

C1.2 CONTRACT DATA PROVIDED BY *EMPLOYER* (ECC3)

The conditions of contract are the NEC3 Engineering and Construction Contract (June 2005), copies of which may be obtained from the South African Institution of Civil Engineering (tel. +27 11-805 5947) or Engineering Contract Strategies (tel. +27 11-803 3008).

Part One – Data Provided by the *Employer*

Completion of the data in full, according to the Options chosen, is essential to create a complete contract.

Statements given in all contracts

1 General (a) The *conditions of contract* are the core clauses and the clauses of the NEC3 Engineering and Construction Contract (June 2005):

Main Option A Priced Contract with Activity Schedule

Dispute resolution Option W1 Adjudication

Secondary Options:

- X7 Delay damages
- X13 Performance bond
- X16 Retention
- X18 Limitation of liability

with additional conditions

- Z(a) Day
- Z(b) Intellectual property
- Z(c) Assignment and cession
- Z(d) Non-waiver
- Z(e) Limitation of the authority of the *Project Manager*

- Z(f) Obligations in respect of the Competitive Supplier Development Programme (CSDP)
- (b) The Contractor's Offer and the Employer's Acceptance is in the document called Form of Offer and Acceptance – Part 2 (C1.1).

(c) The works are Design, Manufacture, Deliver and Commission 28 x Diesel Electric Straddle Carriers

(d) The *Employer* is

Name Transnet Limited trading as Transnet Port Terminals

Address Transnet Port Terminals

Kingsmead Office Park

Stalwart Simelane (Stanger) Street

Durban

(e) The *Project Manager* is

Name Mr. Robert Teale

Address Transnet Port Terminals

Kingsmead Office Park

Stalwart Simelane (Stanger) Street

Durban

(f) The *Supervisor* is

Name Mr. Eric Bilse

Address Transnet Port Terminals

Kingsmead Office Park

Stalwart Simelane (Stanger) Street

Durban

- (g) The *Adjudicator* will be appointed when a dispute arises.
- (h) The Works Information is in the document called “Scope of Work” – Part 3 (C3).
- (i) The Site Information is in the document called “Site Information” – Part 4 (C4).
- (j) The *boundaries* of the site are within DCT Pier 2 area and will be identified during tender negotiations.
- (k) The language of this contract is English.
- (l) The *law of the contract* is the law of the Republic of South Africa.
- (m) The *period for reply* to a communication is 2 weeks.
- (n) The *Adjudicator nominating body* is the Association of Arbitrators (Southern Africa).
- (o) The *tribunal* is Arbitration.
- (p) The following matters will be included in the Risk Register
- Site erection is subject to securing occupation from the Project Manager.
 - Site erection activities need to consider dust and fire hazard issues.
 - Existing equipment need to be protected from damage as well as cross-contamination of products being handled.

3 Time

(a) The *starting date* is 01 April 2011

(b) The *access dates* are to be concluded during contractual negotiations

(c) The *Contractor* submits revised programmes at intervals no longer than 2 weeks.

4 Testing and Defects

(a) The *defects date* is 52 weeks after Completion of the whole of the *works*

5 Payment

(a) The *currency of this contract* is to be concluded during contract negotiations

(b) The *assessment interval* is as per the activity milestone schedule

(c) The *interest rate* is the prime lending rate of the Standard Bank of South Africa Ltd. as determined from time to time.

6 Compensation events

(a) As per the NEC3 ECC document (Option A).

7 Risks and insurance

(a) The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract for any one event is whatever the *Contractor* deems desirable in addition to that provided by the *Employer*.

- (b) The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is that which is prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as amended.

Optional statements (a) If the tribunal is arbitration

- The *arbitration procedure* is the Rules for the Conduct of Arbitrations of the Association of Arbitrators –(Southern Africa).
- The place where arbitration is to be held is Durban.
- The person or organisation who will choose an Arbitrator if the Parties cannot agree a choice is The Chairman of the Association of Arbitrators (Southern Africa).

- (b) The completion date for the whole of the *works* is 31 August 2011.

- (c) The *Employer* is willing to take over the *works* before the Completion Date.

- (d) The *Contractor* is to submit a first programme for acceptance within 4 weeks of the Contract Date.

- (e) The *key dates* and *conditions* to be met are to be concluded during contractual negotiations

(f) The period within which payments are made is 40 days within receipt of the necessary invoice.

(g) These are additional compensation events:

Nil

(h) These are additional *Employer's* risks

Nil

(i) The *Employer* provides these insurances from the Insurance Table

1. Insurance against loss of or damage to the *works*, Plant and Materials is as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance)

Cover/indemnity is to the extent as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance)

The deductibles are as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance)

2. Insurance against loss of or damage to Equipment (Temporary Works only) as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance)

Cover/indemnity is to the extent as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance)

The deductibles are as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance)

3. Insurance against loss of or damage to property (except the *works*, Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance)

Cover/indemnity is to the extent as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance)

The deductibles are as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance)

- (j) If additional insurances are to be provided

The *Employer* provides these additional insurances

1. Contract Works SASRIA insurance subject to the terms exceptions and conditions of the SASRIA coupon policy.

Cover/indemnity is to the extent provided by the SASRIA coupon policy

The deductibles are to be advised.

The *Contractor* provides these additional insurances

- 1 Where the Contract requires that design of any part of the *works* shall be provided by the *Contractor*, he shall satisfy the *Employer* that professional indemnity insurance cover in connection therewith has been effected. Such insurance shall not be for an amount less than the value of the contract. Such insurance shall endure for a period of two (2) years from Completion of the Works.

2. Where the Contract involves manufacture, and/or fabrication of Plant and Materials, components or other goods to be incorporated into the *works*, at premises other than the site, the *Contractor* shall satisfy the *Employer* that such Plant and Materials, components or other goods for incorporation in the *works* are adequately insured during manufacture and/or fabrication.
3. Should the *Employer* have an insurable interest in such items during manufacture or fabrication, such interest shall be noted by endorsement to the *Contractor's* policies of insurance as well as those of any subcontractor.
4. Comprehensive marine insurance covering the full value of the goods transported shall be arranged by the *Contractor*.
5. The insurance coverage referred to in 1, 2 and 4 above shall be obtained from an insurer in terms of an insurance policy approved by the *Employer*. The *Contractor* shall arrange with the insurer to submit to the *Project Manager* the original and duplicate original of the policy or policies of insurance and the receipts for payment of current premiums, together with a certificate from the insurer or insurance broker concerned, confirming that the policy or policies provide the full coverage as required. The original policy will be returned to the *Contractor*.

If Option X7 is used

Delay damages is a penalty in South African Law and the word penalty is to replace delayed damages throughout the Contract.

The penalty for late completion of the *works* is 0.1% (i.e 1/1000) of the contract value per day.

If Option X13 is used

- (a) The amount of the Guarantee (Performance Bond) is to be calculated as 10 % of the contract value.
- (b) The Form of Guarantee (or Performance Bond) is in Clause C 1.3 of Part C1.
- (c) An Advance Payment Guarantee (APG) is required in the form reflected in Part C 1.3.

If Option X16 is used

(a) The retention percentage is 10%. The retention-free amount is Nil.

If Option Z is used

The additional Conditions of Contract are:-

(a) Clause 11.2 (34) – Day

Day is a calendar day and where a specific number of days is allowed in the Contract for the performance of any act or is stipulated for the extinction of any right or the duration of any event or circumstance, public holidays and the annual Christmas break from 16 December to 5 January (both days included) is excluded from the calculation of the number of days concerned.

(b) Clause 28.1 – Intellectual property

Intellectual property rights (including patents, copyright, trade marks etc) rests with the party owning them and the *Contractor* indemnifies the *Employer* from any liability arising from infringement of such intellectual property rights. [See Clauses 80.1, 83.1 and 83.2]

(c) Clause 28.2 – Assignment & cession

Neither the *Contractor* nor the *Employer* may, 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.

(d) Clause 28.3 – Non-Waiver

No grant by the *Employer* or the *Contractor* to the other of any concession, waiver, condonation or allowance is, in respect of any specific event or circumstance other than that in respect of which the grant was made to constitute a waiver of the rights of the grantor in terms of the Contract or an *estoppel* of the grantor's right to enforce the provision of the Contract.

(e) Clause 28.4 – Limitation of the authority of the *Project Manager*

- (i) The *Project Manager* is not authorised to agree increases to the contract value without referring it to the management of the Employer.

- (ii) As referral to management is necessary, a period of 6 weeks over and above any times allowed in the Contract is to be provided.

(f) Obligations in respect of Competitive Supplier Development Programme (CSDP)

It is a fundamental requirement of the tender that the *Contractor* contributes to the Competitive Supplier Development Programme promoted by the Department of Public Enterprises of the Government of South Africa, as applied by the *Employer*.

In response to this requirement, the *Contractor* undertakes to implement the CSDP initiatives as described in T2.2 Annexure C and Appendix A (the CSDP Obligations Plan).

The *Contractor* shall develop and present, for acceptance, to the *Employer/Project Manager* in writing, within 60 (sixty) days from the *Contract Date*, a detailed plan (the CSDP Plan) setting out the exact nature, extent and estimated monetary value of the CSDP commitments which the *Contractor* is prepared to undertake, as well as mechanisms and procedures to allow for access to information and verification of the *Contractor's* compliance with the CSDP commitments it undertakes in the CSDP Plan. The monetary value of CSDP commitments undertaken by the *Contractor* shall not (unless otherwise agreed in Writing) be less than the amounts set out in Annexure A (the CSDP Obligations Plan), in relation to any particular CSDP undertaking. The parties undertake to

negotiate in good faith with a view to agree to the content of the CSDP Plan within 90 (ninety) days from the *Contract Date* (or such later date as the *Employer* may consent to in Writing).

If the parties fail to reach agreement in respect of the CSDP Plan within 90 (ninety) Days of the *Contract Date*, it shall constitute a reason for termination as per clause 91.2 (R11) of the NEC3 Engineering and Construction Contract.

The *Employer* reserves the right to re-negotiate in terms of clause 10.1 of the NEC3 Engineering and Construction Contract to the benefit of the *Employer*.