ANGLOGOLD ASHANTI LIMITED

GENERAL CONDITIONS OF CONTRACT

FOR

SITE WORKS

GCC 100

Rev 2
APRIL, 2004
<table>
<thead>
<tr>
<th>Clause 1</th>
<th>General Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-clause 1.1</td>
<td>Definitions</td>
</tr>
<tr>
<td>Sub-clause 1.2</td>
<td>Interpretations</td>
</tr>
<tr>
<td>Sub-clause 1.3</td>
<td>Assignment and Subcontracting and Prohibition of Cession of Book Debts</td>
</tr>
<tr>
<td>Sub-clause 1.4</td>
<td>Set-off of Monies due from the Contractor</td>
</tr>
<tr>
<td>Sub-clause 1.5</td>
<td>Ethical Standards</td>
</tr>
<tr>
<td>Sub-clause 1.6</td>
<td>Right to Audit</td>
</tr>
<tr>
<td>Sub-clause 1.7</td>
<td>Joint and Several Liability</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Clause 2</th>
<th>The Employer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-clause 2.1</td>
<td>Environmental assessments and access to and possession of Site</td>
</tr>
<tr>
<td>Sub-clause 2.2</td>
<td>The Employer’s Representative</td>
</tr>
<tr>
<td>Sub-clause 2.3</td>
<td>Accommodation and Messing</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Clause 3</th>
<th>The Contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-clause 3.1</td>
<td>Contractor’s General Obligations</td>
</tr>
<tr>
<td>Sub-clause 3.2</td>
<td>Performance Guarantee</td>
</tr>
<tr>
<td>Sub-clause 3.3</td>
<td>Contractor’s Representative</td>
</tr>
<tr>
<td>Sub-clause 3.4</td>
<td>Setting Out</td>
</tr>
<tr>
<td>Sub-clause 3.5</td>
<td>Safety Procedures</td>
</tr>
<tr>
<td>Sub-clause 3.6</td>
<td>Site Data</td>
</tr>
<tr>
<td>Sub-clause 3.7</td>
<td>Sufficiency of Contract Price</td>
</tr>
<tr>
<td>Sub-clause 3.8</td>
<td>Physical Obstructions and Conditions</td>
</tr>
<tr>
<td>Sub-clause 3.9</td>
<td>Construction Programme to be furnished</td>
</tr>
<tr>
<td>Sub-clause 3.10</td>
<td>Revised Programme</td>
</tr>
<tr>
<td>Sub-clause 3.11</td>
<td>Quality Assurance System</td>
</tr>
<tr>
<td>Sub-clause 3.12</td>
<td>Work to be in accordance with Contract</td>
</tr>
<tr>
<td>Sub-clause 3.13</td>
<td>Daily Record Book</td>
</tr>
<tr>
<td>Sub-clause 3.14</td>
<td>Site Meetings</td>
</tr>
<tr>
<td>Sub-clause 3.15</td>
<td>Employer’s Standards</td>
</tr>
<tr>
<td>Sub-clause 3.16</td>
<td>Electricity, water and compressed air</td>
</tr>
<tr>
<td>Sub-clause 3.17</td>
<td>Telephones</td>
</tr>
<tr>
<td>Sub-clause 3.18</td>
<td>Cranes</td>
</tr>
<tr>
<td>Sub-clause 3.19</td>
<td>Transport</td>
</tr>
<tr>
<td>Sub-clause 3.20</td>
<td>Raw materials, utilities and effluents</td>
</tr>
<tr>
<td>Sub-clause 3.21</td>
<td>Control of Contractor’s Equipment</td>
</tr>
<tr>
<td>Sub-clause 3.22</td>
<td>Contractor’s Equipment, Temporary Works and Materials</td>
</tr>
<tr>
<td>Sub-clause 3.23</td>
<td>Existing Services and/or Co-ordination of other Services</td>
</tr>
<tr>
<td>Sub-clause 3.24</td>
<td>Articles of value or antiquity</td>
</tr>
<tr>
<td>Sub-clause 3.25</td>
<td>Preparation of the site</td>
</tr>
<tr>
<td>Sub-clause 3.26</td>
<td>Contractor’s Equipment</td>
</tr>
<tr>
<td>Sub-clause 3.27</td>
<td>Security of the Site</td>
</tr>
<tr>
<td>Sub-clause 3.28</td>
<td>Contractor’s Operations on Site</td>
</tr>
<tr>
<td>Sub-clause 3.29</td>
<td>Use of Hand Held and Welding Machines</td>
</tr>
<tr>
<td>Sub-clause 3.30</td>
<td>Methane Safety Requirements</td>
</tr>
<tr>
<td>Sub-clause 3.31</td>
<td>Storage and Handling of Inflammable Materials</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Clause 4</th>
<th>Nominated Sub-contractors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-clause 4.1</td>
<td>Engagement of Staff and Labour</td>
</tr>
<tr>
<td>Sub-clause 4.2</td>
<td>Labour Laws</td>
</tr>
<tr>
<td>Sub-clause 4.3</td>
<td>Persons in the service of others</td>
</tr>
<tr>
<td>Sub-clause 4.4</td>
<td>Foreign Staff</td>
</tr>
<tr>
<td>Sub-clause 4.5</td>
<td>Working Hours</td>
</tr>
<tr>
<td>Sub-clause 4.6</td>
<td>Facilities for Staff and Labour</td>
</tr>
<tr>
<td>Sub-clause 4.7</td>
<td>Health and Safety</td>
</tr>
<tr>
<td>Sub-clause 4.8</td>
<td>Contractor’s Superintendence</td>
</tr>
<tr>
<td>Sub-clause 4.9</td>
<td>Records of Contractor’s personnel and equipment</td>
</tr>
<tr>
<td>Sub-clause 4.10</td>
<td>Disorderly Conduct</td>
</tr>
<tr>
<td>Sub-clause 4.11</td>
<td>Contractor’s Personnel</td>
</tr>
<tr>
<td>CLAUSE 6</td>
<td>PLANT, MATERIAL AND WORKMANSHIP</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Sub-clause 6.1</td>
<td>Manner of Execution</td>
</tr>
<tr>
<td>Sub-clause 6.2</td>
<td>Quality of materials and workmanship</td>
</tr>
<tr>
<td>Sub-clause 6.3</td>
<td>Samples</td>
</tr>
<tr>
<td>Sub-clause 6.4</td>
<td>Employer’s Quality Assurance Representative</td>
</tr>
<tr>
<td>Sub-clause 6.5</td>
<td>Examination of the Work Before Covering Up</td>
</tr>
<tr>
<td>Sub-clause 6.6</td>
<td>Notice of inspections or testing</td>
</tr>
<tr>
<td>Sub-clause 6.7</td>
<td>Inspections and/or testing; no reason for delays</td>
</tr>
<tr>
<td>Sub-clause 6.8</td>
<td>Rectification of defects revealed by re-inspection (Rejection)</td>
</tr>
<tr>
<td>Sub-clause 6.9</td>
<td>Cost of attendance at inspection or testing</td>
</tr>
<tr>
<td>Sub-clause 6.10</td>
<td>Additional testing before assembly or closing-up</td>
</tr>
<tr>
<td>Sub-clause 6.11</td>
<td>Remedial Work</td>
</tr>
<tr>
<td>Sub-clause 6.12</td>
<td>Ownership of Plant</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CLAUSE 7</th>
<th>EMPLOYER’S PROPERTY</th>
<th>31</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-clause 7.1</td>
<td>Removal of Employer’s Property</td>
<td>31</td>
</tr>
<tr>
<td>Sub-clause 7.2</td>
<td>Collection and Re-delivery of Employer’s Property Waiver of Lien</td>
<td>32</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CLAUSE 8</th>
<th>COMMENCEMENT, DELAYS AND SUSPENSION</th>
<th>32</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-clause 8.1</td>
<td>Commencement of Work</td>
<td>32</td>
</tr>
<tr>
<td>Sub-clause 8.2</td>
<td>Time for Completion</td>
<td>32</td>
</tr>
<tr>
<td>Sub-clause 8.3</td>
<td>Extension of Time for Completion</td>
<td>33</td>
</tr>
<tr>
<td>Sub-clause 8.4</td>
<td>Delay Damages</td>
<td>33</td>
</tr>
<tr>
<td>Sub-clause 8.5</td>
<td>Suspension of the Works</td>
<td>33</td>
</tr>
<tr>
<td>Sub-clause 8.6</td>
<td>Consequences of suspension</td>
<td>34</td>
</tr>
<tr>
<td>Sub-clause 8.7</td>
<td>Payment of Plant and materials in the event of suspension</td>
<td>34</td>
</tr>
<tr>
<td>Sub-clause 8.8</td>
<td>Prolonged Suspension</td>
<td>34</td>
</tr>
<tr>
<td>Sub-clause 8.9</td>
<td>Resumption of Works</td>
<td>34</td>
</tr>
<tr>
<td>Sub-clause 8.10</td>
<td>Standing Time</td>
<td>35</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CLAUSE 9</th>
<th>TESTS ON COMPLETION</th>
<th>35</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-clause 9.1</td>
<td>Notice of Tests</td>
<td>35</td>
</tr>
<tr>
<td>Sub-clause 9.2</td>
<td>Time for Tests</td>
<td>36</td>
</tr>
<tr>
<td>Sub-clause 9.3</td>
<td>Delayed Tests</td>
<td>36</td>
</tr>
<tr>
<td>Sub-clause 9.4</td>
<td>Facilities for Tests on Completion</td>
<td>36</td>
</tr>
<tr>
<td>Sub-clause 9.5</td>
<td>Re-testing</td>
<td>36</td>
</tr>
<tr>
<td>Sub-clause 9.6</td>
<td>Disagreement as to Results of Tests</td>
<td>36</td>
</tr>
<tr>
<td>Sub-clause 9.7</td>
<td>Consequences of Failure to Pass Tests on Completion</td>
<td>36</td>
</tr>
<tr>
<td>Sub-clause 9.8</td>
<td>Test Certificate</td>
<td>36</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CLAUSE 10</th>
<th>TAKING OVER</th>
<th>37</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-clause 10.1</td>
<td>Taking-Over</td>
<td>37</td>
</tr>
<tr>
<td>Sub-clause 10.2</td>
<td>Taking-over Certificate</td>
<td>37</td>
</tr>
<tr>
<td>Sub-clause 10.3</td>
<td>Use before taking-over</td>
<td>37</td>
</tr>
<tr>
<td>Sub-clause 10.4</td>
<td>Interference with Test on Completion</td>
<td>37</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>CLAUSE 11</th>
<th>DEFECTS AFTER TAKING OVER</th>
<th>38</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sub-clause 11.1</td>
<td>Defects Liability Period</td>
<td>38</td>
</tr>
<tr>
<td>Sub-clause 11.2</td>
<td>Making Good Defects</td>
<td>38</td>
</tr>
<tr>
<td>Sub-clause 11.3</td>
<td>Notice of Defects</td>
<td>38</td>
</tr>
<tr>
<td>Sub-clause 11.4</td>
<td>Extension of Defects Liability Period</td>
<td>38</td>
</tr>
<tr>
<td>Sub-clause 11.5</td>
<td>Failure to Remedy Defects</td>
<td>38</td>
</tr>
<tr>
<td>Sub-clause 11.6</td>
<td>Removal of Defective Work</td>
<td>39</td>
</tr>
<tr>
<td>Sub-clause 11.7</td>
<td>Further Tests on Completion</td>
<td>39</td>
</tr>
<tr>
<td>Sub-clause 11.8</td>
<td>Right of Access</td>
<td>39</td>
</tr>
<tr>
<td>Sub-clause 11.9</td>
<td>Defects in Employer’s Designs</td>
<td>39</td>
</tr>
<tr>
<td>Sub-clause 11.10</td>
<td>Contractor to Search for the cause of the Defect</td>
<td>39</td>
</tr>
<tr>
<td>Sub-clause 11.11</td>
<td>Schedule of Defects</td>
<td>40</td>
</tr>
<tr>
<td>Clause</td>
<td>Description</td>
<td></td>
</tr>
<tr>
<td>--------</td>
<td>-------------</td>
<td></td>
</tr>
<tr>
<td>Clause 12</td>
<td>Variation and Adjustments</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 12.1</td>
<td>Variation to the Works</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 12.2</td>
<td>Variation Order Procedure</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 12.3</td>
<td>Disagreement on the adjustment of the Contract Price</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 12.4</td>
<td>Contractor to proceed</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 12.5</td>
<td>Record of Costs</td>
<td></td>
</tr>
<tr>
<td>Clause 13</td>
<td>Provisional Sums and Prime Cost Items</td>
<td></td>
</tr>
<tr>
<td>Clause 14</td>
<td>Dayworks</td>
<td></td>
</tr>
<tr>
<td>Clause 15</td>
<td>Contract Price and Payment</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 15.1</td>
<td>Contract Price</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 15.2</td>
<td>Terms of Payment</td>
<td></td>
</tr>
<tr>
<td>Clause 16</td>
<td>Foreign Currency Control</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 16.1</td>
<td>Foreign Currency</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 16.2</td>
<td>Control Documents</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 16.3</td>
<td>CIF and SA Port Charges</td>
<td></td>
</tr>
<tr>
<td>Clause 17</td>
<td>Claims</td>
<td></td>
</tr>
<tr>
<td>Clause 18</td>
<td>Default</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 18.1</td>
<td>Default by the Contractor</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 18.2</td>
<td>Default by the Employer</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 18.3</td>
<td>Payment after Termination as a result of Contractors default</td>
<td></td>
</tr>
<tr>
<td>Clause 19</td>
<td>Insolvency</td>
<td></td>
</tr>
<tr>
<td>Clause 20</td>
<td>Termination</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 20.1</td>
<td>Material Breach</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 20.2</td>
<td>Termination by giving a period of notice</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 20.3</td>
<td>Termination on cessation or curtailment of operations</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 20.4</td>
<td>Valuation at date of Termination</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 20.5</td>
<td>Return and assignment on Termination</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 20.6</td>
<td>Cost incurred subsequent to Termination date</td>
<td></td>
</tr>
<tr>
<td>Clause 21</td>
<td>Risk and Responsibilities</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 21.1</td>
<td>Indemnities</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 21.2</td>
<td>Contractor’s care of the Works</td>
<td></td>
</tr>
<tr>
<td>Clause 22</td>
<td>Non-Disclosure of Information</td>
<td></td>
</tr>
<tr>
<td>Clause 23</td>
<td>Intellectual Property Rights</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 23.1</td>
<td>Infringement of Intellectual Property Rights</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 23.2</td>
<td>Creation of Intellectual Property Rights</td>
<td></td>
</tr>
<tr>
<td>Clause 24</td>
<td>Documentation</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 24.1</td>
<td>Documentation for approval by the Employer’s Representatives</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 24.2</td>
<td>Documentation to be supplied to the Employer’s Representative prior to completion of the Contract</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 24.3</td>
<td>Additional Documentation required by the Employer’s Representative</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 24.4</td>
<td>Schedule of Documentation</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 24.5</td>
<td>Inspection of Documentation</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 24.6</td>
<td>Documentation to be the property of the Employer</td>
<td></td>
</tr>
<tr>
<td>Sub-clause 24.7</td>
<td>Mistakes in Documentation</td>
<td></td>
</tr>
</tbody>
</table>
CLAUSE 25  TECHNICAL INFORMATION  52
Sub-clause 25.1  Provision and ownership of Technical Information  52
Sub-clause 25.2  Errors or discrepancies in Technical Information  52

CLAUSE 26  TAXES, DUTIES AND PERMITS  52
CLAUSE 27  LAWS AND REGULATIONS  53
CLAUSE 28  FORCE MAJEURE  54
CLAUSE 29  RESOLUTION OF DISPUTES  54
CLAUSE 30  NO WAIVER  54
CLAUSE 31  GOVERNING LAW  54
CLAUSE 32  SEVERABILITY  54
CLAUSE 33  DOMICILIUM  54
CLAUSE 34  NOTICES  55
CLAUSE 35  ENTIRE AGREEMENT  55
CLAUSE 36  PREPARATION OF CONTRACT  55
1. GENERAL PROVISIONS

1.1 Definitions

In the Contract the following words and expressions shall have the meanings hereby assigned to them:

1.1.1 ‘AngloGold Ashanti’ means AngloGold Ashanti Limited, a public company duly incorporated under the company laws of the Republic of South Africa and having company registration number 1944/017354/06.

1.1.2 ‘Commercial Manager’ means the officer appointed as the representative to act for and on behalf of the Employer as the administering officer for the purpose of the Contract and includes his authorised representative.

1.1.3 ‘Commencement Date’ means the date which the Employer's Representative and the Contractor agrees upon to commence with the execution of the Works in accordance with clause 8.

1.1.4 ‘Completion Date’ means the date by which the Works are to be finally completed in terms of the Contract.

1.1.5 ‘Contract’ means the agreement between the Employer and the Contractor for the provision of the Works including any amendment/s thereto, incorporating this document and all schedules attached to this document and ‘this agreement’ or ‘the agreement’ shall bear the same meaning.

1.1.6 ‘Contract Date’ means the date upon which the Contract is deemed to have commenced.

1.1.7 ‘Contract Price’ means the price to be paid by the Employer to the Contractor for the provision of the Works.

1.1.8 ‘Contractor’ means any corporate body, partnership or person to which or to whom the Contract has been awarded and shall include the Contractor’s legal personnel representatives, successors in title and permitted assigns.

1.1.9 ‘Contractor’s Equipment’ means all apparatus, machinery, vehicles, facilities and other things of whatsoever nature required for the execution and completion of the Works, but does not include Plant.

1.1.10 ‘Contractor’s Documents’ means the calculations, computer programs and other software manuals, models and all other documents of a technical nature (if any) supplied by the Contractor under the Contract.
1.1.11 ‘Control’ in relation to:

a company means:

* the beneficial ownership, directly or indirectly (whether through the holding of voting shares in a chain of subsidiaries or otherwise) of more than 50% of the voting shares of that company; or

* the right, directly or indirectly, (through the holding of voting shares in a chain of subsidiaries or otherwise) to exercise more than half the voting rights in respect of the issued shares of that company; or

* the power, directly or indirectly, (through the holding of voting shares in a chain of subsidiaries or otherwise) to appoint, and remove, the majority of the board of directors of that company; or

* the power, through appointees to the board of directors of that company, to exercise more than 50% of the votes exercisable by directors of that company,

1.1.11.1 a close corporation, means the beneficial ownership of more than 50% of the members’ interests of such close corporation; or

1.1.11.2 a trust, for the purposes of this Contract only and notwithstanding that the trust may be a discretionary trust, means the exclusive and continued appointment of a Shareholder which is a natural person under general power of attorney to represent the trustees of the trust in all their dealings with the Company and the Shareholders in accordance with this Contract, and to take all decisions and exercise all rights and procure the fulfillment of all obligations of the trustees concerned, on behalf of the trustees so appointing such person, and the words "Controlled" and "Controlling" shall have a corresponding meaning;

1.1.12 ‘Defects Liability Period’ means the defects liability period stated in the Contract, calculated from:

* the date of completion of the Works certified by the Employer’s Representative in accordance with clause 10; or

* in the event of more than one certificate having been issued by the Employer's Representative under clause 10, the respective date so certified.

1.1.13 ‘Employer’ means AngloGold Ashanti.

1.1.14 ‘Employer’s Property’ means all machinery, equipment, apparatus, material, articles and other things of whatsoever nature belonging to or under the control of the Employer.

1.1.15 ‘Employer’s Representative’ means the person defined as such in the Contract and appointed by the Employer as its representative for the purpose of the Contract or his duly appointed nominee.

1.1.16 ‘Employer’s Standards’ means the Employer’s codes of practice, procedures, management systems, guidelines, directives and instructions;
1.1.17 'Environmental Impact Assessment' means any impact assessments or reports required in terms of the Environment Conservation Act, Act 73 of 1989, the National Heritage Resources Act, Act 25 if 1999 the Mineral and Petroleum Resources Development Act, Act 28 of 2002 or any other Environmental Law;

1.1.18 'Environmental Incident' means:
   i) any uncontrolled/accidental release or spillage/discharge of any gas, liquid or solid substance onto or into an area that could have a negative impact on the environment, including without being limited to the:
      – discharge of highly polluted effluent or any reagents, volatile liquid or other hazardous or harmful substance from the Site that has the potential to significantly impact on surface water and groundwater resources;
      – discharge that has resulted or may result in animal, bird or fish kills;
      – discharge of slimes directly into a natural watercourse;
      – overflows of pollution control dams;
      – spillage of any reagents, volatile liquid or other hazardous substance from any road or rail tanker on the Employer’s property, or from any of the Employer’s or Contractor’s tanker onto public property or roads;
      – any discharge of any noxious gas into the atmosphere which is above the limits set by law;
   ii) any discovered pollution, contamination or any discovered hazardous or dangerous substance;
   iii) non compliance with the Environmental Law;
   iv) an “emergency incident” as defined by the National Water Act, Act 36 of 1998 or the National Environmental Management Act, Act 107 of 1998; or
   iv) an environmentally related complaint received from any person.

1. GENERAL PROVISIONS …/continued

1.1.20 ‘Final Certificate’ means the certificate issued by the Employer’s Representative to the Contractor when the Contractor has completed its obligations in terms of the Contract;

1.1.21 ‘Intellectual Property Rights’ means any know how, inventions, discoveries, innovations, technical information and data, prototypes, processes, improvements, design rights, patent rights, circuitry, drawings, plans, specifications, copyright, trade mark rights;


1.1.23 ‘Mini Environmental Impact Assessment’ means a report describing the impacts that may result from the execution and completion of the Works, and will include, as a minimum, a brief description of the Works, a brief description of how the environment may be affected, and a description of how the execution and completion of the Works will be managed to mitigate, minimise and/or prevent the identified impacts on the environment;

1.1.24 ‘MHSA’ means the Mine Health and Safety Act, Act 29 of 1996 and the Regulations framed thereunder;

1.1.25 ‘MPRDA’ means the Mineral and Petroleum Resources Development Act, Act 28 of 2002 as amended and the Regulations framed thereunder;

1.1.26 ‘Nominated Subcontractor’ means any corporate body, partnership or person who is nominated by the Employer’s Representative to provide defined Works on behalf of the Contractor in terms of the Contract;

1.1.27 ‘Party’ means the Employer or the Contractor, as the context requires;

1.1.28 ‘Performance Guarantee’ means the Demand Bond or Performance Bond which the Contractor is required to submit to the Employer for the due and faithful performance of its obligations under the Contract;

1.1.29 ‘Plant’ means all machinery, equipment, apparatus, materials, articles and any other things of whatsoever nature to be incorporated in the Works by the Contractor;

1.1.30 ‘Programme’ means a schedule of planned activities directly linked to measurable time scales, dates and/or events for the duration of the Contract;

1.1.31 ‘Responsible Person’ means the site agent, an employee of the Contractor who is trained and competent in all aspects of the Works;

1.1.32 ‘Schedule of Prices’ means the schedule of prices listed in the Contract;

1.1.33 ‘Section’ means a part of the Works specifically identified in the Contract as a section;

1.1.34 ‘Site’ means the lands and places as designated in the Contract as forming part of the Site, places on, under, in or through which the Works are to be provided, together with any other lands or places, including ways of access, provided by the Employer for the purposes of the Contract;

1.1.35 ‘Specification’ means the document entitled specification, as included in the Contract, and any additions and modifications to the specifications in accordance with the Contract;
1. GENERAL PROVISIONS …/continued

1.1.36 ‘Subcontract’ means any agreement made between any corporate body, trading trust, partnership or person and the Contractor for the execution of any part of the Contract and which has been approved by the Commercial Manager in terms of clause 1.3.2 below;

1.1.37 ‘Subcontractor’ means any corporate body, trading trust, partnership or person (other than the Contractor) to which or to whom any part of the Contract has been sub-let and which has been approved by the Commercial Manager in terms of clause 1.3.2 below;

1.1.38 ‘Taking Over Certificate’ means the certificate issued by the Employer to the Contractor signifying that the Works or section thereof as the case may be, have been taken over by the Employer;

1.1.39 ‘Tax Invoice’ means a document provided in accordance with Section 20 of the Value Added Tax Act, Act 89 of 1991, as amended;

1.1.40 ‘Technical Information’ means all drawings, diagrams, calculations, designs, specifications and other information provided in Writing by the Employer to the Contractor in relation to the Works;

1.1.41 ‘Temporary Works’ means all works subsidiary to and necessary to carry out the Works;

1.1.42 ‘Tender’ means the Contractor’s priced offer to the Employer for the execution of the Works;

1.1.43 ‘Termination Date’ means the date on which, work on the Contract ceases, and/or the date on which the Contractor receives the Final Certificate, whichever is the later date;

1.1.44 ‘Tests on Completion’ means the tests specified in the Contract or otherwise agreed by both parties in writing to be performed before the Works or a Section (as the case may be) are taken over by the Employer;

1.1.45 ‘Time for Completion’ means the time for completing the Works or a Section as the case may be with any extension of time granted, calculated from the Commencement Date;

1.1.46 ‘Value Added Tax’ means the tax to be levied in terms of the Value Added Tax Act, Act 89 of 1991, as amended;

1.1.47 ‘Variation’ means a variation to the Contract, including the Works, Time for Completion and the Contract Price, issued by the Commercial Manager under clause 12;

1.1.48 ‘Works’ means all that is to be permanently supplied and/or work to be performed in terms of the Contract;

1.1.49 ‘Writing’ means any manuscript, or printed statement signed by an authorised representative of either the Employer or the Contractor and any telex, e-mail or telefaxed message or telegram from one party to the other and written shall have the corresponding meaning.
1. GENERAL PROVISIONS …/continued

1.2 Interpretations

1.2.1 Persons

Words importing persons or parties shall mean and include not only natural person but any corporate body or partnership.

1.2.2 Singular and plural

Words importing the singular only shall also include the plural and vice versa where the context so requires.

1.2.3 Clause headings

Clause headings shall not be deemed part of the Contract and shall not be taken into consideration in the interpretation or construction of the Contract.

1.2.4 Documents mutually explanatory

The several documents forming the Contract shall be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be explained and adjusted by the Commercial Manager who shall thereupon issue to the Contractor instructions on the priority of the documents forming the Contract.

1.2.5 Gender

Words importing the male shall also include the female and vice versa where the context so requires.

1.2.6 Language

The Contract including all Documentation, Technical Information and correspondence shall be drawn up, construed and interpreted in English.

1.2.7 Units of measurement

The System International d'Units (S.I.) system of quantities and units of measurement shall apply.

1.2.8 Statutes

Any reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or provision and shall include that statute or provision as modified, substituted or re-enacted from time to time.

1.2.9 Days

Reference to a day is a reference to any day excluding Saturday, Sunday and a Public Holiday in the Republic of South Africa.

When any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day.
1. **GENERAL PROVISIONS .../continued**

1.2.10 **Rule of Interpretation**

The rule of interpretation that a written agreement shall be interpreted against the Party responsible for the drafting or preparation of that agreement shall not apply.

The *eiusdem generis* rule shall not apply and accordingly, whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned.

1.3 **Assignment and Subcontracting and Prohibition of Cession of Book Debts**

1.3.1 **Assignment**

The Contractor shall not cede, assign or transfer the Contract or any part thereof or any benefits or obligations thereof to any other person except with the prior written consent of the Commercial Manager.

1.3.2 **Subcontracting**

The Contractor shall not subcontract the whole of the Contract. Except where otherwise provided for in the Contract, the Contractor shall not subcontract any part of the Contract without the prior written consent of the Commercial Manager (which consent shall not be unreasonably withheld).

The Contractor shall be responsible for the acts, errors, omissions, defaults and neglects of any Subcontractor, its agents, representatives or employees as fully as if they were the acts, errors, omissions; defaults or neglects of the Contractor, its agents, representatives or employees.

1.3.3 **Prohibition of Cession of Book Debts**

The Contractor shall not during the currency of the Contract cede or transfer to any person its right, title and interest in and to any existing or future book debts of its business, except with the prior consent, in Writing, of the Commercial Manager.

The Contractor shall notify the Commercial Manager at the time of tender of the existence of any cession of book debts and whether such cession is in respect of existing book debts or future book debts or both.

Should the Contractor fail to comply with the above provisions the Employer shall be at liberty to terminate the Contract.

1.4 **Set off monies due from the Contractor**

Any costs, damages or expenses for which the Contractor is liable to the Employer, may be set-off or deducted, by the Employer from any monies due or becoming due to the Contractor as a result of its business dealings with the Employer, or may be recovered by action at law from the Contractor.

1.5 **Ethical standards**

In acceptance of the Contract the Contractor undertakes to act only on the basis of utmost good faith and trust in the execution thereof. Should the Contractor commit an act which may compromise the ethical relationships between the Contractor and Employer, in terms of this or other contracts, or which is contrary to standard business practices, then the Employer shall have the power at its discretion to terminate the Contract immediately by giving notice to that effect to the Contractor.
1. GENERAL PROVISIONS …/continued

1.6 Right to audit

The Employer shall have the right to appoint an auditor, being either an independent auditing firm or the Employer’s Internal Auditing Department, (the Auditing Authority) to audit the Contractor’s records specifically relating to the Contract.

The auditor shall give the Contractor notice of its intention to conduct an audit, and the Contractor shall assist and co-operate with the auditor.

The cost of any such audit shall be for the Employer’s account.

1.7 Joint and several liability

If the Contractor constitutes under applicable laws a joint venture, consortium or other unincorporated grouping of two or more persons:

1.7.1 These persons shall be deemed to be jointly and severally liable to the Employer for the performance of the Contract;

1.7.2 The persons shall notify the Employer of their representative who shall have the authority to bind the Contractor and each of the joint venture parties or grouping of persons; and

1.7.3 The Contractor shall not alter its composition or legal status in a manner that materially affects the Contract without the prior Written consent of the Employer. If the Contractor makes any non-material changes, the Contractor shall ensure that it remains able to carry out its obligations in terms of the Contract.

2. THE EMPLOYER

2.1 Environmental assessments and access to and possession of Site

2.1.1 Employer shall within (seven) 7 days the date specified in the special conditions in the Contract, unless otherwise agreed in the Contract, grant the Contractor, access to and possession of the Site, which may, however, not be exclusive to the Contractor. The Employer shall to the extent stated in the Contract provide means of access for the delivery of all Plant and Contractor’s Equipment to the Site. However, if it is necessary for the Contractor to make any temporary modification, reinforcement or diversion of any fences, roads, railways, service lines, etc., in order to execute the Works, the costs of such modification, reinforcement or diversion and any necessary reinstatement of fences, roads, railways, service lines, etc., shall be borne in full by the Contractor.

2.1.2 If required by law, the Contractor shall conduct or appoint a person approved by the Employer to conduct an Environmental Impact Assessment, and shall obtain authorisation from the relevant authority for the activity for which the Environmental Impact Assessment is required on conditions accepted in writing by the Employer prior to taking possession of or setting up the Site or execution of the Works. The costs of conducting the Environmental Impact Assessment will be borne by the Contractor.

2.1.3 If the Contractor is not required to conduct an Environmental Impact Assessment by law then the Contractor shall conduct a Mini Environmental Impact Assessment, to the Employer’s satisfaction, prior to taking possession of or setting up the Site or execution of the Works. The costs of conducting the Mini Environmental Impact Assessment will be borne by the Contractor.
2. THE EMPLOYER  …/continued

2.1.4 The Contractor will compile an environmental management plan, to the Employer’s satisfaction based upon the findings of the Environmental Impact Assessment or Mini Environmental Impact Assessment, as the case may be. The Contractor shall comply with the environmental management plan and any conditions imposed by the relevant authority in its authorisation of any activity for which an Environmental Impact Assessment was required.

2.1.5 If the Contract requires the Employer to provide any building, structure, foundation or approach to the Contractor, such building, structure, foundation or approach shall be in a condition suitable for the purpose for which it is intended, in sizes and mass as specified by the Contractor and agreed to by the Employer’s Representative in Writing.

2.1.6 During the execution of the Works no persons other than the employees of the Contractor, Sub contractors, shall be allowed on the Site, except with the written consent of the Employer’s Representative. However, access and facilities to inspect the Works shall at all times be afforded to the Employer’s Representative.

2.1.7 The access to and possession of the Site referred to in this clause shall not be exclusive to the Contractor, but only such as is necessary to enable it to execute the Works. The Contractor shall, in accordance with the instruction of the Employer’s Representative, afford to all other contractors engaged by the Employer to work on the Site and all other persons lawfully upon the Site, all reasonable opportunities for carrying out their work provided that this does not obstruct or disturb the progress of the Works. The Contractor shall also afford such opportunities to the employees of the Employer.

2.1.8 The Site and any area and/or accommodation allocated to the Contractor by the Employer is to be used exclusively for the execution of the Works. The Contractor is not permitted to conduct any business other than in connection with the Contract on the Site.

2.2 The Employer’s Representative

2.2.1 The Employer’s Representative shall carry out the duties assigned to him in the Contract.

2.2.2 The Employer’s Representative shall, from time to time, assign duties and delegate the necessary authority to assistants, and may also revoke such assignment or delegation. The assignment, delegation or revocation shall be in Writing and shall not take effect until both parties have received copies of any such assignment or delegation by the Employer’s Representative. The assistants shall be suitably qualified persons, who are competent to carry out the assigned duties and exercise the delegated authority. The Contractor shall proceed with the Works in accordance with orders given in Writing by the Employer’s Representative.

2.3 Accommodation and Messing

Unless otherwise stated in the Contract the Employer shall not provide any accommodation or messing facilities for the Contractor’s employees. All accommodation and messing facilities shall be arranged and provided by the Contractor at its sole cost.
3. THE CONTRACTOR

3.1 The Contractor’s General Obligations

The Contractor shall, with due care and diligence, execute and complete the Works and remedy any defects therein in accordance with the provisions of the Contract to the satisfaction of the Employer. When complete, the Works shall be fit for the purpose for which the Works are intended as defined in the Contract.

3.1.1 The Contractor shall provide all superintendence, labour, materials, Plant, Contractor’s Equipment and all other things, whether of a temporary or permanent nature, required for the execution, completion and remedying of any defects in terms of the Contract, to the sole satisfaction of the Employer.

3.1.2 The Contractor shall give prompt Written notice to the Employer’s Representative, of any error, omission, fault or other defects in the Specification for the Works, which he discovers when reviewing the Contract Documents or executing the Works. The Works shall include any work which is necessary to satisfy the Employer’s requirements or is implied by the Contract and all works which, although not mentioned in the Contract, are necessary for stability or for the completion or safe and proper and environmentally sound operation of the Works.

3.1.3 The Contractor shall be responsible for the adequacy, stability and safety of all Site operation and methods of construction and of all the Works. The Contractor shall, whenever required by the Employer, submit details of the arrangements and methods which the Contractor proposes to adopt for the execution of the Works. No significant alterations to these arrangements and methods shall be made without the Employer having been previously notified in writing by the Contractor.

3.2 Performance Guarantee

3.2.1 If required under the Contract, the Contractor shall provide, within 14 days of notification of award of Contract, a Performance Guarantee in accordance with the Employer’s standard (a copy of which is enclosed) from an approved Bank or insurance company. The institution providing such security shall be subject to the approval of the Employer.

3.2.2 Failure to present the required Performance Guarantee shall result in the Contractor being prevented from proceeding with the Works or receiving payment for any work executed until the Performance Guarantee is received by and approved by the Employer’s Representative. Failure by the Contractor to provide the Employer with the Performance Guarantee shall give the Employer the right to terminate the Contract with immediate effect.

3.2.3 The cost of any delays occasioned by the Contractor’s failure to obtain the Performance Guarantee shall be for the Contractor’s own account and the Employer shall refuse to grant to the Contractor any extension of time for the completions of the Works as a result of such delay.

3.2.4 The costs of complying with the requirements of this Clause shall be borne by the Contractor, unless the Contract otherwise provides.

3.2.5 The Performance Guarantee shall be valid until the Contractor has executed and completed the Works and remedied any defects therein in accordance with the Contract. The Performance Guarantee shall thereupon, at the request of the Contractor, be returned to the Contractor. Should execution or completion in respect of the whole or any part of the Works be delayed due to reasons attributable to the Employer, the Employer shall be responsible for the cost of maintaining the Performance Guarantee beyond the time when such Performance Guarantee should have been returned. No claim shall be made against such security after the issue of the Final Certificate and such Performance Guarantee shall be returned to the Contractor on request.
3. THE CONTRACTOR.../continued

3.2.6 Prior to making a claim under the Performance Guarantee the Employer shall, in every case, notify the Contractor stating the nature of the default in respect of which the claim is to be made.

3.3 Contractor’s Representative

3.3.1 The Contractor shall employ a competent representative to superintend the carrying out of the Works on the Site and shall give him all authority to act on the Contractor's behalf under the Contract. Their names and addresses shall be communicated in Writing to the Employer before work on the Site begins together with a clear definition of the scope of his authority to represent and act for the Contractor and shall specify any and all limitations of such authority.

3.3.2 Any instruction or notice, which the Employer’s Representative gives to the Contractor’s Representative, shall be deemed to have been given to the Contractor.

3.3.3 The Contractor shall upon the Employer’s Representatives written instruction, remove from the Works any person employed by him in the execution of the Works, who misconducts himself or is incompetent or negligent.

3.3.4 The Contractor’s Representative may be appointed as a ‘Subordinate Manager’ for the purposes of the MPRDA and MHSA and shall be present on the Site during working hours. If the Contractor’s Representative has to be absent from the Site for a period in excess of 24 hours, an alternative representative must be appointed by the Contractor for the duration of that period. The Contractor may not revoke the appointment of its Representative or appoint a replacement without the prior written consent of the Employer.

3.3.5 Prior to the commencement of work on Site the Contractor’s Representative shall report to the Employer’s Representative.

3.3.6 On the completion of the Works and prior to leaving Site the Contractor’s Representative shall obtain a Taking Over Certificate from the Employer’s Representative, stating the Works is complete and satisfactory and the Site has been cleaned and the necessary environmental clean up and rehabilitation has been completed.

3.4 Setting Out

The Contractor shall be responsible for ensuring that the alignment and/or measurement of the Works, notwithstanding any assistance the Contractor may have received from the Employer, is correct before commencing with the Works. The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract Documents. If, at any time during the execution of the Works, any error appears in the positions, levels, dimensions or alignment of the Works, the Contractor shall rectify the error at its own cost unless the error results from incorrect information provided in writing by the Employer, or from default of another contractor in which case the cost shall be borne by the Employer.

The checking of any setting-out by the Employer shall not relieve the Contractor of its responsibility for the accuracy thereof. The Contractor shall protect and preserve all points, lines and levels of reference.

The Employer shall not be held responsible for any delays or costs incurred by the Contractor due to any incorrect alignment and/or measurement of the Works.
3. THE CONTRACTOR .../continued

3.5 Safety Procedures

3.5.1 The Contractor shall observe all applicable laws and regulations, including Employer’s procedures, regarding safety on the Site.

3.5.2 Unless otherwise agreed, the Contractor shall from the commencement of work on Site until issue of the Taking Over Certificate, provide and maintain:

3.5.2.1 all Temporary works (including roadways, footways, guards and fences), which may be necessary due to the execution of the Works, for the use and protection of the public and of owners and occupiers of adjacent land;

3.5.2.2 all fencing, lighting, guarding, warning signs and watching of the Works, when and where necessary or required by the Employer or any duly constituted authority, for the protection of the Works or for the safety and convenience of the public or others until completion and taking over by the Employer;

3.5.3 Unless otherwise agreed, the Contractor shall from the commencement of work on Site until taking over;

3.5.3.1 have full regard for the safety of all persons entitled to be on the Site; and

3.5.3.2 use reasonable efforts to keep the Site and Works clear of all unnecessary obstructions so as to avoid danger to these persons.

3.6 Site Data

The Employer shall make available to the Contractor for its information all relevant data and information in its possession applicable to the Site, including all necessary environmental data and information. The Contractor shall be responsible for verifying the accuracy, sufficiency and completeness of such data.

3.7 Sufficiency of Contract Price

3.7.1 The Contractor shall be deemed to have satisfied itself of and taken account of in its Tender:

i) all the conditions and circumstances affecting the Contract, including the Contract Price;

ii) the carrying out of the Works as described in the Contract;

iii) the general conditions and circumstances at the Site (if access had been made available to it) and the cost of conducting any environmental management in accordance with the environmental management plan referred to in clause 2.1.3, any environmental clean up at any time, any remediation and rehabilitation of the Site and the surrounding areas resulting from the carrying out of the Works and any Environmental Incident; and

3.7.2 The Contractor shall not be responsible for the accuracy of the information given in writing by the Employer but shall be responsible for its interpretation of information received from whatever source.
3. THE CONTRACTOR …/continued

3.7.3 Except as otherwise provided in the Contract:

i) The Contractor shall be deemed to have obtained all necessary information as to risks, remediation work, defects, contingencies and other circumstances which may influence or affect the Works;

ii) By signing the Contract, the Contractor accepts total responsibility for having foreseen all difficulties (excluding unreasonable difficulties as provided for in Clause 3.8.1 below) and costs of successfully completing the Works, including any rehabilitation or cleaning up of environmental pollution; and

iii) The Contract Price shall not be adjusted to take account of any unforeseen difficulties or costs. The Contract Price shall be deemed to include all items necessary to complete the Works in accordance with the requirements of the Employer’s Representative and the Specification, and the Contract Price shall be deemed to include all the Contractor’s activities, costs and profits.

3.8 Physical Obstructions and Conditions

3.8.1 If during the execution of the Works on Site the Contractor encounters physical obstructions or conditions of the kind, which could not have been reasonably foreseen by the Contractor in its capacity as a reasonable expert, the Contractor shall, be entitled, at the Employer’s approval, which shall not be unreasonably withheld to recover the additional costs reasonably incurred in consequence, including the extension of Time for Completion, from the Employer.

3.8.2 The Employer’s Representative and the Commercial Manager shall certify and there shall be added to the Contract Price by means of a Variation to the Works, as detailed in Clause 12 hereof, the additional costs so incurred:

3.9 Construction programme to be furnished

The Contractor shall submit a detailed programme, as agreed to at the time of the award, in Writing to the Employer’s Representative within 10 (ten) days after receiving the notice to commence with the Works for his approval, which shall contain the following information:

3.9.1 the order in which the Contractor proposes to carry out the Works, including the anticipated timing of each stage of design (if any), the Contractor’s Documents, procurement, manufacture of Plant, delivery to Site, construction, erection and testing;

3.9.2 details of each of the stages to be undertaken by the nominated Sub-Contractor/s;

3.9.3 the sequence and timing of inspections and tests specified in the Contract, and

3.9.4 a supporting report which includes:

3.9.4.1 a general description of the methods which the Contractor intends to adopt in each of the major stages in the execution of the Works, and
3. THE CONTRACTOR …/continued

3.9.4.2 details showing the Contractor’s reasonable estimate of the number of each class of Contractor’s Personnel and of each type of Contractor’s equipment, required on the Site for each major stage.

3.9.5 Unless the Employer’s Representative, after receiving the programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to all its other obligations under the Contract. The programme shall be binding upon the Contractor.

3.10 Revised Programme

Should the Employer’s Representative give notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or is inconsistent with actual progress and/or the Contractor’s stated intentions, the Contractor shall submit a revised program for approval to the Employer’s Representative in accordance with this clause.

3.11 Quality Assurance System

The Contractor shall institute a quality assurance system (“QAS”) to demonstrate compliance with the requirements of the Contract. The QAS must be in accordance with the details of the Contract and the Employer shall be entitled to audit the QAS at any time during the currency of the Contractor ensure compliance. However, compliance with the QAS shall not relieve the Contractor of any of its duties, obligations and responsibilities under the Contract.

3.12 Work to be in accordance with Contract

Unless it is legally or physically impossible, the Contractor shall execute and complete the Works and remedy any defects therein in strict compliance with the Contract and to the satisfaction of the Employer’s Representative. The Contractor shall comply with and adhere strictly to the Employer’s Representatives instructions on any matter, whether mentioned in the Contract or not, concerning the Works. The Contractor shall take instructions only from the Employer’s Representative.

3.13 Daily Record Book

The Contractor is required to keep a Daily Record Book in which a record of events is to be entered on a daily basis. A duplicate of the Daily Record Book is to be submitted to the Employer’s Representative for signature every twenty-four (24) hours.

The Employer's Representative signature on the Daily Record Book shall, however, indicate acknowledgement only of such daily record and shall not be construed as acceptance of the contents of such record.

3.14 Site Meetings

3.14.1 Regular Site meetings shall be held during the period of Contract at times and dates to be agreed between the Parties. The Contractor shall ensure that one or more senior representatives of the Contractor are present at such meetings, having the necessary authority to make decisions on the Contractor’s behalf. In addition the Contractor must ensure that it represents all its sub-contractors.

3.14.2 Minutes of any Site meeting will not be deemed to serve as notice for or an instruction to commence any additional work and/or notice of claims.
3. THE CONTRACTOR …/continued

3.14.3 In the event that meetings are held between the Contractor and any of its Subcontractors regarding matters arising from the Contract then the Employer shall be given the opportunity to attend. To this end the Contractor shall give to the Employer a minimum of twenty-four (24) hours prior notice of such meetings.

3.15 Employer’s Standards

All Works shall be strictly in accordance with the relevant Employer’s Standards, Codes of Practice and Procedures and the onus is on the Contractor to familiarise itself fully with the Employer’s Standards.

The Contractor shall be held liable for any and all errors and/or omissions due to its failure to adhere to the Employer’s Standards.

3.16 Electricity, water and compressed air

3.16.1 The Contractor shall, except as stated below, be responsible for the provision of all power, water and other services it may require.

3.16.2 The Contractor, by arrangement with the Employer’s Representative, and at its cost shall be entitled to use, for the purposes of the Works, such supplies of electricity, water and compressed air as may be ordinarily available on the Site and of which details and prices are given in the Specification. The Employer shall be responsible for providing a point of supply to the Contractor. The Contractor shall at its risk and cost, provide any apparatus necessary for its use of these services, including any cost in connecting to the Employers point of supply, and for the measuring of the quantities consumed and shall not make any direct connection to the Employer’s reticulation.

3.16.3 The Contractor shall ensure that the quantities so used are reasonable and do not interfere with the running or maintenance of other installations belonging to the Employer or others upon or adjacent to or in proximity to the Site. No guarantee of uninterrupted or fluctuating supply shall be given by the Employer and neither the Employer nor the Employer’s Representative shall be held liable for any consequences, damages (whether direct or indirect), costs or delays incurred by the Contractor as a result of any such interruption or fluctuations to the services detailed herein.

3.17 Telephones

The Employer will not supply telephones on Site to the Contractor and as such the Contractor shall make its own arrangements for this service at its sole cost.

3.18 Cranes

Unless otherwise stated in the Contract, the use of the Employer’s cranes by the Contractor will not be permitted.
3. THE CONTRACTOR …/continued

3.19 Transport

Unless otherwise stated in the Contract:

3.19.1 Surface transport

The Contractor shall provide all necessary surface transport for its employees, materials, Plant and Contractor’s Equipment. The Contractor shall comply with all the relevant laws, including Environmental Law, as well as the Employer’s Standards relating to the transportation of employees, materials, Plant and Contractor’s Equipment.

3.19.2 Underground transport

The Employer shall provide transport from a designated point in the shaft bank area to the appropriate underground station. Such transport shall be requested by the Contractor in Writing a minimum of seven (7) days prior to being required by the Contractor. The Employer’s Representative shall confirm the arrangements not less than two (2) days prior to being required. The Contractor shall be responsible for receiving all items being transported at the underground station, and the underground transport from the station to the place of work. The Contractor shall, further, provide all labour necessary for the loading of materials, Plant and Contractor’s Equipment into the transport device and subsequent unloading thereof.

3.20 Raw materials, utilities and effluents

The Employer shall provide or terminate, whatever shall be the case, from dates and at points on the battery limits agreed between the Contractor and the Employer’s Representative supplies of the raw materials and utilities required for the commissioning, testing and operating of the Works, and unless agreed to otherwise in Writing, the Contractor shall be responsible for the disposal, from agreed points on the battery limits, of all products, by-products and effluents produced by the Works. The Contractor shall be responsible for making the necessary connections or disconnection’s to the points of supply and disposal to the approval of the Employer’s Representative. Notwithstanding any such approval or otherwise by the Employer’s Representative, the Contractor shall be responsible for ensuring that such connections are suitable for the purpose of the Works.

3.21 Control of Contractor’s Equipment

3.21.1 All Contractor’s Equipment, including any Temporary Works and temporary buildings as referred to herein, brought onto the Site for the purposes of the Works shall be under the control of the Employer’s Representative and shall be subject to the following provisions:-

3.21.1.1 Contractor’s Equipment shall remain on Site and be used by the Contractor or, should the Contract or any part of it be terminated for reasons other than default on the part of the Employer, by the Employer or such other contractors or persons as may be engaged by the Employer to complete the Works. It shall be used solely for the purpose of the Works and shall not, without the prior consent in Writing of the Employer’s Representative, be taken from the Site whilst it is required for the purpose of the Works; and
3. **THE CONTRACTOR …/continued**

3.21.1.2 The following provisions shall apply to any Contractor's Equipment which is hired, leased or the subject of a hire purchase agreement:

(i) Details of all Contractor's Equipment which is brought on to the Site by or on behalf of the Contractor for the purpose of the Works and which is hired, leased or the subject of hire purchase agreements together with the names of the hirers, lessors or owners thereof shall be supplied to the Commercial Manager by the Contractor.

(ii) The Employer may, in order to avoid seizure by the hirer, owner or lessor, at the Employer's option, pay to such hirer, owner or lessor the amount of any overdue instalment or other sum payable under the agreement for hire, lease or hire purchase and, in the event of doing so, any amount so paid by the Employer shall be a debt due from the Contractor to the Employer and may be deducted by the Employer from any monies due or that may become due to the Contractor in terms of the Contract or may be recovered by the Employer from the Contractor at law.

3.21.1.3 the Contractor shall, when entering into any sub-contract for the execution of any part of the Works, incorporate in such sub-contract the abovementioned provisions in relation to the Contractor's Equipment brought onto the Site by the Sub-contractor.

3.22 **Contractors Equipment, Temporary Works and Materials**

All the Contractors equipment, Temporary Works and materials provided by the Contractor shall, when brought onto the Site, be deemed to be exclusively intended for the execution of the Works and the Contractor shall not remove same or any parts thereof, except for the purpose of moving it from one part of the Site to another, without the prior Written consent of the Employer. Provided that the consent shall not be required for vehicles engaged in transporting any staff, labour, Contractors equipment, Temporary Works, Plant or materials to or from the Site.

Notwithstanding the above, the risk of loss of or damage to the Contractors equipment, Temporary Works and materials provided by the Contractor shall remain with the Contractor until the Works are taken over by the Employer and the Final Certificate is issued to the Contractor.

3.23 **Existing Services and/or Co-ordination of other Services**

The Contractor shall at all times maintain services and access ways. The Contractor shall, prior to commencement of work, obtain from the Employer's Representative either a layout of the existing services or a certificate of clearance that the Contractor may proceed with work in an affected area. The Contractor shall be liable for any damages incurred by the Employer due to the Contractor's non-compliance with the above. Where applicable, the Contractor shall familiarise itself with shaft times, rules and regulations.

All work entailing interruption of activities of operating installations shall only be carried out following agreement with the Employer's Representative as to the sequence and timing of such work.
3. THE CONTRACTOR …/continued

The Contractor shall give the Employer seven (7) days notice, in Writing, of any equipment that is to be transported underground and/or is to be provided by the Employer in terms of the Contract.

3.24 Articles of value or antiquity

All fossils, coins, articles of value or antiquity and structures and other remains or items of geological or archaeological interest discovered on the Site, shall, subject to the provisions of the National Heritage Resources Act, Act 25 of 1999, be the absolute property of the Employer and must immediately be placed under the care and authority of the Employer.

The Contractor shall take reasonable precautions to prevent its workmen or any other person from removing or damaging any such findings. Should the Contractor discover graves on the Site it will not destroy, damage, alter, exhume or remove the graves from their original position without the relevant legal authority.

The Contractor shall carry out the Employer’s Representative’s instructions as to the action to be taken.

Any actions taken shall be in accordance with the requirements of the National Heritage Resources Act, Act 25 of 1999, and the regulations framed thereunder and any other relevant law or regulation. If the Contractor suffers delay and or incurs costs from complying with the Employer’s instructions in terms of this clause, the Contractor shall give a further notice to the Employer and shall be entitled to any reasonable costs and extension of time so incurred and approved by the Employer’s Representative in Writing.

3.25 Preparation of the Site

The Contractor shall inspect and approve the Site where the Contractor's Equipment is to be erected to ensure that the space provided is adequate and safe for the Contractor's Equipment to be installed and operated.

The Employer will, where applicable for drilling purposes, provide the necessary concrete pad or foundation for the Contractor's Equipment. However, it will be the Contractor's obligation to provide the Employer's Representative with detailed drawings of the pad or foundation required at least fourteen (14) days prior to commencing operations on Site. Furthermore the Contractor shall provide the Employer's Representative with the Contractor's Equipment base frame, where applicable, at least four (4) days prior to commencing operations on Site. In the event that the Contractor is delayed from commencing operations on Site due to its non-compliance with the requirements of this clause, it shall not be entitled to claim any additional costs, nor shall it be granted an extension of time to complete the Works.

The Employer shall provide basic set out points. Thereafter, the Contractor shall be responsible for ensuring that the alignment of the Works is correct before commencing with the Works. The Employer shall not be held responsible for any delays or costs incurred by the Contractor due to incorrect alignment.

3.26 Contractor's Equipment

Unless otherwise provided in the Contract, the Contractor shall:

3.26.1 provide all Contractor’s Equipment necessary to complete the Works;

3.26.2 ensure that all the Contractor's Equipment shall, when brought on to the Site, be exclusively intended for the execution of the Works. The Contractor shall not remove from the Site any such equipment except:
3. THE CONTRACTOR …/continued

3.26.2.1 when it is no longer required for the completion of the Works; or

3.26.2.2 when the Employer’s Representative has given his Written consent to remove the Equipment; or

3.26.2.3 when the Employer’s Representative instructs in Writing that it be removed.

3.27 Security of the Site

Unless otherwise stated:

3.27.1 the Contractor shall be responsible for keeping unauthorised persons off the Site; and

3.27.2 authorised personnel shall be limited to the Contractor’s personnel and the Employer’s personnel; and

The Employer shall notify the Contractor of any other authorised personnel entitled to be on the Site, including the Employer’s other contractors on Site.

3.28 Contractor’s Operations on Site

3.28.1 The Contractor shall confine its operations to the Site, and to any additional working areas, which may be obtained by the Contractor and agreed to by the Employer’s Representative as working areas. The Contractor shall keep the Contractor’s Equipment and the Contractor’s Personnel on the Site and any approved additional working areas and shall keep Contractors Equipment and Personnel off any adjacent land. The approved additional working areas will be considered part of the Site for purposes of this Contract.

3.28.2 During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall lawfully store or dispose of any Contractor’s Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and temporary Works, which are no longer required.

3.28.3 Upon the issue of a Taking Over Certificate, the Contractor shall clear away and remove from that part of the Site and Works, to which the Taking Over Certificate relates, all the Contractor’s Equipment, surplus materials, wreckage, rubbish and Temporary Works or any other materials or equipment the Employer requires the Contractor to remove. The Contractor shall leave the Site in a clean and safe condition and shall conduct an environmental clean up and rehabilitation of the Site and any other areas affected by the Works in terms of the Environmental Law, the environmental management plan referred to in clause 0. The Contractor’s obligation to clean up and leave the Site in a safe condition shall be subject to the approval of the Employer. If the area affected by the Contractor is not included in the environmental management plan, then the Contractor must clean up and rehabilitate the affected area to the Employer’s satisfaction. However, the Contractor may retain on site, during the defects notification period such goods as are required for the Contractor to fulfill its obligations under the Contract.
3. THE CONTRACTOR …/continued

3.29 Use of Hand Held and Welding Machines

The Contractor shall familiarise itself with the Employer’s Standards relating to the use of hand held machines and welding machines.

The Contractor shall be held liable for any errors or omissions due to its failure to adhere to such rules.

3.30 Methane Safety Requirements

The Contractor shall at all times and at its sole cost ensure that all of its employees working underground are at all times:

3.30.1 trained in and comply with all statutes, rules and regulations of the Employer regarding Methane Safety and other inflammable gas safety;

3.30.2 in possession of a valid “Competence Certificate”; and

3.30.3 in possession of a valid “Methane Certificate”.

The Employer shall provide the necessary training facilities to the Contractor in terms of this clause, the cost of which shall be for the Contractor’s account.

3.31 Storage and Handling of Inflammable Materials

The Contractor shall provide a secure, proper area, approved by the Employer for the storage of all inflammable materials. Pressed gas cylinders shall be handled by means of cradles or containers approved by the Employer’s Representative and the use of rope or cable slings shall not be permitted.

The Contractor shall have available and maintain during the period of the Contract suitable and adequate fire-fighting equipment as specified in the MPRDA, MHSA and the Employer’s internal Practices and Procedures in all areas where it may create a fire hazard.

4. NOMINATED SUB-CONTRACTORS

4.1 The Contractor shall not sub-contract the whole of the Works.

4.2 In this Clause 4 Nominated Sub-Contractor means a Sub-Contractor whom the Employer instructs the Contractor to employ as a Sub-Contractor to carry out certain of the Works.

4.3 Subject to the provisions of this clause, the Contractor shall not be under any obligation to employ a Nominated Sub-Contractor against whom the Contractor may raise reasonable objection, by giving notice to the Employer’s Representative as soon as is reasonably possible setting out the grounds as to why the Contractor objects to the Nominated Sub-Contractor, together with supporting documentation. The Employer’s Representative shall determine, in his sole and unfettered discretion, whether any such objection by the Contractor is reasonable. The decision of the Employer’s Representative shall be final and binding on the Contractor.

4.4 In the event that the Employer’s Representative rejects the objection, the Contractor shall engage the Nominated Sub-contractor on such terms and conditions as may be determined by the Employer’s Representative.
4. NOMINATED SUB-CONTRACTORS  .../continued

4.5 The Contractor shall be responsible for the acts or defaults of all Nominated Sub-Contractors, other Sub-Contractors, agent and employees as if they were the acts or default of the Contractor. All Nominated Contractors, other contractors and agents of the Contractor shall for the purpose of the Contract be deemed to be employees of the Contractor.

5. STAFF AND LABOUR

5.1 Engagement of staff and labour

The Contractor shall make its own arrangements for the engagement and employment of all staff, local or otherwise, and for their payment, housing, meals and transport.

5.2 Labour Laws

The Contractor shall comply with all the relevant labour laws applicable to the Contractor’s Personnel, including laws relating to their employment, health and safety, welfare, immigration and emigration and shall allow them all their legal rights.

The Contractor will be required to submit proof of compliance and/or registration, including proof of payment of levies, in terms of the following Acts, in respect of category 3 – 8 employees, within a period of 14 (fourteen) days of receipt of the Contract document, failing which the Contract can be cancelled:

- Basic Conditions of Employment Act, Act 75 of 1997;
- Unemployment Insurance Act, Act 63 of 2001;
- Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993; and
- Occupational Diseases in Mines and Works Act, Act 78 of 1973

The Contractor shall require its employees to obey all applicable laws including but not limited to those concerning safety at work.

Should the Contractor and/or any of the Contractor’s employees not comply with any of the Employer’s policies or procedures or any applicable Legislation with regards to health, safety and labour requirements, then the Contractor shall pay the sum of R5 000.00 (Five Thousand Rand) per incident in which such non-compliance occurs.

5.3 Persons in the service of others

Neither the Contractor nor the Employer shall recruit, or attempt to recruit staff and labour from each other for the duration of the Contract.

5.4 Foreign Staff

The Contractor may import any personnel necessary for the execution of the Works. The Contractor must ensure that these personnel are provided with the required residence visas and work permits. The Contractor shall be responsible for the return to the place where they were recruited or to their country of domicile. In the event of the death in South Africa of any of these personnel or members of their families, the Contractor shall similarly be responsible for making the appropriate arrangements for their return or burial.

Should the Contractor, in terms of a separate agreement, have any employees housed in accommodation owned by the Employer, the Contractor shall ensure that the provisions of the Immigration Act, Act 13 of 2002, as amended, are adhered to. The Contractor hereby acknowledges that it is fully acquainted with the provisions relating to the employment, housing and harbouring of foreigners or illegal foreigners.

The Contractor indemnifies the Employer against any loss or damage it may suffer in the event of the Employer being prosecuted as a result of a contravention of the Immigration Act, Act 13 of 2002, as amended, by the Contractor or any of its employees.
5. STAFF AND LABOUR . . . . / continued

5.5 Working Hours

Hours of work on the Site shall at all times be within statutory requirements. On site the Contractor shall observe the normal working hours stated in the Contract Document and the Employer shall allow the Contractor to carry out work on the Site continuously during such working hours.

The Employer’s Representative may after consultation with the Employer and the Contractor, direct that work be done at other times. The extra cost, together with profit, shall be added to the Contract Price unless it has become necessary for the Completion of the Works within the Time for Completion, and this is not due to the default of the Employer.

No work shall be carried out on the Site outside normal working hours or on locally recognised holidays unless the Contract so provides or the work is unavoidable or necessary for the saving of life or property or protection of the environment or for the safety of the Works, in which case the Contractor shall immediately advise the Employer’s Representative or the Employer’s Representative gives his consent.

5.6 Facilities for staff and labour

Except as otherwise stated in the Contract the Contractor shall provide and maintain all necessary accommodation or welfare facilities for the Contractor’s employees. The Contractor shall also provide facilities for the Employer’s Personnel if stated in the Contract Documents.

The Contractor shall not permit any of the Contractor’s Personnel to maintain any temporary or permanent living quarters within the structures forming part of the Permanent Works.

5.7 Health and Safety

The Contractor shall at all times take all reasonable precautions and shall comply with all laws and regulations governing safety for the duration of the Contract to maintain the health and safety of the Contractor’s personnel.

In collaboration with local health authorities, the Contractor shall ensure that medical staff, first aid facilities, sick bay and ambulance services are available at all times at the Site and at any accommodation for the Contractor’s and Employer’s Personnel, and that suitable arrangements are made for all necessary welfare and hygiene requirements and for the prevention of epidemics.

The Contractor shall comply with Site safety regulations in force from time to time and shall appoint an accident-prevention officer at the Site responsible for maintaining safety. This person shall be qualified for this responsibility and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the works, the contractor shall provide whatever is required by this person to exercise this responsibility and authority.

The Contractor shall send to the Employer details of any accident within 48 (forty eight) hours after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare to persons, and damage to property, as the Employer may reasonably require.
5. STAFF AND LABOUR  …/continued

5.8 Contractor’s Superintendence

Subject to clause 5.9 below, for the duration of the Contract, and as long thereafter as is necessary to fulfil the Contractor’s obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Works.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language used for communications and of the operations to be carried out for the satisfactory and safe execution of the Works.

5.9 Records of Contractor’s personnel and equipment

The Contractor shall prior to the commencement of work on Site submit to the Employer’s Representative documentary evidence of the qualifications and past experience of all representatives or persons the Contractor wishes to employ on the Contract. The Employer’s Representative may give written notice objecting to any of these representatives or persons and the Contractor shall not permit such representatives or persons to enter the Site.

The Contractor shall submit to the Employer’s Representative details showing the number of each class of Contractor’s Personnel and of each type of Contractor’s Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Employer, until the Contractor has completed all work.

5.10 Disorderly Conduct

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor’s Personnel, and to preserve the peace and protection of persons and property on and near the Site. The Contractor shall be liable for all damage or loss resulting from any unlawful, riotous or disorderly conduct or any act contrary to any Regulations of the Employer by or amongst the Contractor’s Personnel.

5.11 Contractor’s Personnel

The Contractor’s Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Employer may, require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor’s Representative, if applicable, who:

5.11.1 persists in any misconduct or lack of care;

5.11.2 carries out duties incompetently or negligently;

5.11.3 fails to conform with any provisions of the Contract; or

5.11.4 persists in any conduct, which is prejudicial to safety, health, or the protection of the environment.

If appropriate, the Contractor shall immediately appoint (or cause to be appointed) a suitable replacement person.
6. PLANT, MATERIAL AND WORKMANSHIP

6.1 Manner of Execution

The Contractor shall execute the Contract in accordance with good industry standards and practice, applicable to the appropriate industry under the Contract. The execution shall be in accordance with the Contractor’s obligations in terms of the Contract and to the satisfaction of the Employer’s Representative. If anything should be omitted from the Contract and/or the Technical Information which is necessary thereto, or may reasonably be inferred therefrom, the Contractor shall execute the same as if it had been fully described therein and shall undertake whatever actions may be necessary to complete the Contract.

6.2 Quality of materials and workmanship

All Plant to be supplied shall be manufactured and all work to be done shall be executed in the manner set out in the Contract. Where the manner of manufacture and execution is not set out in the Contract, the work shall be executed in a proper and workmanlike manner in accordance with recognised good industry standards and practice and shall at all times be subject to the approval and satisfaction of the Employer’s Representative.

6.3 Samples

If required, the Contractor shall at no cost supply all samples of materials and relevant information if the supply thereof is clearly intended by or provided for in the Contract to the Employer’s Representative for his consent prior to using the materials in or for the Works.

6.4 Employer’s Quality Assurance Representative

The Employer’s Representative may appoint an independent quality assurance specialist/organisation to act in a quality surveillance capacity on his behalf for all or any part of the Works.

6.5 Examination of the Work Before Covering up

6.5.1 No part of the Works shall be covered up or put out of view without the prior Written approval of the Employer’s Representative. The Contractor shall give the Employer’s Representative full opportunity to examine, measure and test any such part of the Works which is about to be covered up or put out of view, and to examine any foundations before any part of the Works is placed thereon. The Contractor shall give notice to the Employer’s Representative whenever such work is ready for examination, measurement or testing and the Employer’s Representative shall without unreasonable delay, unless he considers it necessary and advises the Contractor accordingly, attend for the purpose of examining, measuring and testing such part of the Works, or for examining the foundations.

6.5.2 The Contractor shall uncover any part of the Works or make any openings in or through the same, as the Employer’s Representative may from time to time instruct, and shall reinstate and make good such part as required by the Employer’s Representative. If any such part has been covered up or put out of view after compliance with the requirement of sub-clause 6.5.1 and is found to be executed in accordance with the Contract, the Employer’s Representative shall after due consultation with the Employer and the Contractor, determine the amount of the Contractor’s costs in respect of such uncovering, making openings in or through, reinstating and making good the same, which shall be added to the Contract Price and shall notify the Contractor accordingly, with a copy to the Employer. In any other case all costs shall be borne by the Contractor.
6. PLANT, MATERIAL AND WORKMANSHIP.../continued

6.6 Notice of inspections or testing

6.6.1 If the Employer’s Representative notifies the Contractor that he intends witnessing certain inspections and/or tests, the Contractor shall provide the Employer’s Representative with at least five (5) days prior notice in writing of the time, date and place at which such Plant will be ready for the said inspections and/or tests. Special arrangements shall be agreed in respect of Plant being manufactured overseas.

6.7 Inspections and/or testing; no reason for delays

6.7.1 Inspections and testing shall be conducted so that progress of the Contract is not delayed and the witnessing of such inspections and/or tests shall not be reason for the Contractor to delay manufacture or delivery of any Plant or delay completion thereof.

6.7.2 Inspections and/or tests shall not be delayed by the absence of the Employer’s Representative. Provided notice has been given by the Contractor in accordance with the above, the Contractor may proceed with the inspections and/or tests on the date and at the place indicated in the notice. The Contractor shall forward to the Employer’s Representative duly certified copies of the results of the inspections and/or tests carried out.

6.7.3 Should the Employer’s Representative not be present to witness inspections and/or tests on any Plant where he had indicated his intention to be present and provided notice had been given by the Contractor in accordance with the above, the Contractor shall dismantle/disassemble, open or uncover such part of the Works if the Employer’s Representative so directs and again perform the specified inspections and/or tests to the satisfaction of the Employer’s Representative. The cost of such dismantling/disassembling, open or uncovering and inspection and/or testing shall then be for the account of the Employer.

6.8 Rectification of defects revealed by re-inspection (Rejection)

If as a result of the inspection, examination or testing referred to above, the Employer’s Representative decides that any Plant is defective or otherwise not in accordance with the Contract, he may reject such Plant and shall notify the Contractor thereof immediately. The notice shall state the objections and reasons therefore. The Contractor shall then at its own cost and with all speed make good and rectify the defect or ensure that any defected Plant complies with the Contract. If the Employer’s Representative requires that the Plant be re-tested, the tests shall be repeated under the same terms and conditions. In the event that such Plant so inspected and/or tested meet the requirements of the Contract or are not defective, then all such costs shall be for the Employer’s account.

6.9 Cost of attendance at inspection or testing

The costs of attendance by the Employer’s Representative or Quality Assurance Representative at any inspections and/or tests which fail to take place through the fault of the Contractor or repeated attendance where the Plant is defective shall be for the Contractor’s account, such costs including but not being limited to, inspection fees as determined by and obtainable from the Employer, and transportation costs of the Automobile Association (AA) rates.
6. PLANT, MATERIAL AND WORKMANSHIP.../continued

6.10 Additional testing before assembly or closing-up

The Employer's Representative may direct the Contractor to perform additional or alternative inspections and/or tests for specific Plant. Costs of such inspections and/or tests shall be for the Employer's account.

6.11 Remedial Work

6.11.1 Notwithstanding any previous test or certification, the Employer's Representative may instruct the Contractor to:

6.11.1.1 remove from the Site and replace any plant or material, which is not in accordance with the Contract;

6.11.1.2 remove and re-execute any other work which is not in accordance with the Contract; and

6.11.1.3 execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

6.11.2 The Contractor shall comply with the instruction within a reasonable time, which shall be the time if any specified in the instruction, or immediately if urgency is specified under sub-clause 6.11.1.

6.11.3 If the Contractor fails to comply with the instructions of the Employer, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall pay to the Employer all costs arising from its failure to comply with the instructions of the Employer.

6.12 Ownership of Plant

At the sole discretion of the Employer, each item of Plant shall become the property of the Employer at whichever is the earlier of the following times, and the Contractor warrants that such Plant is free of any liens and other encumbrances:

6.12.1 when it is delivered to the Site; or

6.12.2 when the Contractor is entitled to payment.

7. EMPLOYER'S PROPERTY

7.1 Removal of Employer's Property

7.1.1 Otherwise than as stated in the Contract no item of Employer's Property shall be removed from Site by the Contractor.

7.1.2 In the event that it becomes necessary to remove certain items of Employer's Property from Site, then the Contractor shall first obtain the prior consent in Writing of the Employer's Representative.

7.1.3 Transportation of Employer's Property removed from, or being returned to Site shall be at the Contractor's risk and for the Contractor's account.
7. EMPLOYER'S PROPERTY  …/continued

7.1.4. In the event of the Contract being terminated for any reason whatsoever the Contractor shall return all the Employer’s Property that has been removed from Site.

7.2 Collection and Re-delivery of Employer’s Property

Where in terms of the Contract the Contractor is permitted to remove items of Employer’s Property from Site:

7.2.1 On notification of award of the Contract the Contractor shall, where applicable, and at the Contractor’s risk and cost, collect the specified Employer’s Property from the point or points stated in the Contract.

7.2.2 Prior to the collection of the specified Employer’s Property the transporter shall first obtain a dispatch waybill from the Employer’s Representative who may direct the said transporter to the actual point or points of collection.

7.2.3 On completion of the work the Contractor shall at its risk and cost re-deliver the Employer’s Property to the Employer’s Representative at the point or points of collection stated in the Contract. The Employer’s Representative may direct the transporter at the Contractor’s risk and cost to the actual point or points of re-delivery.

7.3 Waiver of Lien

It is an express condition of this Contract that upon acceptance thereof by the Contractor, however communicated or performed, that the Contractor expressly waives any and all liens which may, but for the provisions of this Clause, have applied in respect of Employer’s Property arising from the execution of the Works.

8. COMMENCEMENT, DELAYS AND SUSPENSION

8.1 Commencement of Work

The Employer’s Representative shall give the Contractor not less than 7 days’ written notice of the Commencement Date.

The Contractor shall commence the execution of the Works on the Commencement Date, and shall then proceed with the Works with due expedition and without delay.

8.2 Time for Completion

The Contractor shall complete the whole of the Works, and each Section (if any), within the Time for Completion for the Works or Section (as the case may be), including:

8.2.1 Achieving the passing of the Tests on Completion, and;

8.2.2 Completing all work, which is stated in the Contract as being required for the Works or Section to be considered completed for the purposes of taking-over by the Employer.
8. COMMENCEMENT, DELAYS AND SUSPENSION

8.3 Extension of Time for Completion

8.3.1 The Contractor may submit written application for an extension of the Time for Completion to the Employers Representative if and to the extent that completion for the purposes of Taking-Over of the Works by the Employer is or will be delayed by any of the following causes:

8.3.1.1 an agreed variation to the Time for Completion in terms of the Contract;

8.3.1.2 exceptionally adverse climatic conditions;

8.3.1.3 *force majeure*; or

8.3.1.4 any delay, impediment or event caused by or attributable to the Employer, the Employer’s Personnel, or the Employer’s other contractors on the Site.

8.3.2 The Employer’s Representative shall grant such extension of time as is necessary to complete the Works. The terms and conditions of any extension of time granted shall be confirmed by means of an amendment to the Contract issued by the Commercial Manager.

8.4 Delay Damages

If delays are incurred, which are solely attributable to the Contractor’s negligence and/or poor performance, then the Contractor shall pay the Employer as penalty a sum calculated at (1%) one percent of the value of the Contract which shall be paid for every day or part thereof which shall elapse between the relevant Time for Completion and the date stated in the Taking Over Certificate. However, the total amount due under this sub-clause shall not exceed the maximum amount of delay damages, being ten per cent (10%) of the total Contract Price.

These damages shall not relieve the Contractor from its obligations to complete the Works, or from any other duties, obligations or responsibilities which the Contractor may have under the Contract, nor constitute a waiver by the Employer of any of its rights in terms of the Contract or a novation thereof.

8.5 Suspension of the Works

The Employer’s Representative may at any time instruct the Contractor to suspend progress of the Works or any part thereof. During such suspension, the Contractor shall properly protect, store and secure such the Works or part thereof against any deterioration, loss or damage.

The Employer’s Representative may also notify the Contractor for the cause of the suspension and whether it is the responsibility of the Contractor.
8. COMMENCEMENT, DELAYS AND SUSPENSION . . . /continued

8.6 Consequences of suspension

If the Contractor suffers delay or incurs additional costs from complying with the Employer’s Representatives instruction under sub-clause 8.5 or from resuming the work, the Contractor shall give notice to the Employer’s Representative, and the Contractor shall be entitled to:

i) an extension of time for any such delay, if completion is or will be delayed; and

ii) payment of any such additional costs, which shall be included in the Contract Price.

Upon receipt of this notice the Employer’s Representative shall determine any additional payment to be made to the Contractor in respect of such claim. However, the Contractor shall not be entitled to payment of any additional costs if such suspension is necessary by reason of any default on the part of the Employer causing such delay.

8.7 Payment of Plant and materials in the event of suspension

The Contractor shall be entitled to payment of the value (as at the date of suspension) of any Plant and/or materials, which have not been delivered to Site, if:

8.7.1 the work on the Plant or delivery of Plant and/or materials has been suspended for more than 28 consecutive days; and

8.7.2 the Contractor has marked the Plant and/or materials as the Employer’s property in accordance with the instructions of the Employer’s Representative, including material in anticipation of off-take.

The Contractor shall not be allowed to claim costs incurred in anticipation of, or planning for the Contract.

8.8 Prolonged Suspension

If any suspension of the Works has continued for more than 90 (ninety) consecutive days, the Contractor may request, in Writing, the Written permission of the Employer’s Representative to proceed. If the Employer’s Representative does not give permission within 28 days (twenty-eight) after being requested to do so, the Contractor may, by giving notice to the Employer’s Representative, treat the suspension as an omission of the affected part of the Works. If the suspension affects the whole part of the Works, the Contractor may give notice of termination to the Employer’s Representative.

8.9 Resumption of Works

After permission to proceed is given, the Contractor and the Employer’s Representative shall jointly examine the Works and the Plant and materials affected by the suspension. The Contractor shall make good any deterioration or defect or loss of the Works or Plant or materials, which has occurred during the suspension.
8.10  **Standing Time**

8.10.1 Standing time will not be allowed unless included in terms of the Contract or expressly agreed and authorised, in Writing, by the Employer's Representative.

8.10.2 In the event of delays occurring in the performance of the Contract for reasons attributable to the Employer, such delays shall be reported immediately verbally to the Employer’s Representative by the Contractor and thereafter confirmed in Writing within twenty four (24) hours.

8.10.3 Should standing time be awarded to the Contractor, claims for standing time shall be based upon the rates specified in the Contract or rates to be agreed by the Commercial Manager and the Contractor shall, when claiming for standing time, ensure that time sheets reflecting the name of each employee and the number of hours lost by each such employee are submitted each working day in respect of the previous working day to the Employer's Representative for signature. Failure to comply with this requirement will invalidate each such time sheet. Signed time sheets shall be submitted with the relevant Tax Invoices for payment.

8.10.4 Delays arising from the following shall not qualify for claims:-

8.10.4.1 The first sixty (60) minutes of any single event.

8.10.4.2 Delays arising from statutory examinations.

8.10.4.3 Delays arising from planned maintenance.

8.10.4.4 Delays attributable to any form of neglect or failure on the part of the Contractor, the Contractor's agents, representatives, Sub contractors or the employees thereof.

8.10.4.5 Delays caused by inadequate assessment of the capacity of any Contractor's Equipment or similar items provided by the Employer and used by the Contractor for the performance of the Contract.

8.10.4.6 Delays which could have been avoided by reporting to the Employer’s Representative when the possibility thereof became apparent.

During the period or periods covered by claims for standing time the Contractor's labour shall, at the request of the Employer’s Representative, be made available to the Employer for use on any work on the Site where such labour can be suitably employed. In instances of protracted delays the Employer’s Representative shall have the right to call upon the Contractor to reduce the labour force subject to a period of notice, to be agreed in Writing, being given for the resumption of the Contract work.

The Contract Completion Date shall be extended for a period equal to the total extent of delays reported by the Contractor in Writing and accepted by the Employer’s Representative provided that such delays are caused by factors attributable to the Employer.

9.  **TESTS ON COMPLETION**

9.1  **Notice of Tests**

The Contractor shall give to the Employer’s Representative 21 (twenty one) days Written notice of the date after which it will be ready to make the Tests on Completion ("the Tests"). Unless otherwise agreed, the Tests shall take place within 14 (fourteen) days after the said date on such day(s) as the Employer’s Representative shall notify the Contractor.
9. **TESTS ON COMPLETION** . . . / continued

9.2 **Time for Tests**

If the Employer’s Representative fails to appoint a time after having been asked to do so, or does not attend at the time and place appointed, the Contractor shall be entitled to proceed with the Tests in his absence. The Tests shall then be deemed to have been made in the presence of the Employer’s Representative and the results of the Tests shall be accepted as accurate.

9.3 **Delayed Tests**

If the Tests are being unduly delayed by the Contractor, the Employer’s Representative may by notice require the Contractor to make the Tests within 21 (twenty one) days after the receipt of such notice. The Contractor shall make the Tests on such days and within the period specified by the Employer’s Representative.

If the Contractor fails to make the Tests within 21 (twenty one) days the Employer’s Representative may himself proceed with the Tests. All Tests so made by the Employer’s Representative shall be at the risk and cost of the Contractor and the cost thereof shall be deducted from the Contract Price. The Tests shall then be deemed to have been made in the presence of the Contractor and the results of the Tests shall be accepted as accurate.

9.4 **Facilities for Tests on Completion**

Except where otherwise specified, the Employer shall provide, free of charge, such labour, materials, electricity, fuel, water, stores, apparatus and feedstock as may be reasonably required by the Contractor to carry out the Tests.

9.5 **Re-testing**

If the Works or any Section fails to pass the Tests, the Employer’s Representative or the Contractor may require such Tests to be repeated on the same terms and conditions until the Employer issues the Taking Over Certificate. All costs to which the Employer may be put by the repetition of the Tests under this clause shall be deducted from the Contract Price.

9.6 **Disagreement as to Result of Tests**

If the Employer’s Representative and the Contractor disagree on the interpretation of the Test results, each shall give a Written statement of its views to the other within 14 (fourteen) days after such disagreement arises. The statement shall be accompanied by all relevant evidence.

9.7 **Consequences of Failure to Pass Tests on Completion**

If the Works or any Section fails to pass the Tests on the repetition thereof, the Employer’s Representative, after due consultation with the Employer and the Contractor, shall be entitled to:

- **9.7.1** order further repetition of the Tests;
- **9.7.2** reject the Works or any Section in which event the Employer shall have the same remedies against the Contractor as are provided under clause 9.5; or
- **9.7.3** issue a Taking-Over Certificate, if the Employer so wishes, notwithstanding that the Works are not complete. The Contract Price shall then be reduced by such amount as may be agreed by the Employer and the Contractor or, failing agreement, as may be determined in terms of clause 29.

9.8 **Test Certificate**

As soon as the Works or any Section thereof has passed the Tests, the Employer’s Representative shall issue a certificate to the Contractor and the Employer to that effect.
10. TAKING OVER

10.1 Taking Over

The Works shall be taken over by the Employer when they have been completed in accordance with the Contract, have passed the Tests on Completion and a Taking-Over Certificate has been issued or deemed to have been issued.

10.2 Taking-Over Certificate

10.2.1 The Contractor may in Writing apply to the Employer’s Representative for a Taking-Over Certificate not earlier than 14 (fourteen) days before the Works will, in the Contractor’s opinion, be complete and ready for taking over under sub-clause 10.1.

10.2.2 The Employer’s Representative shall within 21 (twenty one) days after the receipt of the Contractor’s application either:

10.2.2.1 issue the Taking-Over Certificate to the Contractor with a copy to the Employer stating the date on which the Works were complete and ready for taking over, or

10.2.2.2 reject the application, giving his reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued.

10.2.3 If the Employer’s Representative fails either to issue the Taking-Over Certificate or to reject the Contractor’s application within the period of 21 (twenty one) days, he shall be deemed to have issued the Taking-Over Certificate on the last day of that period.

10.2.4 If the works are divided by the Contract into Sections the Contractor shall be entitled to apply for separate Taking-Over Certificates for each such Section.

10.3 Use Before Taking Over

10.3.1 The Employer shall not use any part of the Works unless a Taking-Over Certificate has been issued in respect thereof.

10.3.2 Notwithstanding clause 10.3.1, should the Employer use any part of the Works, that part, which is used shall be deemed to have been taken over at the date of such use. The Employer’s Representative shall on request of the Contractor issue a Taking-Over Certificate accordingly. If the Employer uses any part of the Works before issuing a Taking Over Certificate the Contractor shall be given the earliest opportunity of taking such steps as may be necessary to carry out the Tests on Completion.

10.4 Interference with Tests on Completion

If the Contractor is prevented from carrying out the Tests on Completion by a cause for which the Employer or the Employer’s Representative or other contractors employed by the Employer are responsible, the Employer shall be deemed to have taken over the Works on the date when the Tests on Completion would have been completed but for such prevention. The Employer’s Representative shall issue a Taking-Over Certificate accordingly.

The Works shall not be deemed to have been taken over if they are not substantially in accordance with the Contract.
10 TESTS ON COMPLETION . . . . / continued

If the Works are taken over under this clause the Contractor shall nevertheless carry out the Tests on Completion during the Defects Liability Period. The Employer's Representative shall require the Tests on Completion to be carried out by 14 (fourteen) days notice and in accordance with the relevant provisions of Clause 11.

Any additional costs to which the Contractor may be put in making the Tests on Completion during the Defects Liability Period, shall be added to the Contract Price.

11. DEFECTS AFTER TAKING OVER

11.1 Defects Liability Period

Where any part of the Works is taken over separately from the whole of the Works, the Defects Liability Period for that part shall commence on the date it was taken over.

11.2 Making Good Defects

The Contractor shall be responsible for making good any defect in or damage to any part of the Works which may appear or occur during the Defects Liability Period and which arises from, either:

11.2.1 any defective materials, workmanship or design, or
11.2.2 any act or omission of the Contractor during the Defects Liability Period.

The Contractor shall make good the defect or damage as soon as practicable and at its own cost.

11.3 Notice of Defects

If any such defect appears or damage occurs, the Employer or Employer's Representative shall forthwith notify the Contractor thereof.

11.4 Extension of Defects Liability Period

The provisions of this Clause shall apply to all replacements or renewals carried out by the Contractor as if the replacements and renewals had been taken over on the day they were completed.

The Defects Liability Period for the works shall be extended by a period equal to the period during which the Works cannot be used by reason of a defect or damage. If only part of the Works is affected the defects liability period shall be extended only for that part.

In neither case shall the defects liability period be extended by more than one year.

11.5 Failure to Remedy Defects

11.5.1 If the Contractor fails to remedy a defect or damage within a reasonable time, the Employer may fix a final time for remedying the defect or damage.
11. DEFECTS AFTER TAKING OVER . . . /continued

11.5.2 If the Contractor fails to do so, the Employer may:

11.5.2.1 carry out the work itself or by others at the Contractor’s risk and cost, provided that it does so in a reasonable manner. The costs properly incurred by the Employer in remedying the defect or damage shall be deducted from the Contract Price, but the Contractor shall have no responsibility for such work, or

11.5.2.2 require the Contractor to grant the Employer a reasonable reduction in the Contractor Price to be agreed or fixed by Arbitration under clause 29.

11.5.3 If the defect or damage is such that the Employer has been deprived substantially of the Works or a part thereof, he may terminate the Contract in respect of such parts of the Works as cannot be put to the intended use. The Employer shall, to the exclusion of any remedy under it may have in terms of the Contract or under law, be entitled to recover all sums paid in respect of such parts of the Works together with the cost of dismantling the same, clearing the Site and returning Plant to the Contractor or otherwise disposing of it in accordance with the Contractor’s instructions.

11.6 Removal of Defective Work

If the defect or damage is such that repairs cannot be expeditiously carried out on the Site, the Contractor may with the Written consent of the Employer’s Representative or the Employer remove from the Site for the purposes of repair any part of the Works which is defective or damaged.

11.7 Further Tests on Completion

If the replacements or renewals are such that they may affect the performance of the Works, the Employer may request that Tests on Completion be repeated to the extent necessary. The request shall be made by notice within 28 (twenty eight) days after the replacement or renewal. The Tests shall be carried out in accordance with clause 11.5.

11.8 Right of Access

Until the Final Certificate has been issued, the Contractor shall have the right of access to all parts of the Works and to records of the Works.

Such right of access shall be during the Employer’s normal working hours at the Contractor’s risk and cost. Access shall also be granted to any authorised representative of the Contractor whose name has been communicated in writing to the Employer’s Representative.

Subject to the Employer’s Representative’s approval, the Contractor may also at its own risk and cost make any tests, which it considers necessary.

11.9 Defects in Employer’s Designs

The Contractor shall not be liable for any defects resulting from designs furnished or specified by the Employer or Employer’s Representative.

11.10 Contractor to Search for the cause of the Defect

The Contractor shall, if required by the Employers Representative in Writing, search for the cause of any defect, under the direction of the Employer’s Representative. Unless the defect is one for which the Contractor is liable under this clause, the cost of the work carried out by the Contractor in searching for the cause of the defect shall be added to the Contract Price.
11. DEFECTS AFTER TAKING OVER  . . . . / continued

11.11 Schedule of Defects

When the Defects Liability Period for the Works or any part thereof has expired and the Contractor has fulfilled all of its obligations under the Contract for defects in the Works or that section, the Employer’s Representative shall issue within 28 (twenty eight) days to the Contractor a Final Certificate.

12. VARIATION AND ADJUSTMENTS

12.1 Variation to the Works

The Employer's Representative may direct the Contractor to change the scope of the Works of the Contract.

12.2 Variation Order Procedure

The Works detailed shall be carried out at the prices contained in the Contract. No variations, to such prices shall be permitted unless contained in an amendment to the Contract issued by the Commercial Manager.

On receipt of the Employer’s Representative’s confirmation in Writing of instructions in respect of any Variation, the said obligation shall be modified to the extent necessitated by the variations directed and the Contractor shall immediately proceed to carry out such instructions.

The Contractor shall not vary the Work under the Contract except as directed or approved in Writing by the Employer’s Representative. The Employer’s Representative may, at any time give written instructions to the Contractor or alter, amend, omit, add to or otherwise vary any of the Works and the Contractor shall carry out such variations as though the said variations were stated in the Contract.

If, in the opinion of the Contractor, any such Variation is likely to prevent or prejudice the Contractor from fulfilling any of its obligations under the Contract, the Contractor shall immediately give written notice to that effect to the Employer’s Representative and the Employer’s Representative shall decide whether or not the variations shall be carried out. If the Employer’s Representative decides that the Variation shall be carried out, he shall request that the Commercial Manager issue a Variation order under this clause clearly identified as such in accordance with the Contractor’s submissions or as modified by agreement.

In any instance in which the Contractor has received any such direction from the Employer’s Representative which, in the opinion of the Contractor, involves an increase or decrease in the Contract Price and/or affects the Completion Date, the Contractor shall, within 48 hours and before proceeding, advise the Employer’s Representative and the Commercial Manager in Writing to that effect. The difference in cost or change in the Completion Date, if any, occasioned by any such direction shall, if accepted by the Employer's Representative be incorporated in the Contract by means of an amendment issued by the Commercial Manager. The amount of any difference in the Contract Price shall be ascertained and determined in accordance with rates and prices prevailing in the Contract, so far as such may be applicable, and where the said rates and prices are not applicable such amount shall be agreed in Writing between the Employer’s Representative and the Contractor and incorporated in the said amendment.

The Employer’s Representative shall give reasonable written notice of any Variation that the Employer’s Representative requires the Contractor to make to any part of the Contract to enable the Contractor to make its arrangements accordingly.
12. VARIATION AND ADJUSTMENTS…/continued

12.3 Disagreement on the adjustment of the Contract Price

Where the Employer’s Representative and the Contractor are unable, in advance to agree the increase or the decrease in costs associated with the variation, the variation work under the Contract shall be carried out recording the direct and indirect costs incurred or saved against the original scope of work. To do so the changes to the scope in relation to materials, Plant or services shall be quantified on a daily basis and submitted to the Employer's Representative for verification. Within three (3) working days of completion of the variation work under the Contract, the Contractor shall submit to the Employer’s Representative for approval a completed Variation order certificate, setting out the direct and indirect costs incurred or saved against the original scope of work together with changes to the scope in relation to materials, Plant or services, quantified on a daily basis. In determining the costs the Contractor shall use the rates contained in the Contract, where these are applicable.

12.4 Contractor to Proceed

Subject to the provisions contained in this clause, on receipt of the Employer’s Representative’s confirmation in Writing of instructions in respect of any variation, the said obligation shall be modified to the extent necessitated by the variations directed and the Contractor shall immediately proceed to carry out such instructions.

12.5 Record of Costs

The Contractor shall submit to the Employer’s Representative full particulars of all claims for additional payment to which the Contractor may consider itself entitled in respect of the preceding month and arising out of the provisions of this clause. Claims for additional payment will not be considered if the Contractor fails to submit particulars of its claim in Writing within a period not exceeding 30 (thirty) days.

13. PROVISIONAL SUMS AND PRIME COST ITEMS

Any provisional sum included in the Contract Price shall be used either in whole or in part in accordance with the Employer’s instructions and the Contract Price shall be adjusted accordingly.

Prime Cost items included in the Contract Price shall be used in accordance with the Employer’s instructions.

For each provisional sum the Employer may instruct work to be executed to be supplied by the Contractor or Plant, materials or services to be purchased by the Contractor, for which there shall be added to the Contract Price, less the provisional sum:

i) the actual amount paid or due to be paid by the Contractor; and

ii) a sum for overhead charges and profits, calculated as a percentage of these actual units by applying the relevant percentage rate, if any, stated in the Contract.

The Contractor shall when required by the Employer produce quotations, invoices, vouchers and accounts or receipts in substantiation.

The Employer shall have power to direct the Contractor to place orders with any other person (including a Nominated Subcontractor as defined) approved by the Commercial Manager for Works or Plant included in the Contract as provisional sums or prime cost items. The Contractor shall be responsible for work done or for Plant supplied by such other person unless the Contractor shall have objected in Writing to such person or Nominated Subcontractor prior to such Works being carried out.
14. **DAYWORKS**

The Employer may instruct that a Variation shall be executed on a daywork basis. The work shall then be valued in accordance with the dayworks schedule (“the Dayworks Schedule”) included in the Contract, and the following procedure shall apply:

14.1 Before ordering Plant for the Works the Contractor shall submit quotations to the Employer’s Representative. When applying for payments, the Contractor shall submit invoices, vouchers and accounts or receipts for any goods.

14.2 In the absence of a Daywork Schedule, the Contractor shall be paid the aggregate of:

14.2.1 the gross remuneration of the workmen and of any foremen for the time they are actually engaged on the work concerned;

14.2.2 the nett cost of the materials actually used and paid for by the Contractor;

14.2.3 the percentage allowances stated in the Contract, which is held to cover all charges for the Contractor’s and Sub contractor’s profits, timekeeping, clerical work, insurance, establishment, superintendence and the use of hand tools; and,

14.2.4 an amount in respect of Contractor’s Equipment as provided for herein.

14.3 The Contractor shall deliver each day to the Employer’s Representative accurate statements in duplicate, which shall include the following details of the resources used in executing the previous day’s works:

14.3.1 names, occupations and times of the Contractor’s personnel;

14.3.2 the identification, type and time of Contractor’s Equipment and temporary works; and

14.3.3 the quantities and types of Plant used.

14.4 One copy of each statement may if correct or when agreed, be signed by the Employer’s Representative and refunded to the Contractor. The Contractor will then submit invoices.

15. **CONTRACT PRICE AND PAYMENT**

15.1 **Contract Price**

The Contract Price shall be fixed and firm and not subject to adjustment, unless stated otherwise elsewhere in the Contract.

15.2 **Terms of payment**

The Employer shall pay to the Contractor the Contract Price, together with such additions or deductions, and as detailed in terms of payment elsewhere in the Contract.
16. FOREIGN CURRENCY CONTROL

16.1 Foreign currency

Should the Contract Price contain any amounts in respect of imported Plant which are subject to exchange rate variation then the Contractor shall declare such amounts to the Commercial Manager at the time of submission of the tender. To this end the Contractor shall furnish the following information:

- i) the country of origin of such imported goods;
- ii) the actual FOB value of the imported goods (not expressed as a percentage of the Contract Price); and
- iii) the bank’s selling rate of exchange on which the price is based.

The Employer reserves the right to pay either the Contractor’s principal directly, bear the foreign currency risk on such amounts declared or request the Contractor to provide forward cover therefore.

It is an express condition, however, that should additional cost be incurred due to the Contractor defaulting in:

- i) the submission of foreign currency with its offer; or
- ii) in the timely provisioning of forwarded cover when requested to provide such; or
- iii) the timely submission of commercial invoices in the foreign currency; or
- iv) the delivery date,

then such additional cost shall be for the account of the Contractor.

16.2 Control Documents

16.2.1 Where the Employer has elected to bear the foreign currency risk itself and to pay the relevant amount in foreign currency then the Contractor shall within one (1) month of the date of receipt of the goods at the port of entry into the Republic of South Africa provide the Commercial Manager with original:

- i) custom stamped commercial invoices;
- ii) custom stamped bill of lading;
- iii) custom stamped bill of entry.

16.2.2 In the event that the Contractor is unable to submit originals of the said documents to the Commercial Manager then the Contractor shall provide to the Commercial Manager, in a form approved by the Commercial Manager, an undertaking, signed by an official of the Contractor having authority to do so, guaranteeing that the Contractor will hold the original documents in its safe keeping and make them available for inspection by either the Employer or an official of the South African Reserve Bank when required to do so. The said documents shall be retained by the Contractor for a period of not less than two (2) years from the completion date of Contract or for the period prescribed by the South African Reserve Bank Rules and Regulations.
16. FOREIGN CURRENCY CONTROL  …/continued

16.2.3 The Contractor shall be liable to the Employer for any liability incurred by the Employer for breach by the Employer or Contractor of South African Reserve Bank Rules and Regulations due to failure of the Contractor to supply appropriate documentation.

16.3 CIF and SA Port Charges

CIF and SA Port Charges shall be fixed and firm and free of adjustment except when affected by statutory or exchange rate variations.

Any variation to CIF and SA Port Charges resulting from statutory or exchange rate variations must be claimed separately by the Contractor and substantiated by documentary evidence to the satisfaction of the Commercial Manager.

Any claims for CIF and SA Port and any variations thereof shall be approved and confirmed by the Commercial Manager issuing an amendment to the Contract in that regard.

Any claim for variations to CIF and SA Port Charges shall be submitted as soon as possible to the Commercial Manager, but in any event not later than thirty (30) days from the date of receipt of the Goods at the port of entry into the Republic of South Africa.

17. CLAIMS

17.1 If there are any circumstances, which the Contractor considers as being entitling itself to claim additional payment, the Contractor shall:

17.1.2 give Written notice to the Employer’s Representative of its intention to claim for additional payment, within 28 (twenty eight) days of the circumstances giving rise to the claim becoming known to it; and

17.1.3 as soon as reasonably possible after the date of the Written Notice or within 90 (ninety) days from such Written Notice, submit full and complete details of its claim to the Employer’s Representative together with any additional information that may be required to assess the validity of its claim.

17.2 After due consultation with the Employer’s Representative and the Contractor, the Commercial Manager will determine whether the Contractor is entitled to additional payment or not and advise the parties accordingly. The Employer’s Representative shall initiate an amendment if the Commercial Manager determines that an additional payment is required.
18. **DEFAULT**

18.1 **Default by the Contractor**

If the Contractor abandons the Works, refuses or fails to comply with a valid instruction of the Employer’s Representative or fails to proceed expeditiously and without delay, or is, despite a written complaint, in breach of any of terms and conditions of the Contract, the Employer may give notice referring to this clause and stating the default.

If the Contractor has not taken all reasonable steps to remedy the default within 14 (fourteen) days after receipt of the Employer’s Representatives notice in terms of this clause 18, the Employer’s Representative may by a second notice given within a further 21 (twenty one) days, terminate the Contract. The Contractor shall then, if so instructed by the Employer, demobilise from the Site after cleaning up any pollution on the Site (to the satisfaction of the Employer’s Representative), leaving behind any materials and/or Plant and any of the Contractor’s Equipment which the Employer’s Representative’s instructions in the second notice lists as to be used until the completion of the Works.

18.2 **Default by the Employer**

If the Employer fails to pay an amount in accordance with the Contract, or is despite a written complaint, in breach of the Contract, the Contractor may give Written notice referring to this clause and stating the default. If the default is not remedied within 14 (fourteen) days after receipt of the Contractor’s Written notice, the Contractor may suspend the execution of all or parts of the Works.

18.3 **Payment after Termination as a result of Contractor’s default**

After issue of a notice of termination the Employer may proceed with the Employer’s claims without further payments to the Contractor until the costs of execution, completion and remedying of any defects, damages for delays in completion, if any, and all costs incurred by the Employer have been established.

The Employer may recover set-off from the Contractor any losses and damages incurred by the Employer and any extra costs of completing the Works after allowing for any sums due to the Contractor.

19. **INSOLVENCY**

Should the Contractor:

– Become insolvent; or

– commit an act of insolvency; or

pass a resolution for winding up, (not being a member’s voluntary winding up for the purpose of reconstruction or amalgamation); or

– be subject to a winding up order of the Court (whether provisional or final), or

– be placed under provisional or final judicial management, or

– should there be a reasonable possibility that such an event may occur;

then the Employer shall be entitled either:
19. INSOLVENCY …/continued

19.1 to terminate the Contract, in Writing, to the Contractor or to the liquidator or judicial manager or to any person in whom the Contract may become vested; or

19.2 to give such liquidator or judicial manager or other person the option of carrying out the Contract subject to the liquidator or judicial manager or other person providing a guarantee for the due and faithful performance of the Contract.

20. TERMINATION

In addition to the Employer’s rights to terminate the Contract, either altogether or in part, in respect of ‘Default’, ‘Insolvency’, ‘Force Majeure’ and ‘Ethical Standards’, either Party shall also be entitled to terminate the Contract as specified hereunder.

20.1 Material Breach

On Written notice, either Party may terminate this Contract, if there is a material breach by the other Party. However the Party seeking termination shall provide the other Party with 14 (fourteen) days Written, prior notice, of such material breach and provide the Party in breach with the opportunity to remedy the breach.

20.2 Termination by giving a period of notice

Either Party may elect to terminate the Contract, either altogether or in part, by giving a minimum period of prior written notice to the Contractor as stated in the Contract or where no such period is stated on at least sixty thirty (60 30) days prior written notice to the Contractor.

During such period of notice the Contractor shall continue to perform in terms of the Contract but shall not incur any unauthorised cost.

In the event of termination of the Contract in terms of this clause and on completion of the aforesaid notice period the Employer shall pay to the Contractor any sum of money that may be due and payable for any expenditure and liabilities properly incurred by the Contractor in terms of the Contract and the Contractor shall not be entitled to any further payment of whatsoever nature.

20.3 Termination on cessation or curtailment of operations

If during the currency of the Contract operations at the Employer's property cease or are curtailed the Employer shall have the right to terminate the Contract or any portion thereof on thirty 30 (thirty) days written notice to the Contractor without payment of any compensation to the Contractor for any damages whatsoever including any loss of business and/or overhead recovery costs and/or loss of profit resulting from such termination.

20.4 Valuation at date of termination

As soon as practicable after a notice of termination has taken effect, the Employer’s Representative shall either agree with the Contractor the value of the Works or determine the value of the Works itself and any other sums that may be due to the Contractor for work executed in terms of the Contract.

20.5 Return and assignment on termination

In the event of termination of the Contract the Contractor shall immediately upon receipt of a notice of termination:
20. TERMINATION …/continued

20.5.1 return all Employer’s Property to the Employer;
20.5.2 deliver all Documentation prepared by the Contractor to the Employer;
20.5.3 return all Technical Information to the Employer;
20.5.4 deliver or return all relevant environmental information to the Employer;
20.5.5 on the request of the Employer assign all existing sub contracts and Contractor’s Equipment to the Employer; and
20.5.6 conduct any environmental clean up and remediation required in terms of the Contract, to the satisfaction of the Employer.

20.6 Cost incurred subsequent to Termination Date

Notwithstanding anything stated or implied to the contrary, it shall be an express condition of the Contract, that where notice of termination has been properly served in Writing, the Employer will not be liable for any cost of whatsoever nature incurred by the Contractor subsequent to the Termination Date, or in anticipation of the Termination Date.

NOTE: ANY NOTICE OF TERMINATION FROM THE EMPLOYER MUST BE SUBMITTED IN WRITING BY THE COMMERCIAL MANAGER

21. RISKS AND RESPONSIBILITIES

21.1 Indemnities

The Contractor shall indemnify and hold harmless the Employer, the Employer’s Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of any:

21.1.1 bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the execution and completion of the Works and the remedying of any defects unless attributable to any negligence, wilful act or breach of the Contract by the Employer, the Employer’s personnel, or any of their respective agents,

21.1.2 damage to or loss of any property, real or personal (other than the Works), or damage or degradation of the environment to the extent that such damage, degradation or loss:

21.1.2.1 arises out of or in the course of or by reason of the Contractor’s execution of the Works or any part thereof ;

21.1.2.2 arises out of the Works and the remedying of any defects in the Works; and

21.1.2.3 is attributable to any negligence, wilful act or breach of the Contract by the Contractor, the Contractor’s personnel, their respective agents, or anyone directly or indirectly employed by them.

21.1.3 the Employer shall indemnify and hold harmless the Contractor, the Contractor’s Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of any bodily injury, sickness, disease or death, which is attributable to any negligence, wilful act or breach of the Contract by the Employer’s personnel, or any of their respective agents.
21. **RISKS AND RESPONSIBILITIES .../continued**

21.2 **Contractor’s care of the Works**

21.2.1 The Contractor shall, during the Contract, take every reasonable precaution to prevent damage to the Works from any cause whatsoever.

21.2.2 Notwithstanding that the Contractor may have a claim or claims against the Employer or third parties, the Contractor's liability shall extend to all losses and/or damage to property forming part of the Works from the Commencement Date until the Taking Over Certificate is issued when responsibility for the Works shall pass to the Employer.

21.2.3 After responsibility has passed to the Employer, the Contractor shall take responsibility for the care of any Works, which are outstanding on the date stated in a Taking Over Certificate, until the outstanding work has been completed.

21.2.4 The Contractor shall be liable for all losses or damage to the whole or any part of the Works caused by any act, error, omission or default (including, but not limited to, faulty design and/or detailing) of the Contractor or any Sub-contractor.

21.2.5 If, while the Contractor is on the Site for the purpose of making good a defect or other maintenance obligations, there shall occur any destruction or loss of or damage to the Works or part thereof or to any other property or death or any injury to any person, the Contractor's liability in respect thereof shall be the same as if the said destruction, loss, damage, death or injury had occurred before the risk in the Works had passed to the Employer.

21.2.6 The Contractor shall not be held liable for any damage or compensation which may be payable for:

21.2.6.1 any decision of the Employer to construct or perform the Works or any part thereof on, over, under or through any land;

21.2.6.2 any interference, whether temporary or permanent, with any servitude or other right which is the unavoidable result of the construction or performance of the Works in accordance with the Contract.

22. **NON-DISCLOSURE OF INFORMATION**

22.1 “Restricted Information” means all information whether in Writing or oral, which is communicated to the Contractor together with information which the Employer notifies the Contractor in Writing as not being for publication. Restricted Information shall exclude that which is already known to the recipient thereof and in respect of which the recipient has a free right of disposal at the date of receipt, or which is already public knowledge at the date of receipt, or which becomes public knowledge thereafter otherwise than through default on the part of the recipient, or which the recipient obtains from any third party with good legal title thereto and free right of disposal thereof.

22.2 The Contractor shall not, without the previous consent in Writing of the Employer, use, publish, or disclose to any person, nor cause nor permit any of its agents or employees to use, publish, or disclose any Restricted Information received by the Contractor otherwise than for the performance of its duties under the Contract. If so required, the Contractor shall ensure that its agents, representatives or employees undertake to the Employer in Writing to comply with the provisions of this clause.
22. NON-DISCLOSURE OF INFORMATION …/continued

22.3 The Employer shall not, without the previous consent in Writing of the Contractor, cause or permit any of its agents, representatives or employees to use any Restricted Information received by the Employer other than for the purposes of fulfilling its obligations under the Contract.

22.4 The Contractor shall not, without the prior approval in Writing of the General Manager of the Business Unit of the Employer, or the Head of Discipline of the Employer,

22.4.1 take or permit to be taken any photograph; 
22.4.2 publish, cause or permit to be published any article, story or other material having any reference whatsoever to the Contract;  
22.4.3 display any advertisements in connection with the Contract.

22.5 The rights and obligations contained in this clause shall continue in full force and effect for a period of ten (10) years from the date of completion or termination of the Contract. In the case of environmental information, the rights and obligations contained in this clause shall continue in full force and effect for an indefinite period from the date of completion or termination of the Contract.

23. INTELLECTUAL PROPERTY RIGHTS

23.1 Infringement of Intellectual Property Rights

The Contractor indemnifies and shall keep indemnified the Employer against all losses and costs of whatsoever nature that may be incurred as a result of any action, proceeding or claim arising from the acquisition, use, reproduction or adaptation of a design or process provided by the Contractor that constitutes an infringement of any Intellectual Property Rights.

23.1.1 The indemnity shall not apply to any infringement of Intellectual Property Rights which is due entirely to the Contractor following a design or process stipulated by the Employer, provided that such infringement was not at the time known to be an infringement by the Contractor.

23.1.2 It is a condition of this indemnity that the Employer shall give the Contractor prompt notice of any action, proceeding, claim or threat instituted or made against it. The Employer shall consult with the Contractor and the Employer may at its option either:

23.1.2.1 Permit the Contractor at its expense to conduct all negotiations or any litigation that may ensue with the proviso that the Employer is informed of all actions taken and the results thereof; or
23.1.2.2 conduct any negotiations or litigation that may ensue with the proviso that the Contractor shall be consulted and shall not be liable for costs incurred outside the normal course of litigation of which the Contractor does not approve.

23.1.3 The Contractor hereby authorises the Employer to reproduce or publish any documentation other than Restricted Information, as defined in clause 22, which is made available in connection with the Contract for whatsoever reason that the Employer sees fit.

23.1.4 The Contractor shall keep the Employer informed of any action, proceeding or claim made against it in respect of any infringement of Intellectual Property Rights.
23. INTELLECTUAL PROPERTY RIGHTS .../continued

23.1.5 The rights and obligations contained in this clause shall continue in full force and effect for a period of ten (10) years from the date of completion or termination of the Contract.

23.2 Creation of Intellectual Property Rights

23.2.1 The Contractor, in carrying out the Contract, may be engaged in research and development work and any proprietary rights arising therefrom will be deemed to have been created in the course and scope of the Contract, unless the Contractor is able to establish that such proprietary rights were created outside the course and scope of the Contract.

23.2.2 Consequentially the Technical Information as well as all information, whether of a technical or commercial nature or otherwise, and know-how, expertise and Intellectual Property Rights of whatever nature including inventions, designs, trade marks and copyrights, originated or acquired by the Contractor while carrying out its duties under the Contract, all of which is referred to hereinafter as "the Intellectual Property", will vest in and be the exclusive property of the Employer and the Employer will be entitled to protect the Intellectual Property Information in whatever way it deems fit including the registration of patents, designs, trade marks, copyrights or any other form of intellectual property.

23.2.3 The Contractor undertakes at the Employer's cost to assist the Employer to perfect the Employer's title to the Intellectual Property and to enable the Employer to protect the Intellectual Property.

23.2.4 The Contractor further undertakes at the Employer's cost, when required by the Employer to render to the Employer all reasonable assistance that may be necessary at any stage to prove, establish, protect, defend or enforce the Employer's title in and to the Intellectual Property Information.

23.2.5 The Contractor undertakes to exercise the utmost good faith to the Employer in respect of the Intellectual Property and that upon originating or acquiring any of the Intellectual Property to fully disclose such Intellectual Property to the Employer and, upon the Employer's reasonable request, forthwith to supplement such disclosure with such further Intellectual Property and details as it can.

23.2.6 The Employer will acquire the Intellectual Property from the Contractor in terms of this clause without payment of any kind to the Contractor for such Intellectual Property.

24. DOCUMENTATION

24.1 Documentation for approval by the Employer's Representative

Any documentation of the Contractor which requires the approval of the Employer's Representative shall be submitted to the Employer's Representative at the times stated in the Contract or in the absence of any such stipulation within fourteen (14) days of the Contract Date.

Within fourteen (14) days of the date of receipt of such documentation, the Employer’s Representative shall signify his approval thereof or the modifications required thereto. Such modification shall be incorporated in the relevant documentation by the Contractor and re-submitted to the Employer's Representative without delay. Notwithstanding approval by the Employer's Representative the Contractor shall be liable for the accuracy and adequacy of all documentation.
24. DOCUMENTATION …/continued

24.2 Documentation to be supplied to the Employer’s Representative prior to completion of the Contract

Prior to the Completion Date of the Contract, the Contractor shall supply to the Employer’s Representative all documentation as required in terms of the Contract. Such documentation shall include the operating and maintenance instructions, spares lists, drawings of the Works as completed, in sufficient detail to enable the Employer to maintain, dismantle, reassemble and adjust all parts of the Works.

24.3 Additional Documentation required by the Employer’s Representative

Documentation submitted to the Employer’s Representative by the Contractor in terms hereof shall not be limited to the documentation stipulated in the Contract, and the Employer’s Representative may from time to time, prior to the completion of the Contract, instruct the Contractor to submit for approval such additional documentation as the Employer’s Representative may require.

24.4 Schedule of Documentation

The Contractor shall maintain an up-to-date schedule of all documentation referred to above showing the state of all such documentation. The Contractor shall supply the schedule to the Employer’s Representative at intervals stipulated by the Employer’s Representative in consultation with the Contractor.

24.5 Inspection of Documentation

The Employer’s Representative shall have the right at all reasonable times to inspect the documentation at the premises of the Contractor or any Sub-contractor.

24.6 Documentation to be the property of the Employer

All documentation shall, subject to any Intellectual Property Rights which the Contractor may hold in respect of them and subject to the conditions set out in clause 22, become and remain the property of the Employer.

24.7 Mistakes in Documentation

The Contractor shall be responsible for all discrepancies, errors or omissions including faulty design and/or detailing in any of the Documentation whether or not such Documentation has been approved by the Employer’s Representative, except insofar as the discrepancies, errors, omissions, faulty design and/or detailing are due to discrepancies, errors or omissions in the Technical Information.
25. TECHNICAL INFORMATION

25.1 Provision and ownership of Technical Information

The Employer shall provide the Contractor at the appropriate times with the Technical Information necessary to enable the Contractor to complete the Contract. All Technical Information shall be and remain the property of the Employer and shall be handed over to the Employer’s Representative on demand. The provisions of the clause 22 shall apply to the Technical Information.

25.2 Errors or discrepancies in Technical Information

In the event of any omission or discrepancy occurring in the Technical Information this shall be brought to the attention of the Employer’s Representative before or at the time of tendering. If, at any later stage, any ambiguity or discrepancy is discovered in the Technical Information the matter shall immediately be referred to the Employer’s Representative for his decision.

26. TAXES, DUTIES AND PERMITS

26.1 The Employer will not be responsible for any income tax or any other taxes levied on the Contractor and/or its employees and/or agents in respect of the Contractor’s obligations in terms of the Contract.

26.2 The Contractor shall be responsible for complying with all importation regulations and the payment of all customs and excise duties, levies or any other costs incurred by the Contractor in respect of any imports into the Republic of South Africa. In the event that the Contractor is to be reimbursed by the Employer, such costs shall be shown separately in the Contract. The Employer will not be responsible for any costs incurred by the Contractor due to the Contractor’s failure to comply with import control regulations.

Any import permit obtained by the Contractor in terms of the foregoing is to be in the joint names of the Contractor and the Employer, if so stated in the Contract.

26.3 The Contractor shall, at its cost, obtain from the relevant authorities and administer all necessary permits and licences and fulfil all immigration formalities to enable the Contractor to fulfil its obligations in terms of the Contract.

Copies of all authorised Documentation are to be provided to the Commercial Manager, if so stated in the Contract.

26.4 The Employer will, at its cost, obtain from the relevant authorities the necessary permission to carry out the Works.
27. **LAWS AND REGULATIONS**


27.2 If the cost to the Contractor for the performance of the Contract is increased or reduced by reason of the passing or amendment of any applicable legislation after the date of the Contractor’s tender, such increase or reduction shall be added to or deducted from the Contract Price as the case may be.

28. **FORCE MAJEURE**

28.1 "Force Majeure" shall mean any circumstances beyond the reasonable control of the party concerned and shall include but not be limited to:

28.2 war, revolution, riot, mob violence, sabotage, epidemic, accident, breakdown of machinery or facilities where such are not part of the Contractor’s Equipment or under the Contractor’s control;

28.2.1 industrial action by workers or employees;

28.2.2 earthquake, flood, fire or other natural physical disaster.

The mere shortage of labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances which are themselves Force Majeure.

28.3 If either party is prevented from performing any of its obligations under the Contract by Force Majeure, then it shall immediately notify the other party of the circumstances causing Force Majeure and the obligations so affected. The party giving such notification shall thereupon be excused from the performance of its obligations under the Contract for so long as the circumstances giving rise to the event of force Majeure continue.

28.4 If by virtue of the provisions hereof, either party is excused from the performance of its obligations under the Contract for a continuous period of four (4) months, then either party may, at any time after the expiry of the four (4) month period and provided such performance is still excused, terminate the Contract by notice in Writing to the other party.

28.5 If the Contract is terminated in terms of this clause 28 then:

28.5.1 the Contractor shall within three (3) days remove from the Site all Contractor’s Equipment and shall ensure that its sub contractors similarly do so; and

28.5.2 the Contractor shall recompense the Employer for all outstanding amounts owed by the Contractor to the Employer from whatsoever source that debt was incurred.
29. RESOLUTION OF DISPUTES

29.1 Should any disputes or differences whatsoever arise at any time between the Employer and the Contractor concerning the Contract or its construction, interpretation or effect or as to the rights, duties or liabilities of the parties under or by virtue of the Contract or otherwise or as to any other matter in any way arising out of the subject matter of the Contract, and should the parties fail to resolve such dispute amicably within fourteen (14) days of such dispute arising then either Party may declare a dispute by giving to the other Party notice thereof in Writing, specifying the nature of the dispute, its details, and the point/s at issue.

29.2 The Employer, on the receipt of a notice of dispute from the Contractor and within a period of fourteen (14) days from receipt of the notice of dispute from the Contractor or in the event that the Employer is declaring a dispute, the Employer may elect to resolve the dispute by way of litigation. Should the Employer fail to so elect within the prescribed period or in terms of its notice declaring the dispute, then the dispute shall be resolved by arbitration in accordance with the rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation. This arbitration clause shall not preclude a Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

29.3 Any award made by the arbitrator or arbitrators shall be subject to appeal in terms of the rules of the Arbitration Foundation of Southern Africa.

30. NO WAIVER

No act of relaxation, indulgence or grace on the part of the Employer shall in any way operate as or be deemed to be a waiver by the Employer of any of its rights in terms of the Contract or a novation thereof.

31. GOVERNING LAW

The Contract shall be governed, construed and interpreted in accordance with the law of the Republic of South Africa.

32. SEVERABILITY

If any one or more of the provisions of this Contract shall be declared or adjudged (formally or informally) by competent authority to be illegal, invalid or unenforceable under any law applicable in any jurisdiction in which this Contract is to be performed (the "Severable Provision"), the Severable Provision shall be severable and divisible from the other terms and conditions of this Agreement, and if the Severable Provision is invalid or unenforceable, the parties shall retain the right to enforce all the other terms of this Contract and shall retain all such rights as are validly and enforceably conferred upon them by this Contract.

33. DOMICILIUM

Each party chooses domicilium citandi et executandi at its respective registered office or at such alternative address in the Republic of South Africa which it may notify to the other in Writing from time to time; provided that, if the registered address of the Contractor is outside the Republic of South Africa, the Contractor shall choose domicilium citandi et executandi at an address in the Republic of South Africa.
34. **NOTICES**

Any communication or notice required to be given or made under the Contract between the parties shall be in Writing and shall be deemed:

34.1 to have been duly made or given if either sent by prepaid registered post or telegram or hand delivered to the addresses of the parties given in the Contract or by telex, e-mail or facsimile to the appropriate numbers of the parties or such other address as notified in terms hereof;

34.2 to have been received by the intended addressee for all purposes thereunder:

i) if delivered by hand or transmitted by facsimile, telex, e-mail or telegram, on the day of normal business following the date of despatch of such communication or notice; and

ii) if made by prepaid registered post, on the tenth day following the date of despatch of such communication or notice unless such tenth day is not a normal business day, then on the next normal business day immediately thereafter.

35. **ENTIRE AGREEMENT**

The Contract constitutes the entire agreement between the parties thereto. Any variation of the Contract and of this clause shall be in Writing by means of an amendment to the Contract issued by the Commercial Manager.

36. **PREPARATION OF CONTRACT**

The expenses of preparing the Contract document shall be for the account of the Employer.