



# PART C: THE CONTRACT

## C1.2 Contract Data

### Part one - Data provided by the *Employer*

Clause	Statement	Data
1	<p><b>General</b></p> <p>The <i>conditions of contract</i> are the core clauses and the clauses for main Option</p>	<p><b>A: Priced contract with activity schedule</b></p>
	<p>dispute resolution Option</p> <p>and secondary Options</p>	<p><b>W1: Dispute resolution procedure</b></p>
		<p><b>X7: Delay damages</b></p> <p><b>X13: Performance Bond</b></p> <p><b>X16: Retention</b></p> <p><b>X18: Limitation of liability</b></p> <p><b>Z: <i>Additional conditions of contract</i></b></p>
	<p>of the NEC3 Engineering and Construction Contract June 2005 (amended June 2006 and April 2013)</p>	

10.1	The <i>Employer</i> is:	<b>Transnet SOC Ltd (Registration No. 1990/000900/30)</b>
	Address	Registered address: <b>Transnet National Ports Authority Port Control Building Ganteaume Crescent Port of East London 5201</b>
	Having elected its Contractual Address for the purposes of this contract as:	<b>Transnet National Ports Authority Port Control Building Ganteaume Crescent Port of East London 5201</b>
10.1	The <i>Project Manager</i> is: (Name)	<b>Thabiso Ntsala</b>
	Address	<b>Transnet National Ports Authority EMD Building,01 DR Zahn &amp; Nuffield Road West Bank, Port of East London 5201</b>
10.1	The <i>Supervisor</i> is: (Name)	<b>Nolonwabo Zamani</b>
	Address	<b>Transnet National Ports Authority Port Control Building Ganteaume Crescent East London 5201</b>
11.2(13)	The <i>works</i> are :	<b>Provision of Repair, Installation, Testing, and Commissioning of the second vertical centrifugal Turbine Pump and associated Gearbox at Tanker Berth</b>
11.2(14)	The following matters will be included in the Risk Register :	
11.2(15)	The <i>boundaries of the site</i> are	<b>As stated in Part C4.1. "Description of the Site and it surroundings"</b>
11.2(16)	The Site Information is in	<b>Part C4</b>
11.2(19)	The Works Information is in	<b>Part C3</b>
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa subject to the jurisdiction of the Courts of South Africa.</b>
13.1	The <i>language of this contract</i> is	<b>English</b>

13.3	The <i>period for reply</i> is	<b>Two (2) weeks</b>
<b>2</b>	<b>The Contractor's main responsibilities</b>	<b>No additional data is required for this section of the conditions of contract.</b>
<b>3</b>	<b>Time</b>	
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	<b>Condition to be met</b> <b>key date</b>  <b>1 Starting date</b> <b>2 Completion date</b>
30.1	The <i>access dates</i> are	<b>Part of the Site</b> <b>Date</b>  <b>1 Whole of the site</b>
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	<b>Two (2) weeks of the Contract Date.</b>
31.2	The <i>starting date</i> is	
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	<b>Two (2) weeks</b>
35.1	The <i>Employer</i> is not willing to take over the <i>works</i> before the Completion Date.	
<b>4</b>	<b>Testing and Defects</b>	
42.2	The <i>defects date</i> is	<b>Fifty-two (52) weeks after Completion of the whole of the works.</b>
43.2	The <i>defect correction period</i> is	<b>Two (2) weeks</b>
<b>5</b>	<b>Payment</b>	
50.1	The <i>assessment interval</i> is monthly on the	<b>25<sup>th</sup> (twenty fifth) day of each successive month.</b>
51.1	The <i>currency of this contract</i> is the	<b>South African Rand.</b>
51.2	The period within which payments are made is	<b>Payment will be effected on or before the last day of the month following the month during which a valid Tax Invoice and Statement were received.</b>

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51.4	The <i>interest rate</i> is	<b>the prime lending rate of Rand Merchant Bank of South Africa.</b>
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**6 Compensation events**

60.1(13)	The <i>weather measurements</i> to be recorded for each calendar month are,	<p><b>the cumulative rainfall (mm)</b></p> <p><b>the number of days with rainfall more than 10 mm</b></p> <p><b>the number of days with minimum air temperature less than 0 degrees Celsius</b></p> <p><b>the number of days with snow lying at 08:00 hours South African Time</b></p>
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The place where weather is to be recorded (on the Site ) is:	<b>The <i>Contractor's</i> Site establishment area</b>
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The <i>weather data</i> are the records of past <i>weather measurements</i> for each calendar month which were recorded at:	<b>Port of East London</b>
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and which are available from:	<b>South African Weather Service 012 367 6023 or <a href="mailto:info3@weathersa.co.za">info3@weathersa.co.za</a>.</b>
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<b>7</b>	<b>Title</b>	<b>No additional data is required for this section of the <i>conditions of contract</i>.</b>
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**8 Risks and insurance**

80.1	These are additional <i>Employer's</i> risks	<b>None</b>
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84.1	The <i>Employer</i> provides these insurances from the Insurance Table	
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1	Insurance against:	<b>Loss of or damage to the <i>works</i>, Plant and Materials is as stated in the Insurance policy for Contract Works/ Public Liability.</b>
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Cover / indemnity:	<b>to the extent as stated in the insurance policy for Contract Works / Public Liability</b>
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The deductibles are:	<b>as stated in the insurance policy for Contract Works / Public Liability</b>
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<p>2 Insurance against:</p>	<p><b>Loss of or damage to property (except the <i>works, Plant and Materials &amp; Equipment</i>) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising out of or in connection with the performance of the Contract as stated in the insurance policy for Contract Works / Public Liability</b></p>
<p>Cover / indemnity</p>	<p><b>Is to the extent as stated in the insurance policy for Contract Works / Public Liability</b></p>
<p>The deductibles are</p>	<p><b>as stated in the insurance policy for Contract Works / Public Liability</b></p>
<p>3 Insurance against:</p>	<p><b>Loss of or damage to Equipment (Temporary Works only) as stated in the insurance policy for contract Works and Public Liability</b></p>
<p>Cover / indemnity</p>	<p><b>Is to the extent as stated in the insurance policy for Contract Works / Public Liability</b></p>
<p>The deductibles are:</p>	<p><b>As stated in the insurance policy for Contract Works / Public Liability</b></p>
<p>4 Insurance against:</p>	<p><b>Contract Works SASRIA insurance subject to the terms, exceptions and conditions of the SASRIA coupon</b></p>
<p>Cover / indemnity</p>	<p><b>Cover / indemnity is to the extent provided by the SASRIA coupon</b></p>
<p>The deductibles are</p>	<p><b>The deductibles are, in respect of each and every theft claim, 0,1% of the contract value subject to a minimum of R2,500 and a maximum of R25,000.</b></p>
<p>Note:</p>	<p><b>The deductibles for the insurance as stated above are listed in the document titled "Certificate of Insurance: Transnet (SOC) Limited Principal Controlled Insurance."</b></p>

84.1

The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is

**The *Contractor* must comply at a minimum with the provisions of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as amended.**



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The *Contractor* provides these additional Insurances

- 1 Where the contract requires that the design of any part of the *works* shall be provided by the *Contractor* the *Contractor* shall satisfy the *Employer* that professional indemnity insurance cover in connection therewith has been affected**
  - 2 Where the contract involves manufacture, and/or fabrication of Plant & Materials, components or other goods to be incorporated into the *works* at premises other than the site, the *Contractor* shall satisfy the *Employer* that such plant & materials, components or other goods for incorporation in the *works* are adequately insured during manufacture and/or fabrication and transportation to the site.**
  - 3 Should the *Employer* have an insurable interest in such items during manufacture, and/or fabrication, such interest shall be noted by endorsement to the *Contractor's* policies of insurance as well as those of any sub-contractor**
  - 4 Motor Vehicle Liability Insurance comprising (as a minimum) "Balance of Third Party" Risks including Passenger and Unauthorised Passenger Liability indemnity with a minimum indemnity limit of R 5 000 000**
  - 5 The insurance coverage referred to in 1, 2, 3, 4, above shall be obtained from an insurer(s) in terms of an insurance policy approved by the *Employer*. The *Contractor* shall arrange with the insurer to submit to the *Project Manager* the original and the duplicate original of the policy or policies of insurance and the receipts for payment of current premiums, together with a certificate from the insurer or insurance broker concerned, confirming that the policy or policies provide the full coverage as required. The original policy will be returned to the *Contractor*.**
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84.2	The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the works, Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i> ) caused by activity in connection with this contract for any one event is	<b>Whatever the <i>Contractor</i> requires in addition to the amount of insurance taken out by the <i>Employer</i> for the same risk.</b>
84.2	The insurance against loss of or damage to the works, Plant and Materials as stated in the insurance policy for contract works and public liability selected from:	<b>Principal Controlled Insurance policy for Contract</b>
<b>9</b>	<b>Termination</b>	<b>Transnet has the right to terminate the contract for Non-performance of Contractor based on service level agreement (SLA) that will be conducted on a weekly basis.</b>
<b>10</b>	<b>Data for main Option clause</b>	
<b>A</b>	<b>Priced contract with Activity Schedule</b>	<b>No additional data is required for this Option.</b>
<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i> is	<b>Both parties will agree as and when a dispute arises. If the parties cannot reach an agreement on the <i>Adjudicator</i>, the Chairman of the Association of Arbitrators will appoint an <i>Adjudicator</i>.</b>
W1.2(3)	The <i>Adjudicator nominating body</i> is:  If no <i>Adjudicator nominating body</i> is entered, it is:	<b>The Chairman of the Association of Arbitrators (Southern Africa)</b>  <b>the Association of Arbitrators (Southern Africa)</b>
W1.4(2)	The <i>tribunal</i> is:	<b>Arbitration</b>
W1.4(5)	The <i>arbitration procedure</i> is	<b>The Rules for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa)</b>

The place where arbitration is to be held is **eMendi Building N2  
Neptune Road Off  
Klub Road Port of  
Ngqura Port  
Elizabeth  
6100**

The person or organisation who will choose an arbitrator

- if the Parties cannot agree a choice or
- if the arbitration procedure does not state who selects an arbitrator, is

**The Chairman of the Association of Arbitrators  
(Southern Africa)**

**12 Data for secondary Option clauses**

**X7 Delay damages**

X7.1 Delay damages for Completion of the whole of the *works* are **R 400,00 per day**

**X13 Performance bond**

X13.1 The amount of the performance bond is **5% of the total of the Prices**

**X16 Retention**

X16.1 The retention free amount is **Nil**

The retention percentage is **5% on all payments certified.**

**X18 Limitation of liability**

- X18.1 The *Contractor's* liability to the **Nil**  
*Employer* for indirect or consequential loss is limited to: **The deductible of the relevant insurance policy**
- X18.2 For any one event, the *Contractor's* liability to the *Employer* for loss of or damage to the *Employer's* property is limited to: **The cost of correcting the Defect**
- X18.3 The *Contractor's* liability for Defects due to his design which are not listed on the Defects Certificate is limited to: **The Total of the Prices**
- X18.4 The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than excluded matters, is limited to: **36 Months after Completion of the whole of the works**
- X18.5 The *end of liability date* is

**Z Additional conditions of contract are:**

**Z2 Additional clause relating to Performance Bonds and/or Guarantees**

- Z2.1** **The Performance Guarantee under X13 above shall be an irrevocable, on-demand performance guarantee, to be issued exactly in the form of the Pro Forma documents provided for this purpose under C1.3 (Forms of Securities), in favour of the *Employer* by a financial institution reasonably acceptable to the *Employer*.**

<b>APPROVED TRANSNET GUARANTEE ISSUERS</b>
ABSA BANK LIMITED GROUP
BANK OF AMERICA, N.A
BANK OF CHINA LIMITED GROUP
BARCLAYS BANK PLC GROUP
BESA MEMBERS

TRANSNET NATIONAL PORTS AUTHORITY - PORT OF EAST LONDON  
 TENDER NUMBER: TNPA/2026/03/0464/2672/RFQ  
 DESCRIPTION OF WORKS: PROVISION OF REPAIR, INSTALLATION, TESTING, AND COMMISSIONING OF THE SECOND VERTICAL CENTRIFUGAL TURBINE PUMP AND ASSOCIATED GEARBOX AT TANKER BERTH IN THE PORT OF EAST LONDON FOR A PERIOD OF THREE (3) WEEKS.

<b>APPROVED TRANSNET GUARANTEE ISSUERS</b>
BNP PARIBAS GROUP
CHINA CONSTRUCTION BANK GROUP
CITIBANK GROUP
CREDIT SUISSE GROUP
DEUTSCHE BANK GROUP
FIRSTRAND BANK LIMITED GROUP
GOLDMAN SACHS INTERNATIONAL
HSBC HOLDINGS GROUP
INVESTEC BANK LTD
JPMORGAN CHASE BANK GROUP
MORGAN STANLEY
MACQUARIE BANK LIMITED
NEDBANK LTD
SOCIETE GENERALE BANK GROUP
STANDARD BANK GROUP
STANDARD CHARTERED BANK GROUP
AFRICAN BANK LTD
BIDVEST BANK LTD
CAPITEC BANK LTD
DISCOVERY BANK LTD
GRINDROD BANK LTD
ABN AMRO Bank N.V.
BANCO BILBAO VIZCAYA ARGENTARIA S.A
Coöperative Rabobank U.A.
CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK
DANSKE BANK
INDUSTRIAL DEVELOPMENT CORPORATION
ING Bank N.V.
KBC BANK
LANDESBANK BADEN-WUERTTEMBERG
MIZUHO BANK, LTD
NATIONAL AUSTRALIA BANK LIMITED
SKANDINAVISKA ENSKILDA BANKEN
SUMITOMO MITSUI BANKING CORPORATION

TRANSNET NATIONAL PORTS AUTHORITY - PORT OF EAST LONDON

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### APPROVED TRANSNET GUARANTEE ISSUERS

SVENSKA HANDELSBANKEN AB

AIG SOUTH AFRICA

CONSTANTIA INSURANCE LTD

CREDIT GUARANTEE INSURANCE CORPORATION

GUARDRISK INSURANCE

HOLLARD INSURANCE COMPANY

INFINITY INSURANCE

LOMBARD INSURANCE GROUP

MUTUAL & FEDERAL

RENASA INSURANCE COMPANY

SANTAM

BRYTE INSURANCE COMPANY LTD

ZURICH INSURANCE PLC



## **Z3 Additional clauses relating to Joint Venture**

### **Z3.1**

#### **Insert the additional core clause 27.5**

**27.5. In the instance that the *Contractor* is a joint venture, the *Contractor* shall provide the *Employer* with a certified copy of its signed joint venture agreement, and in the instance that the joint venture is an 'Incorporated Joint Venture,' the Memorandum of Incorporation, within 4 (four) weeks of the Contract Date.**

**The Joint Venture agreement shall contain but not be limited to the following:**

- **A brief description of the Contract and the Deliverables;**
- **The name, physical address, communications addresses and domicilium citandi et executandi of each of the constituents and of the Joint Venture;**
- **The constituent's interests;**
- **A schedule of the insurance policies, sureties, indemnities and guarantees which must be taken out by the Joint Venture and by the individual constituents;**
- **Details of an internal dispute resolution procedure;**
- **Written confirmation by all of the constituents:**
  - i. **of their joint and several liabilities to the *Employer* to Provide the Works;**
  - ii. **identification of the lead partner in the joint venture confirming the authority of the lead partner to bind the joint venture through the *Contractor's* representative;**
  - iii. **Identification of the roles and responsibilities of the constituents to provide the Works.**
- **Financial requirements for the Joint Venture:**
  - iv. **the working capital requirements for the Joint Venture and the**

- v. extent to which and manner whereby this will be provided and/or guaranteed by the constituents from time to time; the names of the auditors and others, if any, who will provide auditing and accounting services to the Joint Venture.

**Z3.2**

**Insert additional core clause 27.6**

**27.6. The *Contractor* shall not alter its composition or legal status of the Joint Venture without the prior approval of the *Employer*.**

**Z4 Additional obligations in respect of Termination**

**Z4.1**

The following will be included under core clause 91.1:

In the second main bullet, after the word 'partnership' add 'joint venture whether incorporate or otherwise (including any constituent of the joint venture)' and

Under the second main bullet, insert the following additional bullets after the last sub-bullet:

- commenced business rescue proceedings (R22)
- repudiated this Contract (R23)

**Z4.2 Termination Table**

The following will be included under core clause 90.2 Termination Table as follows:

Amend "A reason other than R1 – R21" to "A reason other than R1 – R23"

**Z4.3**

Amend "R1 – R15 or R18" to "R1 – R15, R18, R22 or R23."

**Z5 Right Reserved by the *Employer* to Conduct Vetting through SSA**

**Z5.1**

The *Employer* reserves the right to conduct vetting through State Security Agency (SSA) for security clearances of any *Contractor* who has access to National Key Points for the following without limitations:

1. Confidential – this clearance is based on any information which may be used by malicious, opposing or hostile elements to harm the objectives and functions of an organ of state.
2. Secret – clearance is based on any information which may be used by malicious, opposing or hostile elements to disrupt the objectives and functions of an organ of state.
3. Top Secret – this clearance is based on information which may be used by malicious, opposing or hostile elements to neutralise the objectives and functions of an organ of state.

**Z6 Additional Clause Relating to Collusion in the Construction Industry**

**Z6.1**

The contract award is made without prejudice to any rights the *Employer* may have to take appropriate action later with regard to any declared tender rigging including blacklisting.

**Z7 Protection of Personal Information Act**

**Z7.1**

The *Employer* and the *Contractor* are required to process information obtained for the duration of the Agreement in a manner that is aligned to the Protection of Personal Information Act.

## C1.2 Contract Data

### Part two - Data provided by the *Contractor*

The tendering *Contractor* is advised to read both the NEC3 Engineering and Construction Contract - June 2005 (with amendments June 2006 and April 2013) and the relevant parts of its Guidance Notes (ECC3-GN) in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 156 to 158 of the ECC3 Guidance Notes.

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

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name):	
	Address	
	Tel No.	
	Fax No.	
11.2(8)	The <i>direct fee percentage</i> is	
	The <i>subcontracted fee percentage</i> is	
11.2(18)	The <i>working areas</i> are the Site only	
24.1	The <i>Contractor's</i> key persons are:	
	1 Name:	
	Job:	
	Responsibilities:	
	Qualifications:	
	Experience:	

	2 Name:	
	Job	
	Responsibilities:	
	Qualifications:	
	Experience:	
		<b>CV's (and further key persons data including CVs) are appended to Tender Schedule entitled.</b>
11.2(14)	The following matters will be included in the Risk Register	
31.1	The programme identified in the Contract Data is	
<b>A</b>	<b>Priced contract with activity schedule</b>	
11.2(20)	The <i>activity schedule</i> is in	<b>C2, Pricing data</b>
11.2(30)	The tendered total of the Prices is	<b>(in figures) : (in words), excluding VAT.....</b>
	<b>Data for Schedules of Cost Components</b>	<i>Note "SCC" means Schedule of Cost Components starting on page 60 of ECC, and "SSCC" means Shorter Schedule of Cost Components starting on page 63 of ECC.</i>
<b>A</b>	<b>Priced contract with activity schedule</b>	<b>Data for the Shorter Schedule of Cost Components</b>
41 in SSCC	The percentage for people overheads is:	
21 in SSCC	The published list of Equipment is the last edition of the list published by	
	The percentage for adjustment for Equipment in the published list is	

TRANSNET NATIONAL PORTS AUTHORITY - PORT OF EAST LONDON

TENDER NUMBER: TNPA/2026/03/0464/2672/RFQ

DESCRIPTION OF WORKS: PROVISION OF REPAIR, INSTALLATION, TESTING, AND COMMISSIONING OF THE SECOND VERTICAL CENTRIFUGAL TURBINE PUMP AND ASSOCIATED GEARBOX AT TANKER BERTH IN THE PORT OF EAST LONDON FOR A PERIOD OF THREE (3) WEEKS.

22 SSCC	in	The rates of other Equipment are:	<b>Equipment</b>	<b>Size or capacity</b>	<b>Rate</b>
61 SSCC	in	The hourly rates for Defined Cost of design outside the Working Areas are	<b>Category of employee</b>		<b>Hourly rate</b>
62 SSCC	in	The percentage for design overheads is			
63 SSCC	in	The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are:			

## C1.3 Forms of Securities

### Pro forma Performance Guarantee

For use with the NEC3 Engineering & Construction Contract - June 2005 (with amendments June 2006 and April 2013)

The *conditions of contract* stated in the Contract Data Part 1 include the following Secondary Option:

Option X13: Performance bond

The pro forma document for this Guarantee is provided here for convenience but is to be treated as part of the *Works Information*.

The organisation providing the Guarantee does so by copying the pro forma document onto its letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Employer* within the time stated in the contract.

The Performance Bond needs to be issued by an institution that are reasonably acceptable to the *Employer*.

Transnet may choose to not to accept an Issuer. Should the issuer not being accepted, the performance bond needs to be replaced by an issuer that are acceptable to Transnet. Issuers need to be verified for acceptance by Transnet before a performance bond is issued.



TRANSNET NATIONAL PORTS AUTHORITY - PORT OF EAST LONDON  
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**Pro-forma Performance Bond (for use with Option X13)**

*(to be reproduced exactly as shown below on the letterhead of the Surety)*

Transnet SOC Ltd  
 C/o Transnet National Ports Authority  
 Transnet Corporate Centre  
 96 Rissik Street  
 Braamfontein  
 Johannesburg  
 2017

Date:

Dear Sirs,

**Performance Bond for Contract No. TNPA/2026/03/0464/2672/RFQ**

With reference to the above numbered contract made or to be made between

**Transnet SOC Limited, Registration No. 1990/000900/30** (the *Employer*) and

..... (the *Contractor*), for

**PROVISION OF REPAIR, INSTALLATION, TESTING, AND COMMISSIONING OF THE SECOND VERTICAL CENTRIFUGAL TURBINE PUMP AND ASSOCIATED GEARBOX AT TANKER BERTH IN THE PORT OF EAST LONDON FOR A PERIOD OF THREE (3) WEEKS** (the *works*).

I/We the undersigned

on behalf of the  
 Guarantor

of physical address

and duly authorised thereto do hereby bind ourselves as Guarantor and co-principal debtors in solidum for the due and faithful performance of all the terms and conditions of the Contract by the *Contractor* and for all losses, damages and expenses that may be suffered or incurred by the *Employer* as a result of non-performance of the Contract by the *Contractor*, subject to the following conditions:

1. The terms *Employer*, *Contractor*, *Project Manager*, *works* and Completion Certificate have the meaning as assigned to them by the *conditions of contract* stated in the Contract Data for the aforesaid Contract.
2. We renounce all benefits from the legal exceptions "Benefit of Excussion and Division", "No value received" and all other exceptions which might or could be pleaded against the validity of this bond, with the meaning and effect of which exceptions we declare ourselves to be fully acquainted.
3. The *Employer* has the absolute right to arrange his affairs with the *Contractor* in any manner which the *Employer* deems fit and without being advised thereof the Guarantor shall not have the right to claim his release on account of any conduct alleged to be prejudicial to the Guarantor. Without derogating from the foregoing compromise, extension of the construction period, indulgence,

release or variation of the *Contractor's* obligation shall not affect the validity of this performance bond.

4. This bond will lapse on the earlier of
  - the date that the Guarantor receives a notice from the *Project Manager* stating that the Completion Certificate for the whole of the *works* has been issued, that all amounts due from the *Contractor* as certified in terms of the contract have been received by the *Employer* and that the *Contractor* has fulfilled all his obligations under the Contract, or
  - the date that the Surety issues a replacement Performance Bond for such lesser or higher amount as may be required by the *Project Manager*.
5. Always provided that this bond will not lapse in the event the Guarantor is notified by the *Project Manager*, (before the dates above), of the *Employer's* intention to institute claims and the particulars thereof, in which event this bond shall remain in force until all such claims are paid and settled.
6. The amount of the bond shall be payable to the *Employer* upon the *Employer's* demand and no later than 7 days following the submission to the Guarantor of a certificate signed by the *Project Manager* stating the amount of the *Employer's* losses, damages and expenses incurred as a result of the non-performance aforesaid. The signed certificate shall be deemed to be conclusive proof of the extent of the *Employer's* loss, damage and expense.
7. Our total liability hereunder shall not exceed the sum of:  
 (say) \_\_\_\_\_  
 R \_\_\_\_\_
8. This Performance Bond is neither negotiable nor transferable and is governed by the laws of the Republic of South Africa, subject to the jurisdiction of the courts of the Republic of South Africa

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 201\_

Signature(s)

Name(s) (printed)

Position in Guarantor company

Signature of Witness(s)

Name(s) (printed)