.2 All notices to be given in terms of this Agreement shall be given in writing and be delivered or sent by prepaid registered post to the party's chosen *domicilium citandi et executandi*.

17.3 If delivered by hand, a notice shall be presumed to have been received on the date of delivery, or, if sent by prepaid registered post, be presumed to have been received 7 (seven) business days after the date of posting.