



# Sabita

## CODE OF CONDUCT

The Southern African Bitumen Association (Sabita) is a non-profit organisation sponsored by its members to serve all stakeholders through engineering, service and education

### 2008

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## Vision

Sabita's plans and actions are consistent with good corporate citizenship to underpin its dealings with government, and to assist its members.

## Mission

- to advance best practice in southern Africa with due regard to worker health and safety, as well as the conservation of the environment;
- to provide education and training schemes to develop skills and competencies that are sustainable and aligned to national goals and frameworks; and
- to engage stakeholders to promote the social and economic value of road provision and efficient delivery by state road organisations.



## 7. Matters that must never be discussed at Sabita meetings (continued)

### 7.1 Pricing

Direct or indirect fixing of a price may be facilitated by discussions about current or future purchase or selling prices or any other trading condition. Do not discuss pricing, including price increases, target or floor prices, transport rates, credit terms, rebates, discounts, allowances or other incentives, costs, terms and conditions of purchase or supply, employee compensation, benefits remuneration etc.

### 7.2 Market division

Dividing markets by allocating customers, suppliers, contracts, territories or specific types of goods or services is prohibited. Do not discuss matters relating to individual customers or suppliers, volumes or capacity (save to the extent that it is in the public domain), or competitively sensitive information.

### 7.3 Collusive tendering

Do not discuss with competitors tenders or procedures for tendering or proposals in respect of any tender.

### 7.4 Cost and production

Do not discuss business plans or strategies relating to your company; production or distribution activities (for instance volume of product produced and/or supplied into the market); cost accounting and product formulas; methods of manufacture and computing costs; individual company figures on sources of supply inventories, sales etc.

In keeping with the above principles, the members of the Association must not make any agreement or take any decision relating to the activities referred to in 7.1-7.4 above including, without limiting the generality of the foregoing, the fixing of sale or purchase prices, the fixing of other terms of sale or purchase, the restricting of capacity or output, refusal to supply a product or service, the limiting of quality, competition or research, the division of markets or customers, the exclusion of competing companies from a market, or the blacklisting or boycotting of customers or suppliers.

## 6. Matters that can generally be discussed at Sabita meetings

Non-confidential and non-commercial technical issues relevant to the industry - such as technical projects, standards and technical published materials, educational matters, health, safety and environmental issues, lobbying activities promoting the aims of Sabita and Sabita corporate matters.

## 7. Matters that must never be discussed at Sabita meetings

The Competition Act 89 of 1998, as amended (“the Competition Act”) prohibits any agreement between or concerted practice by firms, or a decision by an association of firms if these firms are competitors and if the agreement or concerted practice has the effect of substantially preventing or lessening competition in a market (unless there are technological, efficiency or other pro-competitive gains that outweigh the anti-competitive effect).

The Competition Act also prohibits any agreement between or concerted practice by firms, or a decision by an association of firms which involves:

- directly or indirectly fixing a purchase price or selling price or any other trading condition;
- dividing markets by allocating customers, suppliers, territories or specific types of goods or services; or
- collusive tendering.

To minimise any risk or infringement of the Competition Act, do not have formal or informal discussions or exchange information relating to:



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## 1. Introduction

The Southern African Bitumen Association (referred to interchangeably as Sabita or “the Association”) is a non-profit association with the following objectives which are recorded in its Constitution:

1. To promote excellence in the use of bituminous products in all types of construction in southern Africa;
2. To disseminate among members of the Association information on the bituminous products and associated industries (“the Industry”) and the technology related thereto;
3. To provide a forum for discussion between engineers and designers who are representatives of a legal entity which is or may become a member of the Association and other interested entities for the expression of views, opinions and proposals relating to the use of bituminous products and the technology associated with these materials and products;
4. To print, publish, issue and circulate magazines, books, papers, circulars and other literary productions devoted to topics of interest to those engaged in or associated with the Industry;
5. To represent the Industry in the media;
6. To employ skilled advisors and consultants and other persons for the purpose of carrying out the objectives of the Association and to pay for their services;
7. Where appropriate, to enter into arrangements with foreign institutions, associations or companies carrying on or engaged in similar activities (other than for the purpose of gain) to promote the objects of the Association;
8. Where appropriate, to bring before judicial, legal or other tribunals, government, municipal, local or departmental authorities and public bodies and associations, and the officials thereof, matters affecting the Industry;
9. To collect funds from members and other persons and bodies for the execution of the objectives of the Association;
10. To indemnify any member of the Association in respect of any action taken or to be taken, or any liability incurred or to be incurred by such member in any manner which the Association may consider would further the objects and policy of the Association in accordance with the Association’s Constitution and Code of Conduct;
11. To purchase, take on lease, hire or otherwise acquire for the purposes of the Association, or as an investment of its funds, any real or personal property and to maintain, improve, develop, dispose of, turn to account, or otherwise deal with, all or any of the property of the Association;

## 5. Statistics gathering - key aspects of ensuring the legality of any information exchange

Sabita can perform a legitimate function in gathering industry statistics and on occasion has been requested by Government to provide relevant information. However, it is crucial that any information exchange between Sabita’s members does not itself violate competition law, and that Sabita is not used as a mechanism to facilitate the unlawful exchange of competitively-sensitive information.

As a general rule, Sabita will ensure that the following principles are applied:

- 5.1 Sabita will maintain complete confidentiality in respect of data submitted by individual Sabita members. Confidentiality undertakings will be provided by the Sabita personnel collating such data.
- 5.2 Sabita will collate confidential data in respect of its members only in an aggregated form, which does not directly or indirectly identify the data as data submitted by any individual Sabita member and does not permit any such data applicable to any individual participant to be deduced from the aggregated data.
- 5.3 All such information published may only include historic data, i.e. aggregated annual data, such as historic production and sales figures which, if made available to other members, would not have the effect of preventing or lessening competition, always provided that no current market information can in any way be deduced or inferred from the historic data.
- 5.4 Pricing or market conduct information must never be exchanged or published through Sabita.



### 3. Procedures for meetings (continued)

- 3.7 Additional items added to the agenda at the start of a meeting should be reflected on the agenda as “Items added at the commencement of the meeting”. The minutes of the meeting should clearly list the additional items.
- 3.8 Presentations to be made by invited guests at the meeting to be circulated to the members at least three (3) working days before the meeting. These invited guests are only to sit in on the agenda item which pertains to their presentation.
- 3.9 Attendance registers are to be taken and maintained for all meetings held. All attendance registers always to contain a rider stating that the person signing the register undertakes to comply with the clauses of Sabita’s Code of Conduct as amended from time to time.
- 3.10 Draft minutes of the meetings are to be circulated to attendees of the relevant meetings allowing for a reasonable time for the attendees to review and comment. The minutes will be formally approved at the following meeting of the relevant task force/work group/committee etc. Copies of all presentations made at the meeting as well as copies of all pre-reading material submitted should be attached to the final minutes.
- 3.11 All formally approved minutes are to be made available to all Sabita members through the Sabita web site.
- 3.12 Sabita will retain agendas, minutes and other relevant documentation in its files.

### 4. Potentially sensitive activities where legal advice must be sought before participating in such activities

- 4.1 Gathering and exchanging statistical information;
- 4.2 Sponsored research;
- 4.3 Benchmarking;
- 4.4 Creating industry standards or regulations.

*To the extent that participation in these activities is permitted, the principles and guidelines referred to in Sections 5 and 6 of this Code of Conduct must be adhered to.*



### 1. Introduction (continued)

- 12. To invest the funds of the Association not immediately required upon such securities or otherwise in such manner as may from time to time be determined by the Council of the Association (“the Council”);
- 13. To borrow money with or without security with the limit fixed from time to time by the Council for the purposes of the Association and to guarantee the Association's performance of any obligations that it may properly undertake;
- 14. To do all such other acts and things as may be incidental or conducive to the attainment of the above objectives, or any of them.
- 15. To carry out the above objectives in compliance with the laws of South Africa and, in particular, to comply with South Africa's competition law requirements.

By their very nature, trade associations such as Sabita bring competitors together and members of such associations must be vigilant to ensure that they comply with competition law requirements in South Africa and elsewhere.

Sabita is committed to compliance with the laws that govern its activities, including competition laws, and has therefore developed and adheres to the following guidelines relating to its conduct and its activities. These guidelines apply to all work, projects, meetings and events organised by Sabita, its staff and all member and third party individuals participating in such work on behalf of Sabita.

***However, the main responsibility for competition compliance rests with the representatives of the member companies of Sabita. It is incumbent upon all representatives of member companies of Sabita to ensure that they comply with the requirements of competition law in South Africa and elsewhere. Members are urged to consult their legal advisers when in doubt on any particular compliance issue.***



## 2. Sabita's general operating principles

- 2.1 Sabita's activities are to a large degree based on members' volunteered contributions through participation in work groups, task forces and committees.
- 2.2 Membership of Sabita is based on objective, reasonable and non-discriminatory or non-exclusive criteria:
- 2.2.1 interest in the production, manufacturing or selling of bituminous products;
  - 2.2.2 promotion of excellence in the use of bituminous products;
  - 2.2.3 adherence to the clauses as contained in the HSE Charter which forms part of the Sabita Constitution.
- 2.3 Sabita seeks to be transparent in all its activities. No member is restricted from participation in any group or meeting and all members have the right to be informed about the work and projects undertaken by Sabita through free access to agendas, minutes and other documents. Some Sabita members are also competitors. Therefore all members must carefully consider the information shared in meetings and made available to Sabita (whether for direct or indirect dissemination) in order to avoid sharing competitively-sensitive information which could give rise to competition law concerns and/or infringe the provisions of the prevailing competition legislation.



## 3. Procedures for meetings

- 3.1 Each Sabita council and board meeting, as well as each work group/task force/committee/sub-committee of the Sabita Council and Board should have clear and concise terms of reference ("Terms of Reference") regarding the purpose, membership criteria, election of the chairperson, quorum, frequency and decision making rules of the meeting or body. Terms of reference are to be reviewed annually by the Sabita Council.
- 3.2 A written agenda for Sabita Council and board meetings, clearly describing the purpose and objective of the meeting will be circulated as per clause 6.5.1 of the Sabita Constitution. Agendas for all other meetings as laid down in 3.1 will be circulated at least five (5) working days before the meeting.
- 3.3 The agenda and any presentations and discussions at a Sabita meeting must only contemplate matters that may legitimately be discussed between competitors. Open-ended items like "Any other Business" and "General" are not permitted. The agenda cannot include competitively sensitive issues.
- 3.4 All agendas to be made available to all Sabita members through the Sabita web site, [www.sabita.co.za](http://www.sabita.co.za).
- 3.5 Attendees at the meetings will only discuss items on the agenda.
- 3.6 Any queries as to whether or not it is appropriate for an item to be included in an agenda will result in the item being struck off the agenda until legal advice has been obtained. If an objectionable or questionable subject is raised, the objection will be recorded in the minutes and the discussion relating to the subject will be terminated and the fact of termination recorded in the minutes.

