



## Best Practices Guidelines when entering into an Agreement with Equipment Suppliers

---

*“Provided a man is not a minor or a lunatic and his consent is not vitiated by fraud, mistake or duress his contractual undertakings will be enforced to the letter. If, through inexperience, carelessness or weakness of character, he has allowed himself to be overreached it is just too bad for him, and it can only be hoped that he will learn from his experience. The Courts will not release him from the contract or make a better bargain for him. Darwinian survival of the fittest – the law of nature is also the law of the market place” – Prof. HAHLO a Professor of the law of Contracts.*

## Table of Contents

|   |    |
|---|----|
| Acronyms.....   | 2  |
| 1 Introduction.....   | 3  |
| 2 Evaluation .....  | 3  |
| 2.1 Consequences of Contracting .....                                   | 4  |
| 2.2 Negotiating with Suppliers .....                                    | 5  |
| 2.2.1 Partner with Suppliers.....                                       | 5  |
| 2.2.2 Set up rules of engagement and enforce them .....                 | 6  |
| 2.2.3 Involve all Stakeholders.....                                     | 6  |
| 2.2.4 Recognise a supplier's expertise.....                             | 6  |
| 2.2.5 Realise that suppliers have goals .....                           | 6  |
| 2.2.6 Involve employees in negotiations .....                           | 7  |
| 2.2.7 Be Knowledgeable.....   | 7  |
| 2.2.8 Inquire about references from the supplier where applicable ..... | 7  |
| 2.2.9 Get quotes from competing suppliers .....                         | 7  |
| 2.2.10 Be persistent .....  | 8  |
| 3 Legal Consideration.....  | 9  |
| 3.1 Prerequisites for a contract.....                                   | 9  |
| 3.2 Step by step guide on contract construction .....                   | 9  |
| 3.3 Costs.....  | 10 |
| 3.4 Intellectual Property.....  | 11 |
| 3.5 Copyright .....   | 11 |
| 3.6 Maintenance and Support .....                                       | 11 |
| 3.7 Insurance .....   | 12 |
| 3.8 Employment restrictions .....                                       | 12 |
| 3.9 Restraint of trade.....   | 12 |
| 3.10 Confidentiality and Non-disclosure .....                           | 12 |
| 3.11 Warranty and Guarantee .....                                       | 13 |
| 3.12 Indemnification .....  | 14 |
| 3.13 Breach .....   | 14 |
| 3.14 Domicilium and Notices .....                                       | 14 |
| 3.15 Termination.....   | 15 |
| Appendix A.....   | 16 |
| Appendix B .....  | 19 |

## Acronyms

|          |   |
|----------|---|
| NRF      | National Research Foundation  |
| NIPMO    | National Intellectual Property Management Office                          |
| MFAA     | Master Funding Administration Agreement                                   |
| CoG      | Conditions of Grant   |
| OHS      | Occupational Health and Safety Act  |
| CPA      | Consumer Protection Act   |
| NCA      | National Credit Act   |
| VAT      | Value Add Tax   |
| IPR-PFRD | Intellectual Property Rights for Publicly Financed Research & Development |
| SARS     | South African Revenue Service   |
| PAYE     | Pay As You Earn   |
| IP       | Intellectual Property   |
| CPI      | Consumer Price Index  |
| PROATIA  | Promotion of Access to Information Act                                    |
| EIA      | Environmental Impact Assessment   |

# 1

## INTRODUCTION

Researchers and institutions face numerous challenges in the management of research equipment, and this guide is written as a tool to assist in the procurement procedures with equipment suppliers and manufactures. This document serves as a guide to improve decision making when entering into an agreement and equips researches with background information on how to identify considered key issues.

Grant holders have previously experienced poor service delivery from service providers due to lack of precautions measures and as such, the National Research Foundation (NRF) offering a best practice guide to assist the research community in the acquisition of state-of-the-art research equipment.

**Always remember a contract is an agreement which creates a legal obligation between the parties involved in it.**

# 2

## EVALUATION

*“Before any testing in any new laboratory or new process can begin, the laboratory needs to identify and purchase all related materials and reagents. The laboratory may also need to purchase services, such as equipment maintenance and service contracts and referral laboratory testing. For these purposes, the laboratory should formalise its needs and requirements in documented agreements with vendors that specify each party’s responsibilities. These agreements should be periodically reviewed to determine the vendor’s ability to meet the laboratory’s needs, and must be adjusted as necessary/accordingly. Efficient laboratory operations require the uninterrupted availability of reagents, supplies and services. The laboratory needs to maintain a cost-effective disposable supply inventory and have the support of an adequate materials purchasing program. Critical reagents and materials need to be received, evaluated and tested as necessary (before use) to ensure that necessary quality requirements have been fulfilled.”*

Berte LM. Laboratory Quality Management: A Roadmap. Clinics in laboratory medicine 2007; 27:771-790

Evaluate and review your own needs to make sure you are buying what you really need. Yes, there is the aspect of planning for the future, and this applies especially for capital expense equipment that is expected to last for five (5) or more years.

- 1) Evaluate your immediate needs, i.e. research projects and the producing of scientific results.
- 2) List the reasons why you are applying for a particular piece of equipment.
- 3) List the manufacturers/suppliers of such a particular piece of equipment that you may want to apply for.
- 4) Match your immediate needs and not the possible future projects that may or may not come up, with the equipment that the manufacturers/suppliers offer.
- 5) Identify one specific, possibly from your favourite manufacturer/supplier, or the best priced piece of equipment that satisfies your immediate needs. Check if this piece of equipment can be upgraded / expanded at a later time to match your needs that may evolve in the future.
- 6) Be aware of the infrastructural pre-requisites (room size, electricity, universal power supply) and generator, water, chilled water, air-conditioning, compressed gas/air, and other environmental factors, e.g. vibrations) that this particular piece of equipment that you have identified above requires to be operational according to the technical specifications.
- 7) Be aware that a piece of equipment that may be on your wish list and may full fill your needs in the future, but is beyond your immediate needs, may require more strict pre-requisites that may cost you and your organisation from day one much more than staying with a more basic piece of equipment.
- 8) Be aware that such a 'wish list' piece of equipment may require more special attention and an extra portion of service that can cost you much more than servicing and maintaining the more basic piece of equipment, and that your organisation may not be able afford. Think of what happens when the initial service contract and the warranty period expires. What will be the costs in servicing and maintaining this piece of equipment then compared to the more basic version of the piece of equipment.

## **2.1 Consequences of Contracting**

It is important to understand the basic rules of contracts before you enter into one. The contract is binding even if you failed to read it and subsequently disagree with certain terms and conditions. Always try and anticipate all aspects and what could go wrong and make sure that the contract provides for all such aspects and scenarios.

The following should be clear and undertaken:

- Ignorance of the law is no excuse.
- Make sure you understand the objectives of the relationship and what both parties are to perform or expect from each other in terms of the relationship.
- It is always a good idea to draw a picture and confirm your understanding.
- Never make assumptions and do a risk assessment.
- Always get the agreement reduced to writing.
- Take time to understand the consequences of a good and a bad contract.
- Ensure the contract is correct and that you are happy with all its terms and conditions before you sign or accept it. Make sure you get to see ALL the terms and conditions and that you are not being referred to yet another document containing an additional set of terms and conditions (which may usually only be available upon request from a supplier).
- Be very careful of e-mail correspondence, if you confirm via e-mail it may be construed as acceptance.

## 2.2 Negotiating with Suppliers

The selection of a supplier can be a complicated process that requires diligence and communication. Get involved in the negotiation process, as this will allow for a dynamic contractual process, which will result in you understanding the transaction.

Understanding all the players' roles, obligations and rights in the transaction, will assist to draft a sound and reliable contract setting out the essential details of the transaction.

There are eight strategies identified as key to success in negotiating with suppliers.

- 2.2.1 **Partner with suppliers.** Regarding suppliers as the enemy because they may try to circumvent the procurement process is not constructive. Instead, organisations should treat suppliers as partners by forming relationships that have mutual benefits.

Buying Power:

| Factor                       | Buyers have leverage  | Buyers have limited leverage  |
|------------------------------|---|---|
| Market share / Size of Buyer | Generally larger buyers have more leverage                                | Generally smaller buyers have less leverage                               |
| Buyer Purchase Volume        | Generally speaking a buyer has more power as the purchase volume increase | Generally speaking a buyer has less power as the purchase volume decrease |

|                 |  |   |
|-----------------|--|---|
| Buyer Knowledge | Buyers with greater industry knowledge and information have more power | Buyers without industry knowledge and information have less power |
|-----------------|--|---|

2.2.2 **Set up rules of engagement and enforce them.** Rules enable both suppliers and customers to understand boundaries.

2.2.3 **Involve all stakeholders.** Getting input on a particular product from all those involved can strengthen negotiating power. Before meeting with the supplier, all these stakeholders should meet to strategies on contract terms or reach a consensus on whether a product is worth a higher price or if a substitute can be used. The goal is to have everybody on the same page not just during meetings, but at all times.

2.2.4 **Recognise a supplier's expertise.** Suppliers logically can be used as resources on the benefits of a product they are selling. Equally important is the supplier's knowledge of how to code the product for optimal reimbursement. Large suppliers often have entire departments with expertise on reimbursement issues and can offer examples of how other organisations have coded a particular product.

2.2.5 **Realise that suppliers have goals.** Organisations must earn a profit to stay in business. Suppliers are in business to earn a profit. Working with suppliers to help them meet sales goals may also benefit an organisation's bottom line.

Suppliers often have monthly, quarterly or annual sales targets. If sales are coming up short for a quarterly target, the supplier may offer a discount if the organisation buys the product by the end of that quarter. If it is a well-used item, the organisation can increase its inventory, it meets their targets, and it actually decreases the organisation's operating costs.

This approach helps to keep supply costs down, yet suppliers can still make sales on often high-margin preference items. Work with vendors to say, *"I realise you want to sell your product. We want to buy a product, but we don't have an unlimited flow of money."*

**2.2.6 Involve employees in negotiations.** There is no reason why organisations should not capitalise on employee expertise to negotiate price or other terms of a contract. A lot of employees are involved in research. They have a good handle on what a product is really worth financially. It is important to gauge the level of involvement employees are willing to have.

The key is to accommodate employee schedules, which may predicate early morning or late afternoon meetings. Materials management is also always involved in any supply-related meetings with employees and suppliers.

**2.2.7 Be knowledgeable.** Knowledge is power, so being armed with pricing data adds to negotiating power. To stay on top of pricing trends and general issues experienced by colleagues, both nationally and internationally.

**2.2.8 Inquire about references from the supplier where applicable.** If the product is a capital expense item that may be purchased only once every 10 years or so, and is not necessarily a recurring product that is being purchased on a regular basis, insist on getting references from the supplier. The supplier must have sold this or a very similar item to another organisation or company, and it is important that you assess other customer's satisfaction, especially when it comes to service from the supplier. The other organisation must not necessarily be in your area or country, it can be anywhere in the world. Selling a product is much easier than providing continuous excellent service (maintenance).

**2.2.9 Get quotes from competing suppliers.** Having a quote in hand from a competing supplier, whose product may not be exactly the same as the item you may want to purchase from your preferred supplier, is often worth much more than any other negotiation tactic. Be aware that especially in South Africa suppliers are often agents of manufacturers that are located abroad, and so the agent often tries to considerably mark up prices; 50% is not uncommon. Consequently, the margin that allows for noticeable "discounts" is fairly large. Furthermore, an agent often receives his/her commission from the manufacturer, so there is actually no need to mark-up prices. However, the supplier may tell you that this is their



commission that you need to pay for. Large manufacturers have international price lists that may be obtainable, or even in the public domain (websites) in some cases. If you don't ask to see a copy of that price lists, you won't get to see one.

2.2.10 **Be persistent.** Set a goal, on pricing for example, and try to get as close as possible to that target. A supplier may offer a price that is in accordance with terms of a group purchasing organisation, but that may not necessarily help meet the margin goals of the organisation. Try to get as close to what you want as you can. Optimising spending on supplies is a critical factor for supply chain success.

FINAL

Master Funding Administration Agreement (MFAA) regulates the transactional relationship agreement between NRF and research institutions that are eligible to receive funding from the NRF. MFAA is operationalised through the execution of individually signed Conditions of Grants (CoG). The CoG is compliant with South African laws and institutions are expected to comply with the conditions of the MFAA to expedite disbursement of grants. Appendix A provides some guidance in the form of a check list to reference.

### 3.1 Prerequisites for a contractual undertaking:

- Agreement (offer and acceptance);
- Contractual capacity;
- Is it certain? Is it lawful? and
- Certain formalities stipulated by the parties or by legislation.

### 3.2 Step by step guide on contract construction

| Step 1  | Step 2  | Step 3   |
|---|---|--|
| <input type="checkbox"/> Set out the contractual purpose, aims and objectives.                                  | <input type="checkbox"/> Sketch the contract outline; include a list of required and suggested clauses.                                       | <input type="checkbox"/> Draft and flesh out the contract, consider each clause.   |
| <input type="checkbox"/> This should form the basis for the contract preamble.                                  | <input type="checkbox"/> Look for similar type contracts or precedents for comparison.  | <input type="checkbox"/> Ensure that each clause fits the contract and won't bite you later.                                     |
| <input type="checkbox"/> Once the objectives are defined it will determine the contract type and contract name. | <input type="checkbox"/> Make sure there is no company standard.  | <input type="checkbox"/> Once again conduct risk assessment, ensure equal balance and fairness.                                  |
| <input type="checkbox"/> Consider everything and align with subject matter.                                     | <input type="checkbox"/> Get feedback from the person who negotiated the contract, compare notes and make sure you are both on the same page. | <input type="checkbox"/> If the agreement is a product of an awarded bid make sure the contract and the accepted bid is aligned. |

**PLEASE NOTE:**

When you enter into an agreement with a sole service provider acquire indemnity from claims by SARS and get authority to deduct Pay As You Earn (PAYE) unless exemption certificate is provided.

- One of the most important legislative requirements when contracting with an Independent Contractor is the Occupational Health and Safety Act (OHS).
- Included in this document is a Section 37(2) agreement to be concluded between the company and the Independent Contractor, details can be found in Appendix A.
- It is always important to determine if the Independent Contractor is complying with OHS and if it is registered with the Workmen's Compensation Fund.
- Should one of the Independent Contractors employees be injured while on company premises and it is not registered, the company will be liable for all damages.

**3.3 Costs**

When parties enter into an agreement they have to determine the costs. Never assume the amount mentioned in the contract is correct even if it was done by procurement or finance, always check for errors especially where formulae and equations are used and detailed.

The following should be considered:

- The parties need to determine on what basis are costs calculated, for example: On an hourly/weekly/ monthly basis.
- Is the amount inclusive or exclusive of VAT? What happens when overtime is worked?
- What currency will be applicable? Currency exchange rate may have to be considered.
- The parties also need to agree on invoicing, payment terms, interest on late payments and increases (annual or CPI).
- Make sure interest is correctly stated, i.e. compound, fixed or simple.
- Ensure ALL costs are covered. Ensure that the agreement comply with all applicable legislation for example SARS (South African Revenue Service), NCA (National Credit Act), CPA (Consumer Protection Act), etc.
- Penalty clauses for non-performance.

### **3.4 Intellectual property**

The National Intellectual Property Management Office (NIPMO) released a series of guidelines to assist in interpreting and applying the “Interpretation of the Scope of the Intellectual Property Rights from Publicly Financed Research and Development (IPR-PFRD) Act (Act 51 of 2008)-Setting the Scene” in the first of a series of guidelines.

The IPR-PFRD Act applies to recipients of public funds which are intended for research and development.

In terms of the IPR-PFRD the recipient of public funding is the owner of the intellectual property - do not waive any rights to intellectual property.

Further detail is available at the following site: [www.nipmo.org.za](http://www.nipmo.org.za)

- The parties have to determine if there is any intellectual property (IP);
- The IP has to be defined;
- The parties have to agree on who owns the IP;
- What will happen if there is improvement on IP; and
- Who has the right to use the IP and to what extent.

### **3.5 Copyright**

South Africa is a Berne Convention member and is party to the TRIPS Agreement and South African Copyright Laws are governed as such.

- Copyright in favour of the Company, consider funding source and impact to IP;
- Computer programmes are a distinct class of protected work and if there is payment for the development of the software, publication or material get a written assignment; and
- Reserve IP rights.

### **3.6 Maintenance and Support**

Clearly understand what services are included and what services are excluded in the contract; know what optional services are available. Define what the support includes and determine if there are any special terms and conditions applicable to individual sites where the products are located.

- Will the agreement regulate preventative as well as remedial maintenance?
- Determine if maintenance includes software “upgrades” (new versions);

- What are the software services to be provided?
- What is the software products to which the agreement applies?
- What are the supplier's details for the maintenance and support centre and helpdesk?
- Will the supplier's normal working hours provide sufficient cover?
- What is the supplier's extended cover charges?

### **3.7 Insurance**

Part of risk management involves the consideration of minimising loss, damages and economic impact of acquired physical assets and from third party allegations of liability protected by insurance.

Take the time to be knowledgeable regarding institutional coverage in the loss of equipment and costs associated with the regeneration of research data.

- What will be insured;
- At whose cost?
- Public liability cover; and
- Professional liability cover.

### **3.8 Employment restrictions**

- Is it necessary for either party or both parties to be subject to a restriction on soliciting employment of the other party's staff;
- To whom should it apply? and
- What length of time for the restriction to apply would be reasonable?

### **3.9 Restraint of trade**

- Protected interest;
- Period of restriction;
- Area or country; and
- Applicable to whom and under what circumstances.

### **3.10 Confidentiality and Non-disclosure**

- Protects the proprietary rights;
- Protect know-how and good will;

- Protection against misappropriation of these rights;
- Curtail unwarranted or unauthorised disclosure;
- Determine confidentiality;
- Is one general clause sufficient? Or would a non-disclosure agreement be preferable?
- To what kind of information should the provision apply?
- Should there be a time limit for the information to be kept confidential?
- What exceptions will there be (e.g. requests under PROATIA” Promotion of access to information act and the Protection of Private information Bill)?
- Does the transaction involve personal information?
- Is confidential information to be supplied only in writing, or to be confirmed in writing?
- Will the confidential information be supplied in an electronic or paper based format? If electronic, will any special conditions apply (e.g. encryption)?
- What are the exceptions to confidentiality in respect of people or information;
- Are special procedures appropriate for receiving, holding and using the confidential information?
- Are there to be any exceptions to what is apparently confidential information?
- Should there be a time limit for the confidential information to be maintained? and
- Is the existence of the non-disclosure agreement itself to be regarded as confidential?

### **3.11 Warranty and Guarantee**

A warranty generally refers to an assurance that if the product does not work as is claimed it will be corrected either by repair or replacement of the product within a specific period by the company and/or manufacturer void of a refund.

- Many products come with a warranty promising repair or replacement for months, years or life. In theory, one can return a product to the supplier for repair, but most suppliers that sell such products and even the manufacturer lack repair facilities and these are then send to the manufacturers for repair and/or replacement.
- An implied warranty is one that arises from the nature of the transaction, and the inherent understanding by the buyer, rather than from the express representation of the supplier.
- The warranty of merchantability is implied, unless expressly disclaimed by name, or the sale is identified with the phrase “as is” or “with all faults” or “Voetstoots”. To be

“merchantable” the goods must reasonably conform to an ordinary buyer’s expectation, i.e. they are what they say they are.

A guarantee is a promise assuring that certain conditions will be fulfilled, and may or may not have a time limit attached. The original price or consideration paid for the contract will be returned or the product will be replaced.

### **3.12 Indemnification**

Indemnities are common in contracts. An indemnity is an undertaking by a party to compensate another party for a specific loss, liability or cost which might be incurred or suffered by that party. This is often in the form of an assumption of liability by a party for specified claims which might be made by third parties against the other party. It does not affect the indemnified party’s liability to the third party, but gives him a contractual right of recourse against the indemnifying party. The indemnity is obviously only as good as the financial ability of the indemnifying party to honour the indemnity.

Word carefully and consider:

- Against what?
- Claims/damages/costs/fees/municipal tariffs;
- What are the circumstances; and
- Note the limitations, consequential or direct only; in favour of?

### **3.13 Breach**

- Include a notice period to rectify;
- List types of breach;
- Include remedies when breach is not rectified;
- Notice should not be too short or too long (7-14 days);
- List the material breach; and
- Without prejudice to rights to claim damages.

### **3.14 Domicilium and notices**

Most legal documents require an address agreed to in writing, should a dispute arise any legally required notices will be served the indicated address.

- Addresses for service;
- Manner of service;

- Receipt of notices;
- Insert physical address;
- Provide for service by e-mail and controls.
- Does the Telecommunication Act Apply?

### **3.15 Termination**

Any reason that is not a material breach, a provision should be made for a no fault termination clause, which gives the organisation the opportunity to terminate the agreement.

- On what grounds may the contract be terminated? ( non-payment, material breach, insolvency, any other grounds specific to the transaction);
- Are there any specific requirements as a result of termination to be carried out by either party?
- The effects of termination ( consequences, trademarks and IP usage, damages, penalties, pre-emptive rights);



**CHECK LIST**

| <b>REFERENCE DETAILS</b>     |  |
|------------------------------|--|
| 1. Company unit/Division:    |  |
| 2. File Reference:           |  |
| 3. Date:                     |  |
| 4. Name of Service Provider: |  |
| 5. Anticipated Cost:         |  |
| 6. Commencement Date:        |  |
| 7. Completion Date:          |  |
| 8. Negotiating Team:         |  |
| 9. Head of Team:             |  |
| 10. Contract Administrator:  |  |
| 11. Agreement Acquired By:   |  |

| <b>A. Parties to the Agreement</b>      | <b>Please tick appropriate box</b> |
|---|------------------------------------|
| COMPANY                                 |                                    |
| PTY (LTD) / CC/ Sole Prop/ Partnership  |                                    |
| Division Involved                       |                                    |
| (Tick appropriate division or function) |                                    |
| Legal                                   |                                    |
| BEE                                     |                                    |
| Benefits                                |                                    |
| Procurement                             |                                    |
| Finance                                 |                                    |
| HR                                      |                                    |
| IT                                      |                                    |
| Marketing                               |                                    |
| Recoveries                              |                                    |
| Logistics                               |                                    |
| Administration                          |                                    |
| Sales                                   |                                    |
| Risk                                    |                                    |
| SHE                                     |                                    |
| Tax                                     |                                    |
| Trade Compliance                        |                                    |
| Training                                |                                    |
| Transformation                          |                                    |
| Other Divisions (Provide name)          |                                    |
|   |                                    |
| Other subsidiary (provide name)         |                                    |
|   |                                    |
| Other partner of JV companies           |                                    |
|   |                                    |
| Company Registration Number             |                                    |
|   |                                    |
| Company Address (Postal & Physical)     |                                    |
|   |                                    |
| Represented by:                         |                                    |



|  |  |
|--|--|
| Installation of Equipment and Software |  |
|--|--|

|   |               |
|---|---------------|
| <b>F. Did the other party obtain legal advice, or are there legal representation from their side involved in the negotiation of the agreement</b> | <b>YES/NO</b> |
| Detail of Team and Legal Advisor  |               |

|   |               |
|---|---------------|
| <b>G. Did the other party have sight of the Document?</b> | <b>YES/NO</b> |
|---|---------------|

**ADDITIONAL NOTES**

---



---



---



---



---



---

**MEMORANDUM OF AGREEMENT SECTION 37(2)**

**TABLE OF CONTENTS**

1. MEMORANDUM OF AGREEMENT
2. REQUIREMENTS, ARRANGEMENTS AND PROCEDURES FOR CONTRACTORS
3. INDEMNIFICATION
4. ACCEPTANCE

**1. MEMORANDUM OF AGREEMENT**

*Between:*

*(PRIMARY COMPANY)*

*Company registration number: .....*

*(Hereinafter referred to as (.....))*

*and*

*(CONTRACT COMPANY)*

*Company registration number: .....*

*(Hereinafter referred to as "the Contractor")*

*In terms of Section 37(2) of the Occupational Health and Safety Act 85 of 1993 and its regulations, henceforth referred to as the OHS Act, the provision of Section 37(1) of the same act apply to (CONTRACT COMPANY) henceforth referred to as the contractor, in as far as, (PRIMARY COMPANY) shall not be responsible or liable for the actions or inaction's whatsoever in contravention of the OHS Act taken by the employees of the contractor, in the fulfilment of the contract undertaken by the contractor.*

*As an employer in your own right, you, the contractor are obliged to comply with all the provisions of the OHS Act while on the premises of (CONTRACT COMPANY), you shall also be required to comply with the conditions and safety procedures of (PRIMARY COMPANY).*

*(PRIMARY COMPANY) hereby reserves the right to cause all work undertaken by the contractor, that is in contravention of the OHS Act and that has come to the attention of (PRIMARY COMPANY) to cease, until satisfied that such contravention has been rectified. Non-compliance to (PRIMARY COMPANY) arrangements and procedures will adversely affect future contracts, while serious non-compliance may lead to immediate expulsion from the premises.*

**2. REQUIREMENTS, ARRANGEMENTS AND PROCEDURES FOR CONTRACTORS**

- 2.1 *It is a condition of this contract that your employees, and any sub-contractors, be covered in terms of the Compensation for Occupational Injuries and diseases Act 130 of 1993 as amended. A copy of good standing with the Compensation Commissioner shall be attached to the signed copy of this legal document. Furthermore, the contractor or sub-contractor certifies that such cover will not expire during the execution of the task nor will the contractor become in arrears with any payment due to the Commissioner or any other documentation required by the Commissioner.*
- 2.2 *The contractor furthermore agrees to the following health and safety rules of (PRIMARY COMPANY):*
- 2.2.1 *The contractor shall have available a copy of the OHS Act on request.*
- 2.2.2 *Any contractor with more than five employees at any time on the premises shall have available a first aid box for prompt first aid.*
- 2.2.3 *Any contractor with ten or more employees shall have at least one competent and valid first aider on the premises at their workplace. Should there be fifty or more employees on the premises a further first aider for every fifty employees or part thereof shall be available.*
- 2.2.4 *Any contractor with less than ten employees on the premises shall ensure that such employees are made conversant with the first aider at their workplace.*
- 2.2.5 *The contractor shall keep up to date and available for inspection all applicable legally required registers.*
- 2.2.6 *The contractor shall make himself and his employees conversant with (PRIMARY COMPANY) emergency and evacuation procedures.*
- 2.2.7 *The contractor shall not misuse anything, which is supplied in the interest of health and safety.*
- 2.2.8 *The contractor shall adhere to all (PRIMARY COMPANY) safe working procedures.*
- 2.2.9 *The contractor shall be subject to the health and safety and security rules of (PRIMARY COMPANY).*
- 2.2.10 *No intoxicating drugs or liquor will be consumed on or brought onto the premises and no person under the influence or who appears to be under the influence will be permitted to come onto or remain on the premises or at a workplace.*

### **3. INDEMNIFICATION**

- 3.1 *The contractor hereby certifies that all contracting workmen recognise the inherent hazards that exist on the premises of (PRIMARY COMPANY) and that the Contractor:*
- 3.1.1 *Enters the property entirely at his/her own risk and therefore the Contractor waives any claim of whatsoever nature against (PRIMARY COMPANY), its employees, agents and/or mandatories in respect of any loss, damage and/or injury whether same is the result of any negligent act or omission on the part of (PRIMARY COMPANY), its employees, agents and/or mandatories or other independent contractors or by a third person or by way of defective equipment or materials supplied by the company, and further the Contractor;*
- 3.1.2 *Hereby indemnifies (PRIMARY COMPANY), its employees, agents and/or mandatories against any claims from the Contractor's employees and/or from any other person, arising and being caused in the manner set out above.*

### **4. ACCEPTANCE**

4.1 I, (Authorized Persons Name) the Contractor, do hereby declare that my company (Contractor's Company Name) acknowledge having read and understood the conditions contained in this legal document and furthermore, our employees agree to abide by these conditions.

CONTRACTOR

DATE

(PRIMARY COMPANY)

DATE

WITNESS 1

DATE

**(PLEASE NOTE ABOVE AGREEMENT IS ONLY AN EXAMPLE AND SHOULD NOT BE USED AS IS)**

FINAL