



KAROO HOOGLAND MUNISIPALITEIT MUNICIPALITY

'n Amalgamasie van Fraserburg, Sutherland, Williston & omliggende landelike gebiede
An amalgamation of Fraserburg, Sutherland, Williston and surrounding rural areas

P.O Box 165
WILLISTON, 8920
t. 053 285 0998
e. info@karoohoogland.gov.za
w. www.karoohoogland.gov.za

NAVRAE:
ENQUIRIES: *Mr A Gibbons/Mr SJ Myburgh*

VERW.NR.:
REF. NO.: **8.2 TENDERS**

27 September 2023

JVZ Construction
marko@jvzconstruction.co.za

Sir

BID NO. KHM T002/05/2023 – SEWAGE RETICULATION IN FRASERBURG

I hereby confirm that Karoo Hoogland Municipality has decided to award the contract KHM T002/05/05/2023 to JVZ Construction.

The tender amount, period and scope of work will be discussed at the project initiation meeting.

The onus is on the bidder to ensure that the Municipality has an original Income Tax Clearance Certificate on record and ensure that a new original reach our offices by the expiry date of the previous one.

We look forward to an enjoyable and successful project.

Yours faithfully

Mr A Gibbons
ACTING MUNICIPAL MANAGER



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11 September 2023

JVZ Construction
marko@jvzconstruction.co.za

Sir

BID NO. KHM T002/05/2023 – SEWAGE RETICULATION IN FRASERBURG

The above tender has reference. We would like to inform you that your tender for the above contract was successful due to scoring the most points.

The tender has been awarded to you for the amount of **R 15 010 616.82** (vat included) for the Sewage Reticulation in Fraserburg.

Yours faithfully

Mr A Gibbons
ACTING MUNICIPAL MANAGER

C1.1: FORM OF OFFER AND ACCEPTANCE (CONTRACT AGREEMENT)

Form of Offer and Acceptance

- Note:** 1 This form of offer and acceptance is identical to that contained in Annex F of SANS 10845 - 1: Construction Procurement Processes, Procedures and Methods.
 2 SAICE's Practice Manual #1, The use of South African National Standards in Construction Procurement, provides guidance on the formulation of the wording for the actual offer where it is not based on the offered total of prices.

Offer

The employer, identified in the acceptance signature block, has solicited offers to enter into a contract for the procurement of **SEWAGE RETICULATION FOR 165 STANDS IN FRASERBURG**

The tenderer, identified in the offer signature block, has examined the documents listed in the tender data and addenda thereto as listed in the returnable schedules, and by submitting this offer has accepted the conditions of tender.

By the representative of the tenderer, deemed to be duly authorized, signing this part of this form of offer and acceptance, the tenderer offers to perform all of the obligations and liabilities of the contractor under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the contract data.

THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE ADDED TAX IS:

FIFTEEN MILLION TEN THOUSAND SIX HUNDRED AND SIXTEEN
 RAND AND EIGHTY TWO CENTS.....Rand (in words);

R.....15 010 616.82..... (in figures or other suitable wording)

This offer may be accepted by the employer by signing the acceptance part of this form of offer and acceptance and returning one copy of this document to the tenderer before the end of the period of validity stated in the tender data, whereupon the tenderer becomes the party named as the contractor in the conditions of contract identified in the contract data.

Signature

Name(s)

Capacity

For the tenderer

Marko Marais

Head of Tender Dep.

JVZ Construction (Pty) Ltd

54 Hoop Street, Calvinia 8901
 (Name and address of Tenderer)

Name and Signature of
 witness

Anrich Bitzi

Date 02/08/2023

Acceptance

By signing this part of this form of offer and acceptance, the employer identified below accepts the tenderer's offer. In consideration thereof, the employer shall pay the contractor the amount due in accordance with the conditions of contract identified in the contract data. Acceptance of the tenderer's offer shall form an agreement between the employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

- Part C1 Agreements and contract data, (which includes this agreement)
- Part C2 Pricing data
- Part C3 Scope of work
- Part C4 Site information and drawings and documents or parts thereof, which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the tender data and any addenda thereto as listed in the returnable schedules as well as any changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance, are contained in the schedule of deviations attached to and forming part of this form of offer and acceptance. No amendments to or deviations from said documents are valid unless contained in this schedule.

The tenderer shall within two weeks after receiving a completed copy of this agreement, including the schedule of deviations (if any), contact the employer's agent (whose details are given in the contract data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the contract data. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement. Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the schedule of deviations (if any). Unless the tenderer (now contractor) within five (5) working days of the date of such receipt notifies the employer in writing of any reason why he/she cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the parties.

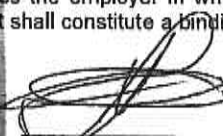
Signature

Name(s)

Capacity

For the Employer:

Name and Signature of
witness


F.J. LOTTER

DIRECTOR INFRASTRUCTURE

KAROO HOOGLAND MUNICIPALITY

MULDERSTREET WILLISTON

(Name and address of Employer)

Date



Schedule of Deviations

Notes:

1. The extent of deviations from the tender documents issued by the employer before the tender closing date is limited to those permitted in terms of the conditions of tender.
2. A tenderer's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid, become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here.
3. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here.
4. Any change or addition to the tender documents arising from the above agreements and recorded here, shall also be incorporated into the final draft of the Contract.

1	Subject	
	Details	
2	Subject	
	Details	
3	Subject	
	Details	
4	Subject	
	Details	

By the duly authorised representatives signing this agreement, the employer and the tenderer agree to and accept the foregoing schedule of deviations as the only deviations from and amendments to the documents listed in the tender data and addenda thereto as listed in the returnable schedules, as well as any confirmation, clarification or changes to the terms of the offer agreed by the tenderer and the employer during this process of offer and acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this agreement.

For the Tenderer:


 John Van Zyl
 Director

Name and address of organisation:

SrZ Construction
 P.O. Box 37
 Wellington
 7654


 Gert Alberts
 4/10/2023

For the Employer:

Signature
 Name
 Capacity


 F.J. Lotter
 Director Infrastructure

Name and address of organisation:

Karoo Hoogland Municipality
 2 Mulder Street
 PO BOX 165
 WILLISTON
 8920

Witness signature

Witness name

Date



C1.2: CONTRACT DATA

Part 1: Contract Data provided by the Employer**GENERAL CONDITIONS OF CONTRACT**

The following standardised General Conditions of Contract:

General Conditions of Contract for Construction Works (Third Edition) 2015

Prepared by the South African Institution of Civil Engineering (SAICE) shall apply to and from the General Conditions of Contract for this Contract. Copies of these conditions of contract are obtainable from the South African Institution of Civil Engineering (SAICE), Private Bag X200, Halfway House 1685, Tel: (011) 805 5947, Fax: (011) 805 5971, e-mail: civilinfo@saice.org.za.

The General Conditions of Contract make several references to the Contract Data for specific data, which together with these conditions collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the Contract. The Contract Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the General Conditions of Contract. Each item of data given below is cross-referenced to the clause in the General Conditions of Contract to which it mainly applies.

The General Conditions of Contract shall be read in conjunction with the variations, amendments and additions set out in the Special Conditions of Contract below.

Save as amended in terms of this document, the provisions of the Standard Conditions of Contract – GCC 2015 shall remain unchanged.

The Contract Data must be read in conjunction with the schedule of Contract Specific Data included in Part C1.2.

C1.2.1 SPECIAL CONDITIONS OF CONTRACT

In this regard, the Standard Conditions of Contract – GCC 2015 is amended by the numbered clauses set out below, as follows:

- (i) where the Standard Conditions of Contract – GCC 2015 contains no provision with the corresponding clause number, the clause set out herein is inserted into the Contract; and
- (ii) where the Standard Conditions of Contract – GCC 2015 contains a provision with the corresponding clause number, it is amended or replaced, as set out herein. (Amendments/replacements are shown in *italics*).

Save as amended in terms of this document, the provisions of the Standard Conditions of Contract – GCC 2015 shall remain unchanged.



1.1 Definitions

- 1.1.1.1 "agreed" means agreed by the Employer and the Contractor; or the Employer's Agent and the Contractor expressly authorised in terms of the Contract, unless specifically stated otherwise.
- 1.1.1.5 "Commencement Date" means the date that the Contract, made in terms of the Form of Offer and Acceptance, comes into effect by signing the Acceptance part and returning one fully completed copy of this document, the Contract Agreement.
- 1.1.1.7 "Contract" means the documentation of the agreement between the parties in terms of the Form of Offer and Acceptance, and such written amendments or additions to the Contract as may be agreed and signed by both parties.
- 1.1.1.13 "Defects Liability Period" means the period stated in the Contract Data, commencing from the issue of the Certificate of Completion or Certificates of Completion in the event of more than one Certificate of Completion having been issued for different portions of the Works, during which the Contractor has both the right and the obligation to make good defects in the materials, Plant and workmanship covered by the Contract.
- 1.1.1.14 "Due Completion Date" means the date or dates of the expiry of the time stated in the Contract Data for achieving Practical Completion for the whole or portions of the Works, calculated from the Commencement Date and as adjusted by such extensions of time or acceleration as may be allowed or agreed in terms of Contract.
- 1.1.1.20 "Form of Offer and Acceptance" means the document defined as the Contract Agreement that formalises the legal process of offer and acceptance and gives rise to the Contract.
- 1.1.1.32 "Temporary Works" means the temporary works required for or in connection with the execution of the Permanent Works and shall include items which are not intended to be permanent or to form part of the Permanent Works, including but not limited to dewatering, shoring, lateral support, access roads, haul roads, shuttering, jacking pits and method, scaffolding, etc.:
- 1.1.1.35 "parties" means the Contractor and the Employer.
- 1.1.1.36 "approved programme" means the latest programme submitted by the Contractor and approved by the Employer's Agent. The latest programme approved by the Employer's Agent supersedes previous approved programmes.
- 1.1.1.37 "Drawings" means all drawings, calculations and technical information forming part of the Contract Documents and any modifications thereof or additions thereto from time to time approved in writing by the Employer's Agent or delivered to the Contractor by the Employer's Agent.
- 1.1.1.38 "Letter of Notification" means the letters of formal notification, signed by the Employer, of the decision of the Supply Chain Management Bid Adjudication Committee sent to all tenderers. The notification of the decision does not form part of the Employer's Acceptance of the successful tenderer's Offer and no rights shall accrue.

1.2 Interpretations

- 1.2.1 Any written communication between the parties shall have been duly delivered if:
- 1.2.1.1 Handed to the addressee or to his duly authorised agent; or
- 1.2.1.2 Delivered at the address of the addressee as stated in the Contract Data, including an e-mail address; and
- 1.2.1.3 Any notice or claim required in accordance with this Contract shall be communicated separately from other communications, on a separate cover with specific reference to the clause in terms of which the communication was made
- Provided that the Employer, Employer's Agent and Contractor shall be entitled, by written notice to each other, to change their said addresses.
- 1.2.6 Any act or communication, including but not limited to "accept, agree, appoint, approve, certify, decide, delegate, dispute, elect, grant, inform, instruct, issue, notice, object, order, record, refuse, request, require, state, dispute, call for" and their derivatives indicate an act to be carried out in writing.
- 1.3.5 Except where otherwise stated in the Contract, the Contractor shall retain the copyright and other intellectual property rights in documents supplied by the Employer or Employer's Agent under the Contract.



The Contractor shall legally be deemed to have given the Employer a non-terminable, transferable, non-exclusive, royalty-free licence to copy, use and communicate the Contractor's documents, including making and using modifications of such documents for the purpose of further work required to the Works

The Contract Specific Data, Specifications (other than Standardized Specifications), Bill of Quantities and Drawings are the copyright of BVI Consulting Engineers Northern Cape (Pty) Ltd.

1.4 Non Variation Clause

- 1.4.1 *This Contract is the entire contract between the parties regarding the matters addressed in this Contract. No representations, terms, conditions or warranties not contained in this Contract shall be binding on the parties. No agreement or addendum varying, adding to, deleting or terminating this Contract including this clause shall be effective unless reduced to writing and signed by both parties.*

2.4 Ambiguity or discrepancy

- 2.4.1 *The several documents forming the Contract are to be read and taken as mutually complementary to and explanatory to each other.*
- 2.4.2 *Any obscurity or ambiguity or discrepancy between the contract documents shall be referred to the Employer's Agent before the due date of submission of tenders for decision as to the true intent and meaning and the Employer's Agents' interpretation. This decision shall be final and binding.*
- 2.4.3 *No claims will be entertained from the contractor on the grounds of any misunderstanding of the contract requirements, which should have and could have been clarified in this manner prior to tendering.*

2.5 Assignment

- 2.5.1 *Neither the Contractor nor the Employer shall, without the written consent of the other, assign the Contract or any part thereof, or any obligation under the Contract, or cede any right or benefit thereunder. Such assignment or cession shall be null and void without the other parties consent.*

3.1 Qualifications of the Employer's Agent

- 3.1.1 *The natural person appointed by the Employer to administer the Contract shall be a registered professional in a built environment profession that is appropriate to the Scope of Work.*

3.2 Functions of the Employer's Agent

- 3.2.1 *The function of the Employer's Agent is to administer the Contract in accordance with the provisions of the Contract.*

4.1 Extent of obligations and liability

- 4.1.1 *The Contractor shall, save insofar as it is legally or physically impossible, design (to the extent provided in the Contract Data), execute and complete the Works and obligations remedy any defects therein in accordance with the provisions of the Contract.*
- 4.1.2 *Where the Contract Data provides that part of the Works shall be designed by the Contractor,*
- 4.1.2.1 *the relevant part of the Works shall be fit for such purposes for which it is intended as are specified in the Contract, and*
- 4.1.2.2 *the Contractor shall, notwithstanding approval by the Employer's Agent, be liable for any error or deficiency in any drawing or document supplied by him for that part of the Works, and for any loss or damage arising out of such error or deficiency.*
- 4.1.2.3 *the Contractor shall submit to the Employer's Agent the "as-built" documents and operation and maintenance manuals in accordance with the Scope of Works and in sufficient detail for the Employer to operate, maintain, dismantle, reassemble, adjust and repair this part of the Works. Such part shall not be considered to be completed for the purposes of issuing a Certificate of Practical Completion in terms of Clause 5.14.1 as read with the relevant Contract data until these documents and manuals have been submitted to the Employer's Agent.*
- 4.1.3 *The Contractor shall be responsible for the design of the Temporary Works, such responsibility shall be that the relevant part of the Temporary Works shall be fit for such purposes for which it is intended and, the Contractor shall, notwithstanding approval by the Employer's Agent, be liable for any error or deficiency in any drawing or document supplied by him for that part of the Works, and for any loss or damage arising out of such error or deficiency.*

- 4.1.4 The Contractor indemnifies the Employer against any liability for any breach of the provisions of Clause 4.1.

4.2 Employer's Agent's instructions

- 4.2.3 Should the Contractor fail to proceed with due diligence with any Employer's Agent's instruction, the Employer's Agent may notify the Contractor to proceed within 7 days from receipt of such notice. Without further notice, on default by the Contractor, the Employer may employ other parties or use its own resources to give effect to such instruction in addition to any other rights that the Employer may have *inter alia* in terms of Clause 9.2.1.3.6. The Employer may recover such costs from the Contractor resulting from same.

4.3 Legal provisions

- 4.3.3 The Employer and the Contractor shall enter into an agreement required for the construction of the Works in terms of the provisions of Section 37(2) of the Occupational Health and Safety Act (Act 85 of 1993) and the latest Construction Regulations promulgated thereunder.

An agreement is included in the Contract Document (C1.4 of Contract Data) and shall be completed and submitted to the Employer together with a letter of good standing from the Compensation Commissioner (if not insured with a Licenced Compensation Insurer) within fourteen (14) days after the Commencement Date. The Contractor shall ensure that any letter of good standing shall be timeously renewed in order that it remains in full force for the duration of the Contract.

4.5 Notices and Fees

- 4.5.2 The Employer shall be responsible for obtaining any planning approval required in respect of the Permanent Works. The Contractor shall be responsible for obtaining any planning approval required in respect of the Temporary Works.

4.11 Competent Employees

- 4.11.3 The Contractor shall only employ persons with the minimum number years applicable experience as shown below for the execution of work on this Contract: (Years' experience after obtaining qualifications)

Contract Manager	- minimum 10 years applicable experience
Construction Manager	- minimum 5 years applicable experience
Surveyor	- minimum 5 years applicable experience
All other key personnel	- minimum 5 years applicable experience

5.3 Commencement of the Works

- 5.3.1 Upon the Employer's Agent's instruction the Contractor shall, save as may be otherwise provided in the Contract or be legally or physically impossible, commence executing the Works. Such instruction shall be subject to the submission by the Contractor, and approval by the Employer, of documentation required before commencement with Works execution, as set out in the Contract Data.

The documentation required before commencement with Works execution are:

- Health and Safety Plan (Refer to Clause 4.3)
- Signed agreement in terms of the provisions of Section 37(2) of the Occupational Health and Safety Act (No. 85 of 1993) and the Construction Regulations promulgated thereunder.
- Initial programme (Refer to Clause 5.6)
- Security (Refer to Clause 6.2)
- Insurance (Refer to Clause 8.6)"
- Letter of Good Standing from the Compensation Commissioner (if not insured with a Licensed Compensation Insurer).

- 5.3.3 If the Employer's Agent's instruction to commence executing the Works, or to resubmit documentation with reasons after having found to be unacceptable by the Employer, is not received by the Contractor within 7 days from the actual date of the submission of all the documentation referred to in Clause 5.3.1, commencement of the Works shall be taken to be on the expiry of such 7 days. However, deemed commencement of the Works shall not be construed as approval of the documentation submitted.

5.4 Access to Site

- 5.4.3 If the Contractor suffers delay to Practical Completion and/or incurs proven additional cost from failure of the Employer to give access to or possession in accordance with the terms of this Clause, the Contractor



shall be entitled to make a claim in accordance with Clause 10.1, for which purpose the time limits of 28 days provided in Clause 10.1.1.1 shall commence to run only from the time when access to or possession of the Site has actually been given.

5.6 Programme

- 5.6.1 *The Contractor shall deliver to the Employer's Agent as part the documentation required before commencement with Works execution in accordance with Clause 5.3.1, an initial programme and method statement for carrying out the Works in order to meet the Due Completion Date.*
- 5.6.2 *The initial programme and all subsequent adjusted programmes shall show and, when relevant, describe in method statements, the entire scope of the Works to be performed including but not limited to:*
- 5.6.2.1 *The Commencement Date, commencement of the Works, Due Completion Date(s) or revisions thereof, and the planned date(s) of Practical Completion for the Works as a whole or in respect of different portions of the Works.*
- 5.6.2.8 *Health and safety requirements*
- 5.6.2.9 *Critical path including the links between all predecessors and successors for activities on the critical path and float.*
- 5.6.3 *The Employer's Agent shall, within 14 days after the Contractor has submitted an initial or adjusted programme, approved such programme or rejected same with reasons and instruct the Contractor to amend such programme. Reasons for rejecting a programme are inter alia that it is not in accordance with the Contract or is not reflecting the actual progress.*
- The Employer's Agents failure to approve or reject, with reasons, the submitted programme:-*
- 5.6.3.1 *in the event of the submitted programme being an adjusted programme, shall be considered to be the approved programme; and*
- 5.6.3.2 *in the event of the submitted programme being an initial programme, it shall not be considered to be the approved programme. However, the Contractor shall have the right to suspend the Works in terms of Clause 5.11.1.3 and if the Contractor suffers delay to Practical Completion and/or incurs proven additional cost from such suspension, the Contractor shall be entitled to make a claim in accordance with Clause 10.1.*
- 5.6.4 *The programme, method statement and the cash flow forecast shall be subject to updates and review on a monthly basis. The Contractor shall monthly deliver to the Employer's Agent an adjusted programme reflecting actual progress and updated dates in accordance with Clause 5.6.2, even though it may reflect that the planned date(s) of Practical Completion will be later than the corresponding Due Completion Date(s), and in addition;*
- 5.6.4.1 *when instructed by the Employer's Agent,*
- 5.6.4.2 *when it no longer reflects the actual progress,*
- 5.6.4.3 *when a specific event, circumstance, act or omission may delay the execution of the Works, or*
- 5.6.4.4 *with each extension of time claim*
- 5.6.5 *The submission to and approval by the Employer's Agent of any programme, method statement and/or cash flow forecast or its adjustments, or the delivery of any other relevant particulars, shall not relieve the Contractor of any of his duties or responsibilities under the Contract*

5.7 Progress of the Works

- 5.7.3 *The Employer's Agent may request the Contractor to submit, or the Contractor may submit to the Employer's Agent, a revised programme and cost determined in accordance with Clause 6.4 for accelerating the rate of progress to achieve Practical Completion before the Due Completion Date. If accepted by the Employer, the adjusted Due Completion Date and the conditions for payment of cost shall be agreed in writing and signed by the parties prior to the Contractor commencing to accelerate progress.*

5.9 Instructions

- 5.9.3 *The Contractor shall give adequate and appropriate written notice to the Employer's Agent of any instructions or drawings, which the Contractor may require for the execution of the Works and the Employer's Agent shall deliver such instructions and/or drawings to the Contractor. The notice shall include details of the necessary drawing or instruction, details of by when it should be issued, and details of the nature and amount of the delay likely to be suffered if it is late.*



5.11 Suspension of the Works

5.11.1 The Contractor may, after giving fourteen (14) days written notice to the Employer, with a copy to the Employer's Agent, (with specific reference to this Clause) suspend the progress of the Works where the Employer or the Employers Agent has failed in terms of Clause 6.10.4 to:

- 5.11.1.1 Deliver a payment certificate, or
- 5.11.1.2 Make full payment of the amount certified in the payment certificate without prejudice to the Contractor's other rights under this Contract or by law, or
- 5.11.1.3 Failed to approve an initial programme in terms of Clause 5.6.3.2

5.12 Extension of the time for Practical Completion

5.12.1 If circumstances of any kind whatsoever which occurred be such as fairly entitle the Contractor to an extension of time and are delaying or will actually delay Practical Completion of the Works beyond the Due Completion Date, the Contractor shall claim in accordance with Clause 10.1 such extension of time as is appropriate. Such extension of time shall take into account any special non-working days and all relevant circumstances, including concurrent delays or savings of time which might apply in respect of such claim and the Due Completion Date will be revised accordingly.

5.12.2.2 Abnormal climatic conditions provided that no extension of time will be granted in respect of any delays attributed to normal climatic conditions. Normal Climatic Conditions shall be deemed to include normal rainfall and associated wet conditions and materials, strong winds and extremes of temperature. However, in the event that delays to critical activities exceed the number of working days listed below, then abnormal climatic conditions shall be deemed to exist, and an extension of time shall be granted in accordance with the provisions of that Clause.

The number of working days quoted below shall be regarded as a fair estimate of the delays to be anticipated and allowed for under normal climatic conditions where normal weather conditions prevent or disrupts critical work.

January	2 days
February	2 days
March	2 days
April	2 days
May	2 days
June	5 days
July	6 days
August	4 days
September	3 days
October	2 days
November	2 days
December	2 days

Claims for delays for abnormal climatic conditions shall be accompanied by substantiating facts and evidence, which shall be submitted timeously as each day or half-day delay is experienced.

Should an extension of time be granted by the Employer's Agent such extension of time will be added to the Time for Completion or set off against any over-provision that may have occurred in the above-mentioned schedule and any other claim.

It shall be further noted that where the critical path is not affected, no extension of time for abnormal climatic conditions or for any other reason will be entertained."

5.12.2.5 Any delay, impediment, or prevention caused by or attributable to the Employer, Employer's Agent, the Employer's personnel or the Employer's other contractors on the Site.

5.12.4 Instead of granting extension of time, if feasible, the Employer's Agent may request the Contractor to accelerate the rate of progress to achieve Practical Completion without extension of time and agree the cost for payment of such acceleration in accordance with Clause 5.7.3.



5.13 Penalties for delay**5.13.2 Delete****5.14 Completion**

5.14.1 *Save as otherwise provided in the Contract, the Contractor shall be entitled to receive a Certificate of Practical Completion when the Works have reached Practical Completion.*

When the Works are about to reach the said stage, the Contractor shall, in writing, request a Certificate of Practical Completion and the Employer's Agent shall, within 14 days after receiving such request, either where the Works;

5.14.1.1 *has reached Practical Completion issue a Certificate of Practical Completion to the Contractor and to the Employer or*

5.14.1.2 *has not reached Practical Completion, issue a written list to the Contractor defining the incomplete work and defects to be rectified to achieve Practical Completion.*
Should the Employer's Agent not issue a Certificate of Practical Completion or such a list within the 14 days, Practical Completion shall be considered to have been achieved on the expiry of the 14 days of the written request in terms of Clause 5.14.1. only once the complete set of As-built drawings and information were submitted by the Contractor to the Employer's Agent.

5.14.2 *As soon as the work referred to in the list issued in terms of Clause 5.14.1 has been duly completed and defects that manifested after the list was issued rectified, the Employer's Agent shall deliver to the Contractor and to the Employer a Certificate of Practical Completion together with a further written list setting out the work to be completed to justify the issuing of a Certificate of Completion.*

5.14.6 *The Employer need not occupy the Works before the Due Completion Date*

5.14.7 *If, in terms of the Contract Data stated for Clause 1.1.1.14, different times for achieving Practical Completion are specified in respect of different portions of the Works, the provisions for the Works as a whole shall apply with necessary adjustment in respect of such portions.*

5.16.3 *The Contractor's liability for any latent defects shall continue beyond the date of the Final Approval Certificate but the Employer shall have no claim against the Contractor arising out of any latent defect which first manifests itself later than the period, stated in the Contract Data, after the issue of the Final Approval Certificate in terms of this Clause.*

The Contractor's liability for any latent defects shall continue for 10 years from the date of the issue of the Final Approval Certificate.

6.2 Security

6.2.1 *The Contractor shall deliver to the Employer, as part of the documentation required before commencement with Works execution in accordance with Clause 5.3.1, at his cost, the type of security for the due performance of the Contract, as selected in the Contract Data.*

6.2.2 *If the Contractor fails to provide or maintain the security as selected in the Contract Data within the time period stated in Clause 5.3.2 or if the performance guarantee is not in accordance with the relevant pro forma performance guarantee, the Employer, in his sole discretion, may either*

6.2.2.1 *Hand over the Site to the Contractor and withhold payment from the Contractor until the amount withheld is equal to ten per cent (10%) of the Contract Price. Such amount shall be reduced to five per cent (5%) of the Contract Price when the Employer's Agent has issued a Certificate of Completion [5.14.4] and to zero per cent (0%) in the Final Payment Certificate [6.10.9] or*

6.2.2.2 *Terminate this Contract in terms of Clause 5.3.2 as read with Clause 9.2.1.3.2.*

6.2.3 *If the Contractor is to provide a performance guarantee as security, he shall ensure that it remains valid and enforceable until the Certificate of Completion is issued. The expiry date shall be specified in the performance guarantee as the date on which the Certificate of Completion is issued.*

6.5 Dayworks

- 6.5.1.2.3 The percentage allowances, stated in the Contract Data, in respect of the said remuneration of workmen and the cost of materials, which allowances shall be held to cover all charges for the Contractor's and subcontractor's *overheads and administration costs*, profits, timekeeping, *clerical work*, *insurances*, *establishment*, superintendence and the use of hand tools, and

For items not included in the daywork schedule, the percentage allowance will be 10%.

6.10 Payment

- 6.10.1 With regard to all amounts that become due to the Contractor in respect of the matters set out in Clauses 6.10.1.1, 6.10.1.2, 6.10.1.3, 6.10.1.4, and 6.10.1.5 below, *the Contractor* shall deliver to the Employer's Agent a monthly statement for payment of all amounts he considers to be due to him (in such form and on such date as may be agreed between the Contractor and the Employer's Agent, or failing agreement, as the Employer's Agent may require) and the Employer's Agent shall, by signed payment certificates issued to the Employer and the Contractor, certify the amount *considered* to be due to the Contractor *or the Employer*, taking into account the following:

- 6.10.1.5 The value up to the percentage limit stated in the Contract Data of Plant and materials referred to in Clause 6.9.1 *not yet built into the Permanent Works*. No payment will be made for any Plant and/or materials off site, except if expressly agreed otherwise;

Provided that the Contractor has produced documentary evidence of ownership of such Plant and/or materials and has delivered to the Employer a MOS Guarantee in accordance with the pro forma MOS Guarantee, approved in writing by the Employer, against any claim to or in respect of such Plant and/or materials, including but not limited to claims by reason of the Contractor's sequestration or liquidation, or of any defect in the Contractor's title to the Plant and/or materials; and

Provided that the total amount of Plant and/or materials referred to in Clause 6.9.1 not yet supplied to Site or built into the Permanent Works certified for payment in terms of the Contract, notwithstanding the percentage limit stated in the Contract Data, shall be limited to the Guaranteed MOS Sum as reflected in the MOS Guarantee.

- 6.10.4 The Employer's Agent shall deliver to the Employer and the Contractor the payment certificate referred to in Clause 6.10.1 within 7 days of the receipt by the Employer's Agent of the Contractor's said statement. Any dissatisfaction in respect of such payment certificate shall be dealt with in terms of Clause 10.2. *The Employer or the Contractor, as the case may be*, shall pay the amount due to the *other* within 28 days of receipt by the *Employer and the Contractor* of the payment certificate signed by the Employer's Agent. Payment shall be subject to the Contractor *or the Employer*, as the case may be, submitting a tax invoice, if required by law, to the *other party* for the amount due.

- 6.10.8 Within 14 days of the date of the Certificate of Completion, the Contractor shall deliver to the Employer's Agent a completion statement showing the value of work done in respect of which a Certificate of Completion has been issued and shall supply such further information as the Employer's Agent may reasonably require. The Contractor shall not be entitled to any payment in respect of any matter which has not been included in such completion statement save as provided for in Clauses 5.14, 7.7 and 7.8 in respect of work executed during the Defects Liability Period and/or Clauses 10.3 to 10.11 in respect of any dispute. The Employer's Agent shall deliver to the Employer and the Contractor the payment certificate in respect of the completion referred to above within 14 days of the receipt by the Employer's Agent of the Contractor's said statement, and the Employer *or the Contractor*, as the case may be, shall pay the amount due to the *other party* within 28 days after receipt by the Employer and the Contractor of the payment certificate signed by the Employer's Agent.



- 6.10.9 Within 14 days of the date of final approval as stated in the Final Approval Certificate, the Contractor shall deliver to the Employer's Agent a final statement claiming final settlement of all moneys due to him (save in respect of matters in dispute, in terms of Clauses 10.3 to 10.11, and not yet resolved). The Employer's Agent shall within 14 days issue to the Employer and the Contractor a Final Payment Certificate, the amount of which shall be paid to the Contractor or the Employer, as the case may be, within 28 days of the date of such certificate, after which no further payments shall be due to the Contractor (save in respect of matters in dispute, in terms of Clauses 10.3 to 10.11 and not yet resolved).

8. RISKS AND RELATED MATTERS

8.6 Insurances

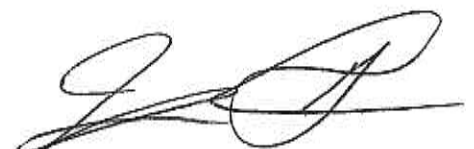
- 8.6.1.6 In addition to the insurances required in terms of General Conditions of Contract Clauses 8.6.1.1 to 8.6.1.4 the following insurance is also required:

- (a) Insurance of Construction Plant and Equipment (including tools, offices and other temporary structures and contents) and other things (except those intended for incorporation into the Works) brought onto the site for a sum sufficient to provide for their replacement.
- (b) Insurance in terms of the provisions of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993.
- (c) Motor Vehicle Liability Insurance comprising (as a minimum) "Balance of Third Party" Risks including Passenger Liability Indemnity.
- (d) Where the contract involves manufacturing and/or fabrication of the works or part thereof at premises other than the Site, the Contractor shall satisfy the Employer that all materials and equipment for incorporation in the works are adequately insured during manufacture and/or fabrication. In the event of the Employer having an insurable interest in such works during manufacture or fabrication then such interest shall be noted by endorsement to the Contractor's Policies of Insurance.
- (e) Lateral Support liability insurance.

- 8.6.8 The evidence that the insurances have been effected in terms of Clause 8.6.1, shall be in the form of an insurance broker's warranty worded precisely as given in part C1.6 Insurance Broker's Warranty.

9.2 Termination by Employer

- 9.2.1.3.2 Has failed, in terms of Clause 5.3.2, to submit documentation in time, or to submit acceptable documentation, or to maintain and extend the validity of the performance guarantee until the Certificate of Completion; or
- 9.2.1.3.6 Is not executing the Works in accordance with the Contract, or is neglecting or failing to carry out his obligations under the Contract, *inter alia* to comply with any instruction under Clause 4.2; or
- 9.2.1.3.9 The Contractor fails to submit the documents within the number of days stipulated or if the documents submitted are found to be unacceptable in accordance with Clause 5.3.2
- 9.2.1.3.10 The Contractor committed a corrupt or fraudulent act during the procurement process or the execution of the Contract.
- 9.2.1.3.11 An official or other role player committed any corrupt or fraudulent act during the procurement process or in the execution of the Contract that benefited the Contractor.



10.1 Contractor's Claim

- 10.1.1 The following provisions shall apply to any claim by the Contractor for an extension of time for *Practical Completion* of the Works in terms of Clause 5.12, or in terms of any Clause that refers to Clause 10.1 for additional payment or compensation:
- 10.1.1.1 The Contractor shall within 28 days *after the commencement of each circumstance, event, act or omission giving rise to such a claim*, deliver to the Employer's Agent a written claim, referring to this Clause and setting out:
- 10.1.1.1.1 The particulars of the circumstance, event, act or omission giving rise to the claim concerned,
- 10.1.1.1.2 The provisions of the Contract on which he bases the claim
- 10.1.1.1.3 *The length of the extension of time, if any, claimed and the basis of the calculation by incorporating the effects of each circumstance, event, act or omission on the critical path of an Approved Programme, indicating the delay on Practical Completion, and*
- 10.1.1.1.4 The amount of money claimed and the basis of calculation thereof.
- 10.1.1.2 If, by reason of the nature and circumstances of the claim, the Contractor cannot reasonably comply with all or any of the provisions of Clause 10.1.1.1.1 to 10.1.1.1.4 to deliver a claim within the said period of 28 days, he shall:
- 10.1.1.2.1 Within the said period of 28 days *issue a further notice referring to the relevant notice in terms of Clause 10.1.2 and confirming his intention to make the claim and comply with such of the requirements of Clause 10.1.1.1.1 to 10.1.1.1.4 as he reasonably can, and*
- 10.1.1.2.2 As soon as practicable, comply with such of the requirements of Clause 10.1.1.1.1 to 10.1.1.1.4 as have not yet been complied with.
- 10.1.1.3 If the *circumstance, event, act or omission relating to the claim are of an ongoing nature:*
- 10.1.1.3.1 *the Contractor shall, within 14 days after the commencement of each circumstance, event, act or omission giving rise to such a claim, deliver to the Employer's Agent a written notice of his intention to submit a claim, referring to this Clause and setting out the particulars of the circumstance, event, act or omission. Provided that the additional payment or compensation or delay that occurred before 14 days prior the date on which the notice in terms of this clause was delivered, shall be deemed to be covered by the rates and/or prices set out in the Pricing Data and the time stated in the Contract Data relating to Clause 5.5.1*
- 10.1.1.3.2 *The Contractor shall, in addition to delivering the said further notice within 28 days in terms of Clause 10.1.1.2.1, each month deliver to the Employer's Agent, in writing, updated particulars required in terms of Clause 10.1.1.1.1 to 10.1.1.1.4 and, within 28 days after the end of the circumstance, event, act or omission deliver his final claim.*
- 10.1.2 The Contractor shall issue an early warning notifying the Employer's Agent as soon as he becomes aware of any circumstance, event, act or omission which could:
- 10.1.2.1 *Increase the Contract Prices,*
- 10.1.2.2 *Delay Practical Completion, or*
- 10.1.2.3 *Impact on the quality or*
- 10.1.2.4 *Impair the performance of the Works in use*



10.1.3.6 The Employer, the Employer's Agent and the Contractor shall not in any proceedings in accordance with Clauses 10.3 to 10.11 be entitled to give or lead evidence of or rely on any fact or circumstance not recorded in *terms of this Clause*.

10.1.4 If, in respect of any claim to which this Clause refers, the Contractor fails to deliver his claim within the *28 day claim period in terms of Clause 10.1.1.1* or does not deliver a further notice within the period of *28 days in terms of Clause 10.1.1.2.1* or does not deliver his final claim within *28 days after the circumstance, event, act or omission ceased in terms of Clause 10.1.1.3.2*, the Due Completion Date shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged all liability in connection with the claim.

Should the Contractor fail to give an early warning notice in terms of Clause 10.1.2 which an experienced Contractor could have given, then the claim shall be assessed by the Employer's Agent and the ruling in terms of Clause 10.1.5 shall take into account the lack of mitigation measures that could have been employed if the Contractor had given an early warning notice.

10.1.5 Unless otherwise provided in the Contract, the Employer's Agent shall within 28 days after the Contractor has delivered his *claim in terms of Clause 10.1.1*, give effect to Clause 3.2.2 and deliver to the Contractor and the Employer his written and adequately reasoned ruling on the claim (referring specifically to this Clause). The amount thereof, if any, allowed by the Employer's Agent shall be included to the credit of the Contractor the next payment certificate. *Where the Employer's Agent fails to make a ruling within such 28 days the claim shall be deemed to be refused;*

Provided that:

10.1.5.1 The said period of 28 days may be extended if so agreed between the Contractor and the Employer's Agent *prior to the expiry of such 28 days*, and

10.1.5.2 Any amount that has been established to the satisfaction of the Employer's Agent, before his ruling on the whole claim, shall be included to the credit of the Contractor in the next payment certificate.

10.3 **Dispute Notice**

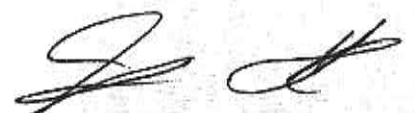
10.3.1 *Any dispute of whatsoever nature arising out of this Contract concerning any of the rights and/or obligations of any party thereto, either during the Time for Completion of the Contract or after the completion thereof, including any dispute as to the validity of the Contract, shall be referred to adjudication in terms of Clause 10.5. The Contractor or the Employer, hereinafter referred to as "the parties", may deliver to the other a written notice, hereinafter referred to as a "Dispute Notice", of any*

10.10 **Common Provisions**

10.10.1 Nothing herein contained shall deprive the Contractor *or the Employer of either party's right* to institute immediate court proceedings in respect of failure by *the Employer or the Contractor, as the case may be*, to pay the amount of a payment certificate on its due date, or to pay any amount of retention money on its due date for payment.

10.10.3 The *Adjudication Board*, arbitrator and the court shall have full power to open up, review and revise any ruling, decision, order, instruction, certificate or valuation of the Employer's Agent.

The Arbitrator and the court shall have full power to and to reconsider any decision by the Adjudication Board relevant to the matter in dispute, and neither party shall be limited in such proceedings before such arbitrator or court to the evidence or arguments put before the Employer's Agent for the purpose of obtaining his ruling, or the Adjudication Board for the purpose of obtaining a decision.



11. ADDITIONAL CONDITIONS OF CONTRACT

11.1 Details to be confidential

- 11.1.1** The Contractor shall treat the details of the Works comprised in this Contract as private and confidential (save in so far as may be necessary for the purposes hereof) and shall not publish or disclose the same or any particulars thereof in any trade or technical paper elsewhere without the prior written consent of the Engineer.

A handwritten signature in black ink, consisting of a stylized 'J' followed by a horizontal line and a checkmark-like flourish.