



South African Revenue Service

OATH OF SECRECY/SOLEMN DECLARATION

Annexure A

Secrecy provisions of Acts
administered by the Commissioner

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Secrecy provisions of Acts administered by the Commissioner

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A. Income Tax Act, 1962 (Act No. 58 of 1962)

Preservation of secrecy

(1) Every person employed or engaged by the Commissioner in carrying out the provisions of this Act shall preserve and aid in preserving secrecy with regard to all matters that may come to his or her knowledge in the performance of his or her duties in connection with those provisions, and shall not communicate any such matter to any person whatsoever other than the taxpayer concerned or his or her lawful representative nor suffer or permit any such person to have access to any records in the possession or custody of the Commissioner except in the performance of his or her duties under this Act or by order of a competent court: Provided that—

- (a) any information obtained by the Commissioner in the performance of his duties under the provisions of this Act or any previous Income Tax Act may be used by him for the purposes of the provisions of any other fiscal law administered by him;
- (b) the Auditor-General shall in the performance of his duties in terms of section 3 of the Auditor-General Act, 1995 (Act 12 of 1995), have access to documents in the possession or custody of the Commissioner;
- (c) the provisions of this subsection shall not be construed as preventing the Commissioner from—
 - (i) disclosing to the Chief of the Central Statistical Services such information in relation to any person as may be required by such Chief in connection with the collection of statistics in complying with the provisions of the Statistics Act, 1976 (Act 66 of 1976), or any regulation thereunder; or
 - (ii) publishing a list of approved public benefit organisations for the purposes of the provisions of sections 18A and 30;
 - (iii) disclosing to the Governor of the South African Reserve Bank or any other person to whom the powers, functions and duties have been delegated by the Minister in terms of Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency and Exchanges Act, 1933 (Act 9 of 1933), such information as may be required for purposes of exercising any power or performing any function or duty in terms of those Regulations.
- (d) the provisions of this subsection shall not be construed as preventing the Commissioner from disclosing to the Board administering the National Student Financial Aid Scheme, any information relating to the name and address of the employer of any borrower or bursar to whom any loan or bursary has been granted in terms of such scheme; and
- (e) the Commissioner shall disclose to the Director-General of the National Treasury information in respect of—
 - (i) any taxpayer which is an institution contemplated in section 3 (1) of the Public Finance Management Act, 1999 (Act 1 of 1999), or an entity contemplated in section 3 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), to the extent necessary for performing the functions and exercising the powers of the National Treasury in terms of those Acts; or
 - (ii) any other class of taxpayers, to the extent necessary for the purposes of tax policy design or revenue estimation.

(1A) The Statistician-General or any person acting under the direction and control of such Statistician-General, shall not disclose any information supplied under subsection (1) (c) to any person or permit any person to have access thereto, except in the exercise of his powers or the carrying out of his duties to publish statistics in any anonymous form.

(1B) The Commissioner may apply ex parte to a judge in chambers for an order allowing him or her to disclose to the National Commissioner of the South African Police Service, contemplated in section 6 (1) of the South African Police Service Act, 1995 (Act 68 of 1995), or the National Director of Public Prosecutions, contemplated in section 5 (2) (a) of the National Prosecuting Authority Act, 1998 (Act 32 of 1998), such information, which may reveal evidence—

- (a) that an offence, other than an offence in terms of this Act or any other Act administered by the Commissioner or any other offence in respect of which the Commissioner is a complainant, has been or may be committed, or where such

information may be relevant to the investigation or prosecution of such an offence, and such offence is a serious offence in respect of which a court may impose a sentence of imprisonment exceeding five years; or

- (b) of an imminent and serious public safety or environmental risk,

and where the public interest in the disclosure of the information outweighs any potential harm to the taxpayer concerned should such information be disclosed: Provided that any information, document or thing provided by a taxpayer in any return or document, or obtained from a taxpayer in terms of section 74A, 74B or 74C, which is disclosed in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such taxpayer, to the extent that such information, document or thing constitutes an admission by such taxpayer of the commission of an offence contemplated in paragraph (a).

(1C) For the purposes of subsection (1B), the Commissioner may delegate the powers vested in him or her by that subsection, to any other officer.

(1D) The Director-General or any person acting under the direction and control of such Director-General shall not disclose any information supplied under subsection (1) (e) to any other person or permit any other person to have access thereto, except in the performance of any function contemplated in subsection (1) (e).

(1E) The National Police Commissioner or the National Director of Public Prosecutions or any person acting under the direction and control of such National Police Commissioner or National Director of Public Prosecutions, shall not disclose any information supplied under subsection (1B) to any other person or permit any other person to have access thereto, except in the exercise of his or her powers or the carrying out of his or her duties-

- (a) for purposes of any investigation of, or prosecution for, an offence contemplated in subsection (1B); or
(b) to combat any public safety or environmental risk contemplated in subsection (1B).

(2) (a) Every person employed or engaged as contemplated in subsection (1) shall, before acting under this Act, take and subscribe before a magistrate or justice of the peace or a commissioner of oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed.

(b) Any oath of secrecy taken and subscribed under the provisions of any previous Income Tax Act by any person who is employed in carrying out the provisions of this Act shall be deemed to be an oath taken and subscribed in terms of this subsection.

(c) The Director-General of the National Treasury, and any person acting under the direction and control of that Director-General, who performs any function as contemplated in subsection (1) (e), shall take and subscribe before a magistrate or justice of the peace or a commissioner of oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed.

(2A) No person shall in any manner publish or make known to any other person (not being an officer carrying out his duties under the control, direction or supervision of the Commissioner) the contents or tenor of any instruction or communication given or made by the Commissioner or any such officer in the performance of his or their duties under this Act for or concerning the examination or investigation of the affairs of any taxpayer or class of taxpayers or the fact that such instruction or communication has been given or made, or any information concerning the tax matters of a taxpayer or class of taxpayers: Provided that the provisions of this subsection shall not be construed-

- (i) as preventing any taxpayer or his representative who is or may be affected by any such examination, investigation or furnishing of information from publishing or making known information concerning his own tax matters; or
(ii) subject to the provisions of subsection (1), as in any way limiting the duties or powers of the Commissioner or any such officer; or
(iii) as preventing any person from publishing or making known anything which has been published or made known by the taxpayer or his representative as contemplated in paragraph (i) or by the Commissioner or any such officer in the exercise of his duties or powers.

(2B) The provisions of this section shall not apply in respect of any information relating to any person, where that person has consented that such information may be published or made known to any other person.

(3) Any person who contravenes the provisions of subsection (1), (1A), (1D), (1E) or (2A), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(4) Any person employed or engaged as contemplated in subsection (1) who carries out any provisions of the Act as contemplated in subsection (1) before he or she has taken the prescribed oath or solemn declaration shall be guilty of an offence and liable on conviction to a fine not exceeding R500.

Note - The above provisions also apply *mutatis mutandis* to the following Acts:

- B. Demutualisation Levy Act, 1998 (Act No. 50 of 1998) – in terms of section 12.
C. Skills Development Levies Act, 1998 (Act No. 9 of 1999) – in terms of section 13.
D. Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2000) – in terms of section 14.
E. Second Small Business Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 10 of 2006) – in terms of section 4(2).
F. Diamond Export Levy (Administration) Act, 2007 (Act No. 14 of 2007) – in terms of section 17(b).
G. Securities Transfer Tax Administration Act, 2007 (Act No. 26 of 2007) – in terms of section 13(1).

H. Value-Added Tax Act, 1991 (Act No. 89 of 1991)

6 Secrecy

(1) A person employed in carrying out the provisions of this Act shall not-

- (a) disclose to any person or his representative any matter in respect of any other person that may in the exercise of his powers or the performance of his duties under the said provisions come to his knowledge; or
- (b) permit any person to have access to any records in the possession or custody of the Commissioner,

except in the exercise of his powers or the performance of his duties in terms of this Act or by order of a competent court: Provided that-

- (i) the Auditor-General in the performance of his duties in terms of section 3 of the Auditor-General Act, 1995 (Act 12 of 1995), shall have access to all records and documents in the possession or custody of the Commissioner for the purposes of this Act; and
- (ii) the Commissioner shall disclose to the Director-General of the National Treasury information in respect of-
 - (aa) any person which is an institution contemplated in section 3 (1) of the Public Finance Management Act, 1999 (Act 1 of 1999), or an entity contemplated in section 3 of the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), to the extent necessary for performing the functions and exercising the powers of the National Treasury in terms of those Acts; or
 - (bb) any other class of persons, to the extent necessary for the purposes of tax policy design or revenue estimation.

(2) The provisions of subsection (1) shall not be construed as preventing the Commissioner from-

- (a) using any information obtained by him in the exercise of his powers or the performance of his duties under this Act for the purposes of any other fiscal law administered by him;
- (b)
- (c) disclosing to the Statistician-General such information in relation to any person as may be required by the Statistician-General in connection with the collection of statistics in carrying out the provisions of the Statistics Act, 1999 (Act 6 of 1999), or any regulation thereunder;
- (d)
- (e) publishing and making known the name and VAT registration number of any vendor;
- (f) disclosing to the Governor of the South African Reserve Bank or any other person to whom the powers, functions and duties have been delegated by the Minister in terms of Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency and Exchanges Act, 1933 (Act 9 of 1933), such information as may be required for purposes of exercising any power or performing any function or duty in terms of those Regulations.

(2A) The Commissioner may apply ex parte to a judge in chambers for an order allowing him or her to disclose to the National Commissioner of the South African Police Service, contemplated in section 6 (1) of the South African Police Service Act, 1995 (Act 68 of 1995), or the National Director of Public Prosecutions, contemplated in section 5 (2) (a) of the National Prosecuting Authority Act, 1998 (Act 32 of 1998), such information, which may reveal evidence-

- (a) that an offence, other than an offence in terms of this Act or any other Act administered by the Commissioner or any other offence in respect of which the Commissioner is a complainant, has been or may be committed, or where such information may be relevant to the investigation or prosecution of such an offence, and such offence is a serious offence in respect of which a court may impose a sentence of imprisonment exceeding five years; or
- (b) of an imminent and serious public safety or environmental risk,

and where the public interest in the disclosure of the information outweighs any potential harm to the taxpayer concerned should such information be disclosed: Provided that any information, document or thing provided by a taxpayer in any return or document, or obtained from a taxpayer in terms of section 57A, 57B or 57C which is disclosed in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such taxpayer, to the extent that such information, document or thing constitutes an admission by such taxpayer of the commission of an offence contemplated in paragraph (a).

(2B) For the purposes of subsection (2A), the Commissioner may delegate the powers vested in him or her by that subsection, to any other officer.

(2C) The National Police Commissioner or the National Director of Public Prosecutions or any person acting under the direction and control of such National Police Commissioner or National Director of Public Prosecutions, shall not disclose any information supplied under subsection (2A) to any other person or permit any other person to have access thereto, except in the exercise of his or her powers or the carrying out of his or her duties for purposes of-

- (a) any investigation of, or prosecution for, an offence contemplated in subsection (2A); or
- (b) dealing with any such public safety or environmental risk as contemplated in subsection (2A).

(2D) The Director-General or any person acting under the direction and control of such Director-General shall not disclose any

information supplied under proviso (ii) to subsection (1) to any other person or permit any other person to have access thereto, except in the performance of any function contemplated in proviso (ii) to subsection (1).

(3) A person may not in any manner publish or make known to any other person (not being an officer performing his or her duties under the control, direction or supervision of the Commissioner or the Managing Director of the South African Post Office Limited) the contents or tenor of any instruction or communication given or made by the Commissioner or the Managing Director of the South African Post Office Limited or any such officer in the performance of his or her or their duties in terms of this Act for or concerning the examination or investigation of the affairs of any person or class of persons or the fact that such instruction or communication has been given or made, or any information concerning the tax matters of a person or class of persons: Provided that the provisions of this subsection shall not be construed-

- (a) as preventing any person or a representative of such person who is or may be affected by any such examination, investigation or furnishing of information from publishing or making known information concerning that person's own tax matters; or
- (b) subject to the provisions of subsections (1) and (4), as in any way limiting the duties or powers of the Commissioner or the Managing Director of the South African Post Office Limited or any such officer; or
- (c) as preventing any person from publishing or making known anything which has been published or made known by that person or a representative of that person as contemplated in paragraph (a) or by the Commissioner or the Managing Director of the South African Post Office Limited or any such officer in the exercise of the officer's duties or powers.

(3A) The provisions of this section shall not apply in respect of any information relating to any person, where that person has consented that such information may be published or made known to any other person.

(4)

(5) The Head: Central Statistical Services or any person acting under his direction and control shall not disclose any information supplied to that Head under subsection (2) (c) to any person or permit any person to have access thereto, except in the exercise of his powers or the performance of his duties to collect statistics or to publish statistics in any anonymous form.

(6) Any person who contravenes the provisions of subsection (1), (3), (4) or (5) shall be guilty of an offence and liable on conviction to a fine not exceeding R5 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

I. Customs & Excise Act, 1964 (Act No. 91 of 1964)

4 General duties and powers of officers

(3) The Commissioner or any officer shall not disclose any information relating to any person, firm or business acquired in the performance of his duties, except in the performance of his or her duties under this Act or by order of a competent court: Provided that the provisions of this subsection shall not be construed as preventing the Commissioner (in such form and under such procedural arrangements as the Commissioner may prescribe) from, on good cause shown-

- (i) disclosing such information in relation to any person as may be required by the Statistician General in connection with the collection of statistics in complying with the provisions of the Statistics Act, 1999 (Act 6 of 1999), or any regulation thereunder;
- (ii) disclosing to the Director-General of the Department of Trade and Industry such information in relation to imports and exports and importers and exporters as may be required by such Director General for the determination of any trade policy;
- (iii) applying ex parte to a judge in chambers for an order allowing the Commissioner to disclose to the National Commissioner of the South African Police Service, contemplated in section 6 (1) of the South African Police Service Act, 1995 (Act 68 of 1995), or the National Director of Public Prosecutions, contemplated in section 5 (2) (a) of the National Prosecuting Authority Act, 1998 (Act 32 of 1998), such information the disclosure of which may reveal evidence-
 - (a) that an offence, other than an offence in terms of this Act or any other Act administered by the Commissioner or any other offence in respect of which the Commissioner is a complainant, has been or may be committed, or where such information may be relevant to the investigation or prosecution of such an offence, and such offence is a serious offence in respect of which a court may impose a sentence exceeding five years imprisonment; or
 - (b) of an imminent and serious public safety or environmental risk,

and where the public interest in the disclosure of the information outweighs any potential harm to the person concerned should such information be disclosed: Provided that any information or document provided by any person in terms of this Act which is disclosed in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such person, to the extent that such information or document constitutes an admission by such person of the commission of an offence contemplated in paragraph (a); or

(iv)

(v) disclosing to the Governor of the South African Reserve Bank or any other person to whom the powers, functions and

duties have been delegated by the Minister in terms of Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency and Exchanges Act, 1933 (Act 9 of 1933), such information as may be required for purposes of exercising any power or performing any function or duty in terms of those Regulations:

Provided further that the Commissioner shall disclose information in respect of any class of persons to the Director-General of the National Treasury, to the extent necessary for the purposes of tax policy design or revenue estimation.

(3A) The Statistician General or the Director-General of the Department of Trade and Industry or the National Treasury as defined in the Exchange Control Regulations, 1961, or the Governor of the South African Reserve Bank or the National Commissioner of the South African Police Service or the National Director of Public Prosecutions or the Director-General of the National Treasury or any person acting under the direction and control of such Statistician General or Director-General of the Department of Trade and Industry or Governor of the South African Reserve Bank or National Commissioner of the South African Police Service or National Director of Public Prosecutions or the Director-General of the National Treasury, shall not disclose any information supplied under the proviso to subsection (3) to any person or permit any person to have access thereto, except in the exercise of his powers or the carrying out of his duties under any Act from which such powers or duties are derived.

(3B) The provisions of subsection (3) shall not be construed as preventing the Commissioner from using any information obtained by him in the exercise of his powers or the performance of his duties under this Act for the purposes of any other law administered by him.

(3C) For the purposes of the proviso to subsection (3), the Commissioner may, subject to the provisions of section 3 (2), delegate the powers vested in him by that proviso, to any officer.

(3D) The provisions of this section shall not apply in respect of any information relating to any person, where that person has consented that such information may be published or made known to any other person.

(3E) Notwithstanding anything to the contrary contained in subsection (3), the Auditor-General shall in the performance of the Auditor-General's duties in terms of section 3 of the Auditor-General Act, 1995 (Act 12 of 1995) have access to the documents in the possession or custody of the Commissioner or a Controller.

SOUTH AFRICAN REVENUE SERVICE GENERAL CONDITIONS OF CONTRACT

NOTES

The purpose of this document is to:

- (i) Draw special attention to certain general conditions applicable to SARS bids, orders; and
- (ii) To ensure that clients be familiar with regard to the rights and obligations of all parties involved in doing business with SARS.

In this document words in the singular also have the same meaning in the plural and vice versa and words in the masculine also mean the feminine.

- The General Conditions of Contract will form part of all bid documents and may not be amended.
- Special Conditions of Contract (SCC) relevant to a specific bid shall be compiled separately for every bid (if applicable) and will supplement the General Conditions of Contract. Whenever there is a conflict, between the GCC and the SCC the provisions in the SCC shall prevail.

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General Conditions of Contract

1. Definitions

- 1.1. The following terms shall be interpreted as indicated:
- 1.1.1. **"Closing time"** means the date and hour specified in the bidding documents for the receipt of bids.
 - 1.1.2. **"Contract"** means the written agreement entered into between SARS and the supplier, as recorded in the contract form signed by the parties, including all attachments and appendices thereto and all documents incorporated by reference therein.
 - 1.1.3. **"Contract price"** means the price payable to the supplier under the contract for the full and proper performance of his contractual obligations.
 - 1.1.4. **"Corrupt practice"** means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a public official in the procurement process or in contract execution.
 - 1.1.5. **"Countervailing duties"** are imposed in cases where an enterprise abroad is subsidized by its government and encouraged to market its products internationally.
 - 1.1.6. **"Country of origin"** means the place where the goods were mined, grown or produced or from which the services are supplied. Goods are produced when, through manufacturing, processing or substantial and major assembly of components, a commercially recognized new product results that is substantially different in basic characteristics or in purpose or utility from its components.
 - 1.1.7. **"Day"** means calendar day.
 - 1.1.8. **"Delivery"** means delivery in compliance of the conditions of the contract or order.
 - 1.1.9. **"Delivery ex stock"** means immediate delivery directly from stock actually on hand.
 - 1.1.10. **"Delivery into consignees store or to his site"** means delivered and unloaded in the specified store or depot or on the specified site in compliance with the conditions of the contract or order, the supplier bearing all risks and charges involved until the supplies are so delivered and a valid receipt is obtained.
 - 1.1.11. **"Dumping"** occurs when a private enterprise abroad market its goods on own initiative in the RSA at lower prices than that of the country of origin and which have the potential to harm the local industries in the RSA.

- 1.1.12. "**Force majeure**" means an event beyond the control of the supplier and not involving the supplier's fault or negligence and not foreseeable. Such events may include, but is not restricted to, acts of the purchaser in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions and freight embargoes.
- 1.1.13. "**Fraudulent practice**" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of any bidder, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the bidder of the benefits of free and open competition.
- 1.1.14. "**GCC**" means the General Conditions of Contract.
- 1.1.15. "**Goods**" means all of the equipment, machinery, and/or other materials that the supplier is required to supply to SARS under the contract.
- 1.1.16. "**Imported content**" means that portion of the bidding price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or his subcontractors) and which costs are inclusive of the costs abroad, plus freight and other direct importation costs such as landing costs, dock dues, import duty, sales duty or other similar tax or duty at the South African place of entry as well as transportation and handling charges to the factory in the Republic where the supplies covered by the bid will be manufactured.
- 1.1.17. "**Local content**" means that portion of the bidding price which is not included in the imported content provided that local manufacture does take place.
- 1.1.18. "**Manufacture**" means the production of products in a factory using labour, materials, components and machinery and includes other related value-adding activities.
- 1.1.19. "**Order**" means an official written order issued for the supply of goods or works or the rendering of a service.
- 1.1.20. "**Project site**" where applicable, means the place indicated in bidding documents.
- 1.1.21. "**Republic**" means the Republic of South Africa.
- 1.1.22. "**SARS**" means the South African Revenue Service.
- 1.1.23. "**SCC**" means the Special Conditions of Contract.
- 1.1.24. "**Services**" means those functional services ancillary to the supply of the goods, such as transportation and any other incidental services, such as installation, commissioning, provision of technical assistance, training, catering, gardening, security, maintenance and other such obligations of the supplier covered under the contract.

1.1.25. "Written" or "in writing" means handwritten in ink or any form of electronic or mechanical writing.

2. Application

- 2.1. These general conditions are applicable to all bids, contracts and orders including bids for functional and professional services, sales, hiring, letting and the granting or acquiring of rights, but excluding immovable property, unless otherwise indicated in the bidding documents.
- 2.2. Where applicable, special conditions of contract are also laid down to cover specific supplies, services or works.
- 2.3. Where such special conditions of contract are in conflict with these general conditions, the special conditions shall apply.

3. Standards

The goods and/or **supplied** shall conform to the standards mentioned in the bidding documents and specifications.

4. Confidentiality: Use of contract documents, information and inspection.

- 4.1. The supplier shall not, without SARS's prior written consent, disclose the contract, or any provision thereof, or any specification, plan, drawing, pattern, sample, or information furnished by or on behalf of the SARS in connection therewith, to any person other than a person employed by the supplier in the performance of the contract. Disclosure to any such employed person shall be made in confidence and shall extend only as far as may be necessary for purposes of such performance.
- 4.2. The supplier shall not, without SARS's prior written consent, make use of any document or information mentioned in GCC **Clause** except for purposes of performing the contract.
- 4.3. Any document, other than the contract itself mentioned in GCC **Clause 4.1** shall remain the property of the SARS and shall be returned (all copies) to SARS on completion of the supplier's performance under the contract if so required by SARS.
- 4.4. The supplier shall permit the SARS to inspect the supplier's records relating to the performance of the supplier and to have them audited by auditors appointed by SARS, if so required by SARS.

5. Patent Rights

The supplier shall indemnify SARS against all third party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods or any part thereof by SARS.

6. Performance Security

- 6.1. Within thirty (30) days of receipt of the notification of contract award, the successful bidder shall furnish to SARS the performance security of the amount specified in SCC.
- 6.2. The proceeds of the performance security shall be payable to SARS as compensation for any loss resulting from the supplier's failure to complete his obligations under the contract.
- 6.3. The performance security shall be denominated in the currency of the contract, or in a freely convertible currency acceptable to SARS and shall be in one of the following forms:
 - 6.3.1. a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in a country acceptable to SARS, in the form provided in the bidding documents or another form acceptable to SARS; or
 - 6.3.2. a cashier's or certified cheque.
- 6.4. The performance security will be discharged by SARS and returned to the supplier not later than thirty (30) days following the date of completion of the supplier's performance obligations under the contract, including any warranty obligations, unless otherwise specified in SCC.
7. **Inspections, tests and analyses**
 - 7.1. All pre-bidding testing will be for the account of the bidder.
 - 7.2. If it is a bid condition that supplies to be produced or services to be rendered should at any stage during production or execution or on completion be subject to inspection, the premises of the bidder or contractor shall be open, at all reasonable hours, for inspection by a representative of SARS or an agent acting on behalf of SARS.
 - 7.3. If there are no inspection requirements indicated in the bidding documents and no mention is made in the contract, but during the contract period it is decided that inspections shall be carried out, SARS shall itself make the necessary arrangements, including payment arrangements with the testing authority concerned.
 - 7.4. If the inspections, tests and analyses referred to in **Clauses 7.2 and 7.3** show the supplies to be in accordance with the contract requirements, the cost of the inspections, tests and analyses shall be defrayed by SARS.
 - 7.5. Where the supplies or services referred to in **Clauses 7.2 and 7.3** do not comply with the contract requirements, irrespective of whether such supplies or services are accepted or not, the cost in connection with these inspections, tests or analyses shall be defrayed by the supplier.
 - 7.6. Supplies and services which are referred to in **Clauses 7.2 and 7.3** and which do not comply with the contract requirements may be rejected.
 - 7.7. Any contract supplies may on or after delivery be inspected, tested or analyzed and may be rejected if found not to comply with the requirements of the contract. Such rejected supplies shall be held at the cost and risk of the supplier who shall, when called upon, remove them immediately at his own cost and forthwith substitute them with supplies which do comply with the requirements of the contract.

7.8. Failing such removal the rejected supplies shall be returned at the suppliers cost and risk. Should the supplier fail to provide the substitute supplies forthwith, SARS may, without giving the supplier further opportunity to substitute the rejected supplies, purchase such supplies as may be necessary at the expense of the supplier.

7.9. The provisions of **Clauses 7.4 to 7.7** shall not prejudice SARS'S the right to cancel the contract on account of a breach of the conditions thereof, or to act in terms of **Clause 22** of the GCC.

8. Packing

8.1. The supplier shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the contract. The packing shall be sufficient to withstand, without limitation, rough handling during transit and exposure to extreme temperatures, salt and precipitation during transit, and open storage. Packing, case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

8.2. The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the contract, including additional requirements, if any, specified in SCC, and in any subsequent instructions ordered by the purchaser.

9. Delivery and documents

9.1. Delivery of the goods shall be made by the supplier in accordance with the terms specified in SCC.

9.2. Documents required to effect delivery are specified in SCC.

10. Insurance

10.1. The goods supplied under the contract shall be fully insured in a freely convertible currency against loss or damage incidental to manufacture or acquisition, transportation, storage and delivery in the manner specified in the SCC.

11. Transportation

11.1. Should a price other than an all-inclusive delivered price be required, this shall be specified in the SCC.

12. Incidental Services

12.1. The supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (a) a performance or supervision of on-site assembly and/or commissioning of the supplied goods;

- (b) furnishing of tools required for assembly and/or maintenance of the supplied goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied goods;
- (d) performance or supervision or maintenance and/or repair of the supplied goods, for a period of time agreed by the parties, provided that this service shall not relieve the supplier of any warranty obligations under this contract; and
- (e) training of the purchaser's personnel, at the supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied goods.

12.2. Prices charged by the supplier for incidental services, if not included in the contract price for the goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the supplier for similar services.

13. Spare parts

13.1. As specified in SCC, the supplier may be required to provide any or all of the following materials, notifications, and information pertaining to spare parts manufactured or distributed by the supplier:

13.1.1. such spare parts as SARS may elect to purchase from the supplier, provided that this election shall not relieve the supplier of any warranty obligations under the contract; and,

13.1.2. in the event of termination of production of the spare parts:

13.1.2.1. Advance notification to SARS of the pending termination, in sufficient time to permit SARS to procure needed requirements; and,

13.1.2.2. Following such termination, furnishing at no cost to SARS, the blueprints, drawings, and specifications of the spare parts, if requested.

14. Warranty

14.1. The supplier warrants that the goods supplied under the contract are new, unused, of the most recent or current models and they incorporate all recent improvements in design and materials unless provided otherwise in the contract.

14.2. The supplier further warrants that all goods supplied under this contract shall have no defect, arising from design, materials, or workmanship (except when the design and/or material is required by SARS's specifications) or from any act or omission of the supplier, that may develop under normal use of the supplied goods in the conditions prevailing in the country of final destination.

- 14.3. This warranty shall remain valid for twelve (12) months after the goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the contract, or for eighteen (18) months after the date of shipment from the port or place of loading in the source country, whichever period concludes earlier, unless specified otherwise in SCC.
- 14.4. SARS shall promptly notify the supplier in writing of any claims arising under this warranty.
- 14.5. Upon receipt of such notice, the supplier shall, within the period specified in SCC and with all reasonable speed, repair or replace the defective goods or parts thereof, without costs to SARS.
- 14.6. If the supplier, having been notified, fails to remedy the defect(s) within the period specified in SCC, SARS may proceed to take such remedial action as may be necessary, at the supplier's risk and expense and without prejudice to any other rights which SARS may have against the supplier under the contract.
- 15. Payment**
- 15.1. The method and conditions of payment to be made to the supplier under this contract shall be specified in SCC.
- 15.2. The supplier shall furnish SARS with an invoice accompanied by a copy of the delivery note and upon fulfilment of other obligations stipulated in the contract.
- 15.3. Payments shall be made promptly by SARS, but in no case later than thirty (30) days after submission of an invoice or claim by the supplier.
- 15.4. Payment will be made in Rand unless otherwise stipulated in SCC.
- 16. Prices**
- 16.1. Prices charged by the supplier for goods delivered and services performed under the contract shall not vary from the prices quoted by the supplier in his bid, with the exception of any price adjustments authorized in SCC or in SARS's request for bid validity extension, as the case may be.
- 17. Contract Amendments**
- 17.1. No variation in or modification of the terms of the contract shall be made except by written amendment signed by the parties concerned.
- 18. Assignment**
- 18.1. The supplier shall not assign, in whole or in part, its obligations to perform under the contract, except with SARS's prior written consent.
- 19. Subcontract**

- 19.1. The Supplier shall not subcontract any part of this contract without prior written consent of SARS. Should such consent be given by SARS, this shall not in any way relieve the supplier from any liability or obligation under the contract.

20. Delays in the Supplier's Performance

- 20.1. Delivery of the goods and performance of services shall be made by the supplier in accordance with the time schedule prescribed by SARS in the contract.
- 20.2. If at any time during performance of the contract, the supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the goods and performance of services, the supplier shall promptly notify SARS in writing of the fact of the delay, its likely duration and its cause(s). As soon as practicable after receipt of the supplier's notice, SARS shall evaluate the situation and may at its discretion extend the supplier's time for performance, with or without the imposition of penalties, in which case the extension shall be ratified by the parties by amendment of contract.
- 20.3. No provision in a contract shall be deemed to prohibit the obtaining of supplies or services from a national department, provincial department, or a local authority.
- 20.4. The right is reserved to procure outside of the contract small quantities or to have minor essential services executed if an emergency arises, the supplier's point of supply is not situated at or near the place where the supplies are required, or the supplier's services are not readily available.
- 20.5. Except as provided under GCC **Clause 24**, a delay by the supplier in the performance of its delivery obligations shall render the supplier liable to the imposition of penalties, pursuant to GCC **Clause 21**, unless an extension of time is agreed upon pursuant to GCC **Clause 21.1** without the application of penalties.
- 20.6. Upon any delay beyond the delivery period in the case of a supplies contract, SARS shall, without cancelling the contract, be entitled to purchase supplies of a similar quality and up to the same quantity in substitution of the goods not supplied in conformity with the contract and to return any goods delivered later at the supplier's expense and risk, or to cancel the contract and buy such goods as may be required to complete the contract and without prejudice to his other rights, be entitled to claim damages from the supplier.

21. Penalties

- 21.1. Subject to GCC **Clause 25**, if the supplier fails to deliver any or all of the goods or to perform the services within the period(s) specified in the contract, SARS shall, without prejudice to its other remedies under the contract, deduct from the contract price, as a penalty, a sum calculated on the delivered price of the delayed goods or unperformed services using the current prime interest rate calculated for each day of the delay until actual delivery or performance. SARS may also consider termination of the contract pursuant to GCC **Clause 22**.

22. Termination for Default

- 22.1. SARS, without prejudice to any other remedy for breach of contract, by written notice of default sent to the supplier, may terminate this contract in whole or in part:
- 22.1.1. if the supplier fails to deliver any or all of the goods within the period(s) specified in the contract, or within any extension thereof granted by SARS pursuant to **GCC Clause 20.2**;
 - 22.1.2. if the Supplier fails to perform any other obligation(s) under the contract; or
 - 22.1.3. if the supplier, in the judgment of SARS, has engaged in corrupt or fraudulent practices in competing for or in executing the contract.
- 22.2. In the event SARS terminates the contract in whole or in part, SARS may procure, upon such terms and in such manner as it deems appropriate, goods, works or services similar to those undelivered, and the supplier shall be liable to SARS for any excess costs for such similar goods, works or services. However, the supplier shall continue performance of the contract to the extent not terminated.
- 22.3. Where SARS terminates the contract in whole or in part, SARS may decide to impose a restriction penalty on the supplier by prohibiting such supplier from doing business with the public sector for a period not exceeding 10 years.
- 22.4. If SARS intends imposing a restriction on a supplier or any person associated with the supplier, the supplier will be allowed a time period of not more than fourteen (14) days to provide reasons why the envisaged restriction should not be imposed. Should the supplier fail to respond within the stipulated fourteen (14) days SARS may regard the intended penalty as not objected against and may impose it on the supplier.
- 22.5. Any restriction imposed on any person by the Accounting Officer /Authority will, at the discretion of the Accounting Officer / Authority, also be applicable to any other enterprise or any partner, manager, director or other person who wholly or partly exercises or exercised or may exercise control over the enterprise of the first-mentioned person, and with which enterprise or person the first-mentioned person, is or was in the opinion of the Accounting Officer / Authority actively associated. If a restriction is imposed, SARS must, within five (5) working days of such imposition, furnish the National Treasury, with the following information:
- 22.5.1. the name and address of the supplier and / or person restricted by SARS;
 - 22.5.2. the date of commencement of the restriction;
 - 22.5.3. the period of restriction; and,
 - 22.5.4. the reasons for the restriction.

These details will be loaded in the National Treasury's central database of suppliers or persons prohibited from doing business with the public sector.

- 22.6. If a court of law convicts a person of an offence as contemplated in sections 12 or 13 of the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the court may also rule that such person's name be endorsed on the Register for Tender Defaulters.
- 22.7. When a person's name has been endorsed on the Register, the person will be prohibited from doing business with the public sector for a period not less than five years and not more than 10 years. The National Treasury is empowered to determine the period of restriction and each case will be dealt with on its own merits. According to section 32 of the Act the Register must be open to the public. The Register can be perused on the National Treasury website.

23. Anti-dumping

- 23.1. When, after the date of bid, provisional payments are required, or anti- and countervailing dumping or countervailing duties are imposed, or the amount of a duties and rights provisional payment or anti-dumping or countervailing right is increased in respect of any dumped or subsidized import, the State is not liable for any amount so required or imposed, or for the amount of any such increase. When, after the said date, such a provisional payment is no longer required or any such anti-dumping or countervailing right is abolished, or where the amount of such provisional payment or any such right is reduced, any such favourable difference shall on demand be paid forthwith by the contractor to the State or the State may deduct such amounts from moneys (if any) which may otherwise be due to the contractor in regard to supplies or services which he delivered or rendered, or is to deliver or render in terms of the contract or any other contract or any other amount which may be due to him.

24. Force Majeure

- 24.1. Notwithstanding the provisions of GCC Clauses 21 and 22, the supplier shall not be liable for forfeiture of its performance security, damages, or termination for default if and to the extent that his delay in performance or other failure to perform his obligations under the contract is the result of an event of force majeure.
- 24.2. If a force majeure situation arises, the supplier shall promptly notify SARS in writing of such condition and the cause thereof. Unless otherwise directed by SARS in writing, the supplier shall continue to perform its obligations under the contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the force majeure event.

25. Termination for Insolvency

- 25.1. SARS may at any time terminate the contract by giving written notice to the supplier if the supplier becomes bankrupt or otherwise insolvent. In this event, termination will be without compensation to the supplier, provided that such termination will not prejudice or affect any right of action or remedy which has accrued or will accrue thereafter to SARS.

26. Settlement of Disputes

- 26.1. If any dispute or difference of any kind whatsoever arises between SARS and the supplier in connection with or arising out of the contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

26.2. If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either SARS or the supplier may give notice to the other party of his intention to commence with mediation. No mediation in respect of this matter may be commenced unless such notice is given to the other party.

26.3. Mediation proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

26.4. 23.5 Notwithstanding any reference to mediation and/or court proceedings herein, the parties shall continue to perform their respective obligations under the contract unless they otherwise agree; and SARS shall pay the supplier any monies due the supplier.

27. Limitation of Liability

27.1. Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to **Clause 6**;

27.1.1. the supplier shall not be liable to SARS, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the supplier to pay penalties and/or damages to SARS; and,

27.1.2. the aggregate liability of the supplier to SARS, whether under the contract, in tort or otherwise, shall not exceed the total contract price, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment.

28. Governing

28.1. The contract shall be written in English. All correspondence and other language documents pertaining to the contract that is exchanged by the parties shall also be written in English.

29. Applicable Law

29.1. The contract shall be interpreted in accordance with South African laws, unless otherwise specified in SCC.

30. Notices

30.1. Every written acceptance of a bid shall be posted to the supplier concerned by registered or certified mail and any other notice to him shall be posted by ordinary mail to the address furnished in his bid or to the address notified later by him in writing and such posting shall be deemed to be proper service of such notice.

30.2. The time mentioned in the contract documents for performing any act after such aforesaid notice has been given, shall be reckoned from the date of posting of such notice.

31. Taxes and Duties

- 31.1. No contract shall be concluded with any bidder whose tax matters are not in order.
- 31.2. A foreign supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside SARS's country.
- 31.3. A local supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to SARS.

32. National Industrial Participation Programme (NIPP)

- 32.1. The NIP Programme administered by the Department of Trade and Industry shall be applicable to all contracts that are subject to the NIP obligation.

33. Prohibition of Restrictive Practices

- 33.1. In terms of section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, an agreement between, or concerted practice by, firms, or a decision by an association of firms, is prohibited if it is between parties in a horizontal relationship and if a bidder (s) is / are or a contractor(s) was / were involved in collusive bidding (or bid rigging).

- 33.1.1. If a bidder(s) or contractor(s), based on reasonable grounds or evidence obtained by the purchaser, has / have engaged in the restrictive practice referred to above, the purchaser may refer the matter to the Competition Commission for investigation and possible imposition of administrative penalties as contemplated in the Competition Act No. 89 of 1998

- 33.1.2. If a bidder(s) or contractor(s), has/ have been found guilty by the Competition Commission of the restrictive practice referred to above, the purchaser may, in addition and without prejudice to any other remedy provided for, invalidate the bid(s) for such item(s) offered, and/or terminate the contract in whole or part, and/or restrict the bidder(s) or contractor(s) from conducting business with the public sector for a period not exceeding ten (10) years and / or claim damages from the bidder(s) or contractor(s) concerned.