

## **THE SUPPLY OF CABLE AGREEMENT ACT, 1970**

No. 41



of 1970

### **AN ACT TO RATIFY AND CONFIRM AN AGREEMENT RESPECTING SUPPLY OF CABLE ENTERED INTO BETWEEN THE GOVERNMENT AND ABERDARE CABLES AFRICA LIMITED AND AFRICAN TELEPHONE CABLES (PROPRIETARY) LIMITED**

Date of Assent: 26.8.1970.

Date of Commencement: 4.9.1970

ENACTED by the Parliament of Botswana

#### **Short Title**

1. This Act may be cited as the Supply of Cable Agreement Act, 1970.

#### **Interpretation**

2. In this Act, unless the context otherwise requires —

“agreement” means the agreement respecting supply of cable entered into between the Government and Aberdare Cables Africa Limited and African Telephone Cables (Proprietary) Limited on the 20th April, 1970, the text whereof (excluding resolutions of the Directors of the foregoing companies appended to the agreement) is set out in the Schedule.

#### **Agreement Ratified and Confirmed**

3. The agreement is ratified and confirmed.

#### **Issue of Treasury Bills Pursuant to Agreement**

4. The Accountant-General is authorised to issue Treasury Bills in accordance with the requirements of clause 15 of the agreement.

**Sums Required Charged on Consolidated Fund**

5. All sums required to meet payments due on Treasury Bills issued under section 4 are charged on and shall be paid out of the Consolidated Fund.

**SCHEDULE**  
(section 2)

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA**  
represented herein by the Permanent Secretary,  
Ministry of Works and Communications  
(hereinafter referred to as "the GOVERNMENT") of the one part

and

of the other part, the undermentioned Companies hereinafter collectively referred to as "the CONTRACTORS" and separately as "a CONTRACTOR":

**(a) ABERDARE CABLES AFRICA LIMITED**

a Company registered with limited liability in terms of the provisions of Act No. 46 of 1926 (as amended) and having its registered Head Office in Stanford Road, Port Elizabeth, herein represented by G. McL. Yuill

in his capacity as a Director of the said Company, he being duly authorised thereto by a Special Resolution of the Board of Directors thereof, dated the 19th day of November, 1969,

and

**(b) AFRICAN TELEPHONE CABLES (PROPRIETARY) LIMITED**

a Company registered with limited liability in terms of the provisions of Act No. 46 of 1926 (as amended) and having its registered office at the corner of Van Dyk and Brakpan Roads, Boksburg, and herein represented by R.L.R. Stewart

in his capacity as a Director of the said Company, he being duly authorised thereto by a Special Resolution of the Board of Directors thereof, dated the 26th day of September, 1969.

**IT IS HEREBY AGREED AS FOLLOWS:**

1.

**The Supply of Cable**

The CONTRACTORS hereby undertake to sell and the GOVERNMENT hereby undertakes to purchase, on an "as and when required" basis, all telecommuni-

cation wire and cable of the nature set out in *Appendix 1* (hereinafter called "the cable") which it may require during the period that this Agreement is in force under the provisions of Clause 16:

Provided that the cable, which may be initially purchased at the GOVERNMENT's discretion up to a total of R250,000-00 (a quarter of a million Rand), shall be in accordance with the standard specifications and descriptions and prices contained in *Appendix 1* which is annexed to and forms part of this Agreement.

The CONTRACTORS undertake to supply, in terms of this Agreement and within the periods stated in the relative order, such cable which the GOVERNMENT may order, and the GOVERNMENT undertakes not to order from any other manufacturer the cable which the CONTRACTORS are able to supply within the periods stipulated and in accordance with the prescribed specifications.

2.

**Association of Manufacturers:**

The CONTRACTORS have formed an Association which is at present in existence and incidentally is also operating for some other purpose, which Association is called the "ASSOCIATION OF SOUTH AFRICAN TELEPHONE CABLE MANUFACTURERS" (hereinafter and hereinbefore referred to as "the Association"). It is agreed that the Association shall now also act as agent for the CONTRACTORS herein in the undermentioned respects, and for the purposes of this Agreement will carry out the function amongst others of co-ordinating the specific orders of the GOVERNMENT and of arranging for their acceptance.

- (a) The address of the Association is P.O. Box 5830, Johannesburg, and also Third Floor, New Commercial Exchange Building, 7 Harrison Street, Johannesburg.
- (b) The GOVERNMENT hereby undertakes to notify the Association before the 1st day of December of each year of the quantity of cable in yards of each size and type which it proposes to order for supply during the twelve months commencing on the 1st day of April of the following year. It shall also state the periods during which delivery is desired.
- (c) The GOVERNMENT may also stipulate a reasonable time limit for the completion of any cable which it may require urgently. The Association hereby undertakes to notify the GOVERNMENT as soon as possible whether completion within such time limit is or is not practicable.
- (d) Within 21 (twenty-one) days of the receipt of the notification specified in paragraph (b) above, the Association shall inform the GOVERNMENT how and on what basis it proposes to allocate manufacture of the cable required between its member contractors, or shall, within the said period (if unable

to supply the said cable in terms of the requirements of the GOVERNMENT) submit alternative proposals regarding such supply.

- (e) It shall not be the concern of the GOVERNMENT how or on what basis manufacture is allocated between the CONTRACTORS by the Association.
- (f) The Association shall act as agents herein and the GOVERNMENT shall place orders under this Agreement with the appropriate CONTRACTOR in accordance with any allocation made in terms of paragraph (e).

3.

**Price Variations:**

- (a) The prices in Appendix 1 are based on Copper Wire Bars at R910-00 South African currency per 2,240 lbs. and are subject to adjustment to the Republic Copper Price at which the manufacturers are able to cover for Copper (Electrolytic Wire Bars) after receipt of the order by them.
- (b) The Republic Copper Price will be *prima facie* established by the published figures thereof appearing in the daily press of the Republic of South Africa.
- (c) This Agreement is based on adequate supplies of Copper (Electrolytic Wire Bars) being available from the manufacturers' normal suppliers at the prices computed on the basis set out in paragraph (a). Any variation in these will be for the GOVERNMENT's account, provided the prior approval of the GOVERNMENT is obtained.
- (d) Adjustments to the purchase price may be made by mutual agreement to take account of any appreciable fluctuation in labour costs, water and electricity charges and the costs of materials other than copper, by reason of the promulgation of any law or regulation having the force of law or by reason of any other cause beyond the CONTRACTORS' control.
- (e) In the column headed "copper Variation per R1.00 per 1,000 ft." in Appendix 1 is inserted the amount in South African currency per 1,000 feet, which must be added to or deducted from the prices listed in Appendix 1 for each R1.00 per 2,240 lbs. fluctuation in the price of Copper. Variations of fractions of R1.00 will be calculated on a *pro rata* basis.

4.

**Warranty:**

The CONTRACTORS warrant in terms of this Agreement that all the cable supplied shall be new and shall be in accordance with the description and specifications set out in Appendix 1 to this Agreement, and further warrant the cable to be suitable for use under the climatic conditions obtaining in Southern Africa:

Provided that, as the policy of the CONTRACTORS is to maintain continuous technical advancement, the CONTRACTORS reserve the right to make modifi-

cations to the cable offered, if in the CONTRACTORS' opinion, this is desirable, provided always that the overall performance is not adversely affected thereby.

5.

**Delivery:**

- (a) Delivery shall mean delivery free on rail at a CONTRACTOR's private railway siding or nearest railway station, or to any officer of the GOVERNMENT authorised to accept such delivery.
- (b) If the GOVERNMENT wishes to arrange delivery on any order in some other manner, then such manner shall be subject to the prior written consent of the CONTRACTOR concerned:

Provided, however, that the GOVERNMENT or its representative shall at all times be allowed a reasonable time to examine the drums or packages and their contents in order to determine whether they comply with the agreed specification or not.

- (c) The period for delivery shall be inclusive of the time required for manufacture, testing, packing, transport to point of delivery and all non-working days for holidays, stocktaking, repairs to plant, etc., which will ordinarily occur within that period.
- (d) Notwithstanding anything elsewhere provided herein, however, delay in loading through no fault or beyond the control of the CONTRACTORS shall not be part of the delivery time as far as the CONTRACTORS' responsibility is concerned and shall be for the GOVERNMENT's account.
- (e) Unless otherwise agreed in writing by the parties delivery of any cable shall be deemed to have been effected at the price determined in accordance with Clause 3 when an invoice in respect of any cable ordered has been endorsed by an authorised officer of the GOVERNMENT.

6.

**Additional Cable:**

Should the GOVERNMENT require any cable which was not initially included in any notification to the Association, under Clause 2 (b) above, it may arrange through the Association for such cable to be supplied as an item additional to its requirements or in substitution of cable already ordered by the placing of an additional or substituted order (as the case may be). The GOVERNMENT shall, however, pay the CONTRACTORS for any damages or loss incurred by the CONTRACTORS by reason of such order being released and/or substituted.

**Failure to Supply Cable Timeously:**

After the procedure set out in Clause 2 has been completed, the CONTRACTORS shall supply the cable when called upon to do so by the GOVERNMENT by not later than a delivery date agreed by the parties as being reasonable in the circumstances, or, in the absence of such agreement, on or before a delivery date determined by arbitration under Clause 20. If a CONTRACTOR fails to supply any of the cable in accordance with the delivery dates so established, or such alternative dates as may be mutually agreed between the GOVERNMENT and the CONTRACTORS, the GOVERNMENT shall be released of its obligation in respect of the cable so ordered:

Provided that in the event of a CONTRACTOR being unable to effect delivery within the period aforesaid through circumstances beyond its reasonable control, the delivery dates aforesaid shall be extended by mutual agreement and, failing agreement, by arbitration under Clause 20.

8.

**Inability to Supply Cable:**

If, under this Agreement, the GOVERNMENT orders cable of the nature set out in Appendix 1 but which is not at the time the order is placed manufactured by the CONTRACTORS, the CONTRACTORS shall forthwith notify the GOVERNMENT in this regard, which shall then be released of its obligations under Clause 1 in respect of such order only.

Provided that the GOVERNMENT and the CONTRACTORS may mutually agree that the CONTRACTORS shall be given the opportunity to manufacture and supply such cable in accordance with such specifications and prices as may be mutually agreed between the parties.

9.

**Forecast of Requirements:**

To assist the CONTRACTORS in planning their manufacturing programme, the GOVERNMENT shall where possible give the CONTRACTORS, through the Association, any information it may have of its future requirements and shall give the CONTRACTORS and the Association immediate notice of any variations of existing orders.

10.

**Cable to be F.O.R. the Contractors' Railway sidings:**

The GOVERNMENT acknowledges that the price of the cable, as determined in accordance with this Agreement, are prices F.O.R. the CONTRACTORS'

due on the 30th day of June of the next succeeding year and the others at six-monthly intervals thereafter.

- (c) Interest at the rate of 6% (Six per centum) per annum shall be payable twice yearly on the outstanding balance of the purchase price, and such interest shall be paid together with the half-yearly payments detailed in the preceding paragraph. Any interest not paid by due date shall bear interest at a like rate calculated on a daily basis.
- (d) All payments by the GOVERNMENT under this clause (including payments against treasury bills issued under this clause) shall be made in South African currency, free of exchange and all other deductions of whatsoever kind, to such address in the Republic of South Africa as each CONTRACTOR shall notify the GOVERNMENT in writing from time to time.

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private railway sidings, while onward transportation and other related costs are payable by the GOVERNMENT.

11.

**Prices of Goods not specified in Appendix 1:**

In the event of any cable of the nature set out in Appendix 1 being required by the GOVERNMENT, the prices and specifications of which are not listed in Appendix 1, then the prices and specifications of same shall be such as are fixed by agreement between the GOVERNMENT and the CONTRACTORS.

12.

**Guarantees:**

- (a) The CONTRACTORS hereby guarantee that all cable supplied by them under this Agreement shall be in accordance with —
  - (i) any order placed under this Agreement; and
  - (ii) the specifications set out in Appendix 1 or such other specifications as may be fixed in terms of Clause 11.
- (b) The CONTRACTORS hereby further guarantee that all cable supplied by them under this Agreement will give satisfactory and efficient service for a period of at least one year from the date of being brought into use, provided that such cable —
  - (i) was properly maintained and installed by the GOVERNMENT;
  - (ii) was not employed for any service for which it was not designed; and
  - (iii) if not brought into use immediately after delivery, was stored under suitable conditions and that the period between delivery and putting into service was not unreasonably long.
- (c) Should the foregoing guarantees not be complied with, the CONTRACTORS undertake to replace all cable which fails to comply with the foregoing requirements of this Clause at their own cost and expense without undue delay.
- (d) The CONTRACTORS shall, however, not be liable for indirect damages nor for any consequential loss arising out of the malfunction or any defect in the cable supplied.

13.

**Variation of Contract price because of change in exchange rates:**

It is recorded that all prices of cable and wire shall be computed on the rates of currency exchange between the Republic of South Africa and all other countries as on the date of this Agreement.

in accordance with the specifications referred to in Appendix 1 or such further specifications as may be agreed between the parties.

18.

**Domicilium Citandi Et Executandi:**

The CONTRACTORS nominate the following address as their *domicilium citandi et executandi*:—

c/o Minchin & Kelly,  
The Mall,  
Tswana House,  
GABORONE,  
BOTSWANA.

19.

**Fees and Charges:**

The GOVERNMENT shall bear the cost of all fees or charges payable by both parties in connection with the Agreement.

20.

**Arbitration:**

Any disputes or differences arising out of this Agreement shall be referred to the arbitration of a person to be mutually agreed upon by the parties, and such reference shall be deemed to be a submission to the arbitration of a single Ar-

The CONTRACTORS shall keep the GOVERNMENT indemnified against any claim made against it due to the infringement of any patent in the execution of any order placed with the CONTRACTORS:

Provided that the CONTRACTORS shall not be bound to indemnify the GOVERNMENT against claims in respect of any cable required by the GOVERNMENT in such specification in regard to which the CONTRACTOR shall, before such order is carried out, have given in writing notice to the GOVERNMENT of inability so to indemnify.

15.

**Payment:**

(a) The GOVERNMENT shall pay the appropriate CONTRACTOR for cable (including such cable as the CONTRACTORS may supply under Clause 6) purchased by it under this Agreement in the following manner:—

(i) On the coming into operation of this Agreement the GOVERNMENT shall make the CONTRACTORS a general advance payment of R12,500-00 (Twelve Thousand five hundred Rand), being R3,750-00 (Three thousand seven hundred and fifty Rand) to Aberdare Cables Africa Limited and R8,750-00 (Eight thousand seven hundred and fifty Rand) to African Telephone Cables (Proprietary) Limited, from which in each year there shall be applied in reduction of the purchase price of the cable delivered in that year an amount equal to 5% (Five per centum) of that purchase price: Provided that on the expiry date of this Agreement the CONTRACTORS shall refund the balance of this advance payment remaining, if any. If, however, during the period of this Agreement the aggregate sum of the aforesaid amounts, which represent the amounts which would have formed the reductions referred to above, should at any time exceed the original advance payment of R12,500-00 (Twelve thousand five hundred Rand), then the GOVERNMENT shall immediately pay in cash such excess to the CONTRACTORS at that time. In other

bitrator within the meaning of the Arbitration Proclamation, 1959, of the Republic of Botswana.

21.

**Commencement of Agreement:**

- (a) This Agreement shall come into operation on its ratification by the Parliament of Botswana.
- (b) On the ratification of this Agreement as aforesaid, this Agreement shall be deemed to have commenced on the 1st day of January, 1970. All cable purchased by the GOVERNMENT from the CONTRACTORS after that date shall be deemed to have been purchased under this Agreement and the sum of R12,500-00 (Twelve Thousand Five Hundred Rand) paid by the GOVERNMENT to the CONTRACTORS as part payment of the purchase price of the cable so purchased shall be deemed to be the advance payment required by Clause 15 (a) (i).

22.

**Force Majeure:**

The CONTRACTORS shall not be in default by reason of any failure in the performance of any obligations arising under this Agreement if such failure arises out of "force majeure", i.e. causes which are beyond the control of the CONTRACTORS and are not due to their fault or negligence. Such causes shall include, but are not limited to, acts of God, wars, strikes, lock-outs, or civil commotion.

23.

**Laws of Republic of Botswana to Apply:**

The provisions of this Agreement shall be interpreted in accordance with the Laws of the Republic of Botswana.

SIGNED at Gaborone on the 20th day of April, 1970.

AS WITNESSES:

For and on behalf of the  
GOVERNMENT OF THE  
REPUBLIC OF BOTSWANA.

1. N. BAGULEY

M.O.S. HAWKINS,  
Permanent Secretary,

2. L.J. ANDERSON

Ministry of Works and Communications

SIGNED at Johannesburg on the 2nd day of April, 1970.

AS WITNESSES:

For and on behalf of ABERDARE CABLES  
AFRICA LIMITED.

1. A. KIBUR

2. N.A. CORNELIUS

G. McL YUILL  
Director

SIGNED at Johannesburg on the 2nd day of April, 1970.

AS WITNESSES:

For and on behalf of AFRICAN TELEPHONE  
CABLES (PROPRIETARY) LIMITED

1. L.J. NOERR

R.L.R. STEWART  
Director

2. M. BOLTON

#### APPENDIX I

Prices Nett per 1000 ft. delivered F.O.R. Contractor's Private Siding

UNDERGROUND TELEPHONE CABLE, POLYTHENE INSULATED, POLY-  
THENE SHEATHED, STEEL WIRE ARMoured, PVC, LOCAL TYPE TWIN  
TO S.A.R. SPECIFICATION 1/64

##### 6½ LB. CONDUCTORS

| No. OF PAIRS        | PRICE   | COPPER VARIATION PER        |
|---------------------|---------|-----------------------------|
|                     | Rands   | R1.00 PER 1000 FT.<br>Rands |
| 10                  | 80.67   | 0.013                       |
| 15                  | 100.06  | 0.019                       |
| 25                  | 141.96  | 0.032                       |
| 50                  | 231.69  | 0.063                       |
| 75                  | 320.91  | 0.095                       |
| 100                 | 422.89  | 0.127                       |
| 150 (25 Pair Units) | 708.23  | 0.189                       |
| 200 (25 Pair Units) | 877.67  | 0.252                       |
| 300 (25 Pair Units) | 1237.07 | 0.379                       |
| 400 (25 Pair Units) | 1606.22 | 0.506                       |
| 600 (25 Pair Units) | 2479.30 | 0.769                       |
| 800 (25 Pair Units) | 3198.24 | 1.029                       |

##### 10 LB. CONDUCTORS

|     |        |       |
|-----|--------|-------|
| 10  | 89.06  | 0.020 |
| 15  | 126.39 | 0.029 |
| 25  | 179.81 | 0.049 |
| 50  | 316.63 | 0.098 |
| 75  | 451.09 | 0.147 |
| 100 | 584.91 | 0.197 |

7. Government and Working Standards
8. Replacement of Standards
9. Authentication of Standards
10. Verification of Standards
11. Equipment for Administration of the Act

### PART III

#### ADMINISTRATION

12. Appointment of Officers
13. Certificates in respect of Design or Pattern of Instruments, etc.

|                     |         |       |
|---------------------|---------|-------|
| 150 (25 Pair Units) | 907.83  | 0.293 |
| 200 (25 Pair Units) | 1182.21 | 0.391 |
| 300 (25 Pair Units) | 1719.87 | 0.594 |
| 400 (25 Pair Units) | 2187.43 | 0.786 |
| 600 (25 Pair Units) | 3271.43 | 1.205 |
| 800 (25 Pair Units) | 4248.42 | 1.597 |

PVC INSULATED, PVC SHEATHED, INDOOR TYPE, TO SAPO SPECIFICATIONS 268N/271G WHERE APPLICABLE.

#### 9¼ LB. CONDUCTORS

|         |       |        |
|---------|-------|--------|
| 1 Wire  | 4.78  | 0.0009 |
| 1 Pair  | 7.24  | 0.0018 |
| 3 Wires | 10.22 | 0.0027 |
| 2 Pairs | 11.36 | 0.0036 |
| 3 Pairs | 18.09 | 0.0054 |
| 4 Pairs | 27.33 | 0.0072 |

PVC TWIN TWISTED, CROSS-CONNECTING WIRE TO SAPO SPECIFICATIONS 268N/302B.

#### 9¼ LB. CONDUCTORS

|         |      |        |
|---------|------|--------|
| 2 Wires | 4.70 | 0.0018 |
| 3 Wires | 6.45 | 0.0027 |
| 4 Wires | 8.36 | 0.0036 |

**Prices Nett per 1000 ft. delivered F.O.R. Contractor's Private Siding**

POLYTHENE INSULATED, STEEL CATENARY WIRE, PVC SHEATHED, FIGURE OF 8, TO SAPO SPECIFICATIONS 275K/267H WHERE APPLICABLE

#### 6½ LB. CONDUCTORS

| No. OF PAIRS | PRICE  | COPPER VARIATION PER        |
|--------------|--------|-----------------------------|
|              | Rands  | R1.00 PER 1000 FT.<br>Rands |
| 15 Pairs     | 98.64  | 0.019                       |
| 30 Pairs     | 135.28 | 0.038                       |
| 50 Pairs     | 205.59 | 0.063                       |

#### 10 LB. CONDUCTORS

|          |        |       |
|----------|--------|-------|
| 14 Pairs | 104.01 | 0.027 |
| 30 Pairs | 177.23 | 0.059 |
| 50 Pairs | 263.89 | 0.099 |

34. Acts or Omissions by Managers, Agents or Employees
35. Safeguards to Traders
36. Documents to be *Prima Facie* Evidence
37. Burden of Proof
38. Recovery of Fees
39. Transitory Provisions
40. Act to bind the Republic
41. Repeal

FIRST SCHEDULE  
SECOND SCHEDULE

**PVC INSULATED, PVC SHEATHED CABLE TO SAPO SPECIFICATIONS 268N/  
271G WHERE APPLICABLE**

**9¼ LB. CONDUCTORS**

|            |        |       |
|------------|--------|-------|
| 6 Pairs    | 36.07  | 0.011 |
| 10 Pairs   | 56.70  | 0.018 |
| 20 Pairs   | 104.69 | 0.036 |
| 10 Triples | 79.71  | 0.027 |
| 20 Triples | 145.36 | 0.054 |
| 25 Triples | 174.68 | 0.068 |
| 20 Quads   | 160.35 | 0.073 |
| 40 Pairs   | 196.07 | 0.073 |
| 100 Pairs  | 455.47 | 0.181 |

**20 LB. CONDUCTORS**

|          |        |       |
|----------|--------|-------|
| 10 Pairs | 99.73  | 0.038 |
| 20 Pairs | 188.19 | 0.076 |

**COPPER CLAD STEEL CONDUCTORS, VRI INSULATED, 2 CORE, P.C.P.  
SHEATHED OVERALL, FIGURE OF 8, TO SAPO SPECIFICATION 228M.**

|                   |       |        |
|-------------------|-------|--------|
| 1/.036 CONDUCTORS | 12.86 | 0.0011 |
|-------------------|-------|--------|

Passed by the National Assembly this day, 2nd July, 1970.

G.T. MATENGE,  
Clerk of the National Assembly