

## General Conditions of Contract (GCC) for SADC Purchase Orders

### • Definitions

1.1 The following terms shall be interpreted as indicated:

- (a) "Contract" means the agreement entered into between SADC and the Supplier, including all specifications, plans, drawings or other documents and conditions which may be referred to in the Contract.
- (b) "Contract Price" means the price payable to the Supplier under the Contract for the full and proper performance of its contractual obligations.
- (c) "Goods" means all of the equipment, machinery, commodities and/or other materials which the Supplier is required to supply to SADC under the Contract.
- (d) "Incidental Services" means those services ancillary to the supply of the Goods, such as transportation and insurance, and any other incidental services, such as installation, commissioning, provision of technical assistance, training, and other such obligations of the Supplier covered under the Contract.
- (e) "Services" means the professional, technical, advisory, or maintenance obligations of the Supplier under a Contract for the provision of Services.
- (f) "Works" means the construction, installation, maintenance, refurbishment, repair and related activities required under a Contract for the provision of Works as defined in the Contract.
- (h) "Supplier" means the individual or firm supplying the Goods, Works or Services, as named in the Contract.

### 2. Country of Origin

- 2.1 All Goods, Works and Services supplied under the Contract shall have their origin in eligible countries and territories. Eligible countries shall mean all member states of the SADC Region.
- 2.2 For purposes of this Clause, "origin" means the place where the Goods were mined, grown, or produced, or from which the Works or Services are supplied. Goods are produced when, through manufacturing, processing, or substantial and major assembly of components, a commercially recognised new product results that is substantially different in basic characteristics or in purpose or utility from its components.
- 2.3 The origin of Goods, Works and Services is distinct from the nationality of the Supplier.

### 3. Standards

- 3.1 The Goods, Works and Services supplied under the Contract shall conform to all standards and requirements mentioned in the technical specifications, plans, drawings, terms of reference or other documentation forming part of the Contract.

### 4. Patent Rights

- 4.1 The Supplier shall indemnify SADC against all third-party claims of infringement of patent, trademark, or industrial design rights arising from use of the goods, output of the services, performance of the works, or any part thereof in the SADC region.

### 5. Inspections and Tests

- 5.1 SADC or its representative shall have the right to inspect and/or to test the Goods, Works or Services to confirm their conformity to the Contract at no extra cost to SADC. The Contract shall specify any inspections and tests SADC requires and where they are to be conducted. SADC shall notify the Supplier in writing of the identity of any representatives retained for these purposes.
- 5.2 Inspections and tests may be conducted on the premises of the Supplier or its subcontractor(s), at point of delivery, and/or at the project site. If conducted on the premises of the Supplier or its subcontractor(s), all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to SADC.
- 5.3 Should any inspected or tested goods, works or services fail to conform to the Specifications, SADC may reject the Goods, Works or Services and the Supplier shall either replace or make alterations necessary to meet specification requirements free of cost to SADC.
- 5.4 SADC's right to inspect, test and, where necessary, reject the Goods, Works or Services shall in no way be limited or waived by reason of having previously been inspected, tested, and passed by SADC or its representative prior to shipment, installation or other performance in the SADC Region.
- 5.5 Nothing in GCC Clause 7 shall in any way release the Supplier from any warranty or other obligations under this Contract.

### 6. Packing

- 6.1 The Supplier shall provide such packing of Goods as is required to prevent 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 final destination and the absence of heavy handling facilities at all points in transit.
- 6.2 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 specified in the contract documents and through any subsequent instructions issued by SADC.

### 7. Delivery and Documents

- 7.1 Delivery of Goods shall be made by the Supplier in accordance with the terms specified in the Schedule of Requirements. The details of shipping and/or other documents to be furnished by the Supplier are specified in the Contract.
- 7.2 For purposes of the Contract, "EXW," "CIF," "CIP," and other trade terms used to describe the obligations of the parties shall have the meanings assigned to them by the current edition of Incoterms published by the International Chamber of Commerce, Paris.
- 7.3 Documents to be submitted by the Supplier are specified in the Contract and shall include certificates issued by SADC confirming acceptance of the Goods, Works or Services provided by the Supplier

### 8. Insurance

- 8.1 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 contract document.
- 8.2 Where delivery of Goods is required by SADC on a CIF or CIP basis, the Supplier shall arrange and pay for cargo insurance, naming SADC as beneficiary. The insurance shall be for 110 percent of the CIF or CIP value on a "warehouse to warehouse" All Risks basis including War Risks and Strikes.
- 8.3 For Works contracts, the Supplier shall provide insurance cover, from the Start Date to the end of the Defects Liability Period, for the following events:
- (a) loss of or damage to the Works, Plant, and Materials;
  - (b) loss of or damage to Equipment;
  - (c) loss of or damage to property (except the Works, Plant, Materials, and Equipment) in connection with the Contract; and
  - (d) personal injury or death.
- 8.4 For Services contracts the Supplier shall provide:
- (a) public liability insurance;
  - (b) third party insurance;

- (c) professional liability insurance, where appropriate;
- (d) employer's liability and workers' compensation insurance in respect of the personnel of the Supplier and of any sub-consultant.

### 9. Transportation

- 9.1 Transportation of Goods shall be in accordance with the general provisions of the Incoterm selected as for GCC Clause 7.2. No restriction shall be placed on the choice of carrier.
- 9.2 Where the Supplier is required under the Contract to transport Goods to a specified place of destination within the SADC Region, defined as the Project Site, transport, including insurance and storage, shall be arranged by the Supplier, and related costs shall be included in the Contract Price.

### 10. Incidental Services

- 10.1 A Supplier may be required to provide any additional services as specified within the Contract.

### 11. Spare Parts

- 11.1 If specified in the Contract, the Supplier may be required to provide materials, notifications, and information pertaining to spare parts manufactured or distributed by the Supplier including such spare parts as SADC may elect to purchase from the Supplier, provided that this election shall not relieve the Supplier of any warranty obligations under the Contract.

### 12. Warranty

- 12.1 The Supplier warrants that goods and materials supplied under the Contract are new, unused, of the most recent or current models, and incorporate all recent improvements in design and materials unless provided otherwise in the Contract. The Supplier further warrants that all Goods supplied under this Contract shall have no defect, arising from design, materials, or workmanship or from any act or omission of the Supplier, which may develop under normal use of the supplied goods in the conditions prevailing in the SADC Region.
- 12.2 The Supplier warrants that all Works and Services performed under the contract shall be of the highest professional and technical standards.
- 12.3 Warranties shall remain valid for twelve (12) months after final acceptance of the Goods or Works by SADC, unless specified otherwise in the Contract.
- 12.4 SADC shall promptly notify the Supplier in writing of any claims arising under this warranty.
- 12.5 Upon receipt of such notice, the Supplier shall, with all reasonable speed, repair or replace the defective goods, works or parts thereof, without costs to SADC.
- 12.6 If the Supplier, having been notified, fails to remedy any defect within the period specified in the contract documents, SADC 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 SADC may have against the Supplier under the Contract.

### 13. Payment

- 13.1 The Supplier's request(s) for payment shall be made to SADC in writing, accompanied by an invoice describing, as appropriate, the goods delivered, works completed or services performed, and by documents submitted pursuant to GCC Clause 7, and upon fulfillment of other obligations stipulated in the Contract.
- 13.2 Payments shall be made promptly by the SADC, but in no case later than thirty (30) days after submission of an invoice or claim by the Supplier.
- 13.3 Payments shall be made in Botswana Pula unless otherwise stated in the contract documents.

### 14. Prices

- 14.1 Prices charged by the Supplier for goods delivered and works or services performed under the Contract shall not vary from the prices quoted by the Supplier.

### 15. Contract Amendments

- 15.1 No variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

### 16. Assignment

- 16.1 The Supplier shall not assign, in whole or in part, its obligations to perform under this Contract, except with the prior written consent of SADC.

### 17. Delays in the Supplier's Performance

- 17.1 Delivery of goods, performance of works and services shall be made by the Supplier in accordance with the time schedule prescribed by SADC in the Schedule of Requirements.
- 17.2 If at any time during performance of the Contract, the Supplier or its subcontractor(s) should encounter conditions impeding timely delivery of the Goods or performance of the Works or Services, the Supplier shall promptly notify SADC 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, SADC shall evaluate the situation and may at its discretion extend the Supplier's time for performance, with or without liquidated damages, in which case the extension shall be ratified by the parties by amendment of Contract.
- 17.3 Except as provided under GCC Clause 20, a delay by the Supplier in the performance of contractual obligations may render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 18, unless an extension of time is agreed upon pursuant to GCC Clause 17.2 without the application of liquidated damages.

### 18. Liquidated Damages

- 18.1 Subject to GCC Clause 20, if the Supplier fails to deliver any or all of the goods or to perform the works or services within the period(s) specified in the Contract, SADC may, without prejudice to other remedies under the Contract, deduct from the Contract Price as liquidated damages, a percentage of the price of the delayed goods or unperformed works or services for each week or part thereof of delay until actual delivery or performance. The percentage rates shall be as follows:
- 1.0% for the first week of delay or any part thereof;
  - 1.5% for the second week of delay or any part thereof;
  - 2.0% for the third week of delay or any part thereof;
  - 3.0% for the fourth week of delay or any part thereof;
  - 4.0% for any further month of delay up to a total maximum deduction of 15% of the value of the delayed goods, works or services .
- Once the maximum is reached, SADC may consider termination of the Contract pursuant to GCC Clause 19.

### 19. Termination for Default

- 19.1 SADC, 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:
- (a) if the Supplier fails to deliver any or all of the goods or to perform the works or services within the period(s) specified in the Contract, or within any extension thereof granted by SADC pursuant to GCC Clause 17; or

- (b) if the Supplier fails to perform any other obligation(s) under the Contract.
  - (c) if the Supplier, in the judgment of SADC, has engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing the Contract.
- For the purpose of this Clause:
- "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value to influence the action of a SADC member of staff in the procurement process or in contract execution.
  - "fraudulent practice" means a misrepresentation of facts in order to influence a procurement process or the execution of a contract;
  - "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of SADC, designed to establish prices at artificial non-competitive levels;
  - "coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or effect the execution of a contract.
- 19.2 In the event SADC terminates the Contract in whole or in part, pursuant to GCC Clause 19.1, SADC 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 SADC 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.

### 20. Force Majeure

- 20.1 Notwithstanding the provisions of GCC Clauses 17, 18, and 19, the Supplier shall not be liable for liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.
- 20.2 For purposes of this Clause, "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 are not restricted to, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.
- 20.3 If a Force Majeure situation arises, the Supplier shall promptly notify SADC in writing of such condition and the cause thereof. Unless otherwise directed by SADC 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.

### 21. Termination for Convenience

- 21.1 SADC, by written notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for SADC's convenience, the extent to which performance of the Supplier under the Contract is terminated, and the date upon which such termination becomes effective.
- 21.2 Goods that are complete and ready for shipment within thirty (30) days after the Supplier's receipt of notice of termination shall be accepted by SADC at the Contract terms and prices. For the remaining goods, SADC may elect:
- (a) to have any portion completed and delivered at the Contract terms and prices; and/or
  - (b) to cancel the remainder and pay to the Supplier an agreed amount for partially completed goods, works and services and for materials and parts previously procured by the Supplier.
- 21.3 For Works contracts, SADC shall issue a payment certificate for the value of work done, materials ordered, the reasonable costs of removal of equipment and securing the site, and relocation of Supplier's personnel.
- 21.4 For Services contracts, SADC shall pay all time-based fees and reimbursable expenses incurred up to the date of termination and for all stage payments due in addition to reasonable costs of removal of equipment and relocation of Supplier's personnel.

### 22. Settlement of Disputes

- 22.1 If any dispute or difference of any kind whatsoever shall arise between SADC 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.
- 22.2 If, after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either SADC or the Supplier may give notice to the other party of its intention to commence arbitration proceedings as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.
- 22.3 Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the goods or performance of the works or services under the Contract.
- 22.4 Arbitration proceedings shall be conducted in accordance with the rules of procedure of an authorised arbitration service within the SADC Region
- 22.5 Notwithstanding any reference to arbitration herein,
- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
  - (b) SADC shall pay the Supplier any monies due the Supplier.

### 23. Limitation of Liability

- 23.1 Except in cases of criminal negligence or wilful misconduct, and in the case of infringement pursuant to GCC Clause 4,
- (a) the Supplier shall not be liable to SADC, 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 liquidated damages to SADC; and
  - (b) the aggregate liability of the Supplier to SADC, 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.

### 24. Governing Language

- 24.1 The Governing Language shall be English.

### 25. Notices

- 26.1 Any notice given by one party to the other pursuant to this Contract shall be sent to the other party in writing or by cable, telex, or facsimile and confirmed in writing to the other party's address specified in the Contract.
- 26.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

### 26. Taxes and Duties

- 27.1 A foreign Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed both inside and outside of the SADC Region.
- 27.2 A SADC Region supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted goods to SADC or performance of the works or services.