



TWO STAGE TENDER FOR THE APPOINTMENT OF A PANEL OF CONTRACTORS TO EXECUTE THE SEALING OF DERELICT HOLINGS

STAGE 1

CONTRACT MTK 20/2021

VOLUME 1

PART 1:

AGREEMENT AND CONTRACT DATA

**TWO STAGE TENDER FOR THE APPOINTMENT OF A PANEL OF CONTRACTORS TO EXECUTE THE
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(MTK 20/2021)**



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**C1.1 FORM OF OFFER AND ACCEPTANCE
(Agreement)**

1. OFFER

The TENDERER is to complete and sign the Form of Offer

- 1.1 The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract in respect of the following works

**Contract No. MTK 20/2021 – Appointment of a panel of contractors to execute the sealing
of derelict holings**

- 1.2 The Tenderer, identified in the Offer signature block below, has examined the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, and by submitting this Offer has accepted the Conditions of Tender.

- 1.3 By the representative of the Tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance, the Tenderer offers to perform all of the obligations and liabilities of the Contractor under the Contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the Conditions of Contract identified in the Contract Data.

- 1.4 THE OFFERED TOTAL OF THE PRICES INCLUSIVE OF VALUE ADDED TAX**

The price is not applicable for this tender but will be applicable for the stage 2 tender.

- 1.5 This offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document to the Tenderer before the end of the period of validity stated in the Tender Data, whereupon the Tenderer becomes the party named as the Contractor in the Conditions of Contract identified in the Contract Data.

Signature(s)

Name(s)

Capacity

**For the
Tenderer**

(Name and address of organization)

Name and

_____ **Date** _____

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**signature of
witness**

2. Acceptance

The EMPLOYER will complete and sign the form of Acceptance

2.1 By signing this part of the Form of Offer and Acceptance, **the Employer** identified below accepts the Tenderer's Offer. In consideration thereof, the Employer shall invite the Contractor to participate in the Stage 2 tender which will be site specific. At stage 2 the contractor will be required to price for the works as identified by Employer in the Bills of Quantities.

2.2 The terms of the contract are contained in

Part 1 Agreement and Contract Data, (which includes this Agreement)

Part 3 Scope of Work

and documents or parts thereof, which may be incorporated by reference into Parts 1 to 3 above, and the contract shall generally be governed by the FIDIC Conditions of Contract for Plant and Design-Build 1999.

2.3 Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules as well as any amendments to the terms of the Offer agreed by the Tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Agreement. No amendments to or deviations from said documents are valid unless contained in the said Schedule of Deviations, which must be duly signed by the authorised representative(s) of both parties.

2.4 The Tenderer shall within two weeks after receiving a completed copy of this Agreement, including the Schedule of Deviations (if any), contact the employer's agent (whose details are given in the Contact Data) to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the Conditions of Contract identified in the Contract Data at, or within 7 days after, the date of this Agreement comes into effect. Failure to fulfill any of the above obligations in accordance with those terms shall constitute a repudiation of this Agreement.

2.5 Notwithstanding anything contained herein, this Agreement comes into effect on the date when the Tenderer receives one fully completed and duly signed original copy of this document, including the Schedule of Deviations (if any). Unless the Tenderer (now the Contractor), within five days after the date of

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such receipt notifies the Employer in writing of any reason why he cannot accept the contents or terms and conditions of this Agreement, this Agreement shall constitute a binding contract between the parties,

FOR MINTEK OFFICIAL USE ONLY	
Signature(s)	<hr style="border: none; border-top: 1px solid black;"/>
Name(s)	<hr style="border: none; border-top: 1px solid black;"/>
Capacity	<hr style="border: none; border-top: 1px solid black;"/>
For the Employer	<hr style="border: none; border-top: 1px solid black;"/>
	(Name and address of organisation)
Name and signature of witness	<div style="display: flex; justify-content: space-between;"><div></div><div>Date</div></div>

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3. SCHEDULE OF DEVIATIONS

3.1 Notes:

- 3.1.1 The extent of deviations from the tender documents issued by the employer prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender,
- 3.1.2 A Tenderer's covering letter shall not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid become the subject of agreements reached during the process of offer and acceptance, the outcome of such agreement shall be recorded here,
- 3.1.3 Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or amendment to the tender documents and which it is agreed by the Parties becomes an obligation of the contract shall also be recorded here,
- 3.1.4 Any amendment or addition to the tender documents arising from the above arrangements and recorded here shall also be incorporated into the final Contract,

1 Subject _____

Details _____

2 Subject _____

Details _____

3 Subject _____

Details _____

4 Subject _____

Details _____

5 Subject _____

Details _____

6 Subject _____

Details _____

7 Subject _____

Details _____

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- 3.2 By the duly authorized representatives signing this Schedule of Deviations, the Employer and the Tenderer agree to and accept the foregoing Schedule of deviations as the only deviations from and amendments to the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, as well as any confirmation, clarification or amendment to the terms of the offer agreed by the Tenderer and the Employer during the process of offer and acceptance.
- 3.3 It is expressly agreed that no other term or condition, whether in writing or oral or implied or tacit, arising during the period between the issue of the tender documents and the receipt by the Tenderer of a completed and signed copy of this Agreement shall have any legal effect in respect of the contract between the parties arising from this Agreement.

For the Tenderer:

Signature(s)

Name(s)

Capacity

(Name and address of organization)

**Name and
signature of
witness**

Date _____

For the Employer:

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Signature(s)

Name(s)

Capacity

(Name and address of organization)

**Name and
signature of
witness**

Date _____



C1.2 CONTRACT DATA

APPENDIX TO CONTRACT - CONTRACT DATA

The following Contract Specific Data, referring to the FIDIC Conditions of Contract for Plant and Design-Build 1999, are applicable in this Contract:

Each item of data given below is cross-referenced to the clause in the General Conditions of Contract to which it mainly applies.

CONTRACT SPECIFIC DATA

The following contract specific data are applicable to this Contract:

Clause	Description	Data
1.1.2.2 & 1.3	Employer's name and address	Mintek 200 Malibongwe Drive Randburg South Africa
1.1.2.3 & 1.3	Contractor's name and address	
1.1.2.4 & 1.3	Engineer's name and address	The Engineer will be the "Mine Closure and Rehabilitation office" of Mintek 200 Malibongwe Drive Randburg South Africa
1.1.3.2	Commencement Date	Commencement date shall be the date specified on the Purchase Order
1.1.3.3	Time for Completion of the Work	As per the Contractor's approved Base Programme for each contract awarded in Stage 2 of this Contract.
1.1.3.7	Defects Notification Period	12 months for each contract awarded in Stage 2 of this Contract.
1.3	Electronic transmissions systems	
1.4	Governing Law	Law of the Republic of South Africa
1.4	Ruling language	The ruling language shall be English
1.4	Language for communications	English (British)

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2.1	Time for access to the Site	Based on the commencement date for each contract awarded under this contract over the 3 year period.
4.2	Amount of Performance Security	<p>Applicable on the works contracts that will be awarded in Stage 2 of this Contract.</p> <p>The security to be provided by the Contractor shall be in the form of a Performance Guarantee issued by an entity within South Africa and will comply with the requirements of Clause 4.2. The Performance Guarantee shall be 10% of the Contract Sum (excl. VAT).</p>
6.5	Normal working hours	<p>Normal working hours will be from 7 am to 4pm.</p> <p>The non-working days are Saturdays and Sundays.</p> <p>The special non-working days are all Public Holidays in terms of the Public Holidays Act (as amended), and the annual "Builder's Break" as defined by SAFCEC on an annual basis.</p>
8.7 & 14.15(b)	Delay damages for the Works	<p>Applicable on the works contracts that will be awarded in Stage 2 of this Contract.</p> <p>1% per day of the Contract Price</p>
8.7	Maximum amount of delay damages	<p>Applicable on the works contracts that will be awarded in Stage 2 of this Contract.</p> <p>Max 20% of the Contract Price</p>
11.1	Period for notifying defects	
13.5(b)	if there are Provisional Sums: Percentage for adjustment of Provisional Sums	

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13.8	Adjustments for Changes in Cost; Table(s) of adjustment data	
14.2	Total advance payment	
14.3	Percentage of retention	Applicable on the works contracts that will be awarded in Stage 2 of this Contract. 10% of the Contract Price
14.5(b)	If Sub-Clause 14.5 applies: Plant and Materials for payment when shipped en route to the Site	
14.5(c)	Plant and Materials for payment when delivered to the Site	
14.6	Minimum amount of Interim payment Certificate	
14.8	Rate of Interest	
14.15	Currencies of payment	ZAR (South African Rand)
18.1	Periods for submissions of insurance:	
18.1(a)	Evidence of insurance	7 days on award of works contracts
18.1(b)	Relevant policies	28 days
18.3	Minimum amount of third party insurance	Public Liability Insurance which will provide indemnity against legal liability in the event of accidental death of or injury to third parties and/or loss or damage to third party property arising directly from the execution of the Contract and occurring during the period of Insurance with a limit of indemnity of R 10 million in respect of all claims arising from any one occurrence or series of occurrences consequent on or attributable to one source or original cause.



AMENDMENTS TO THE FIDIC CONDITIONS OF CONTRACT FOR PLANT AND DESIGN-BUILD 1999 WITH CONTRACT PARTICULAR CONDITIONS

PARTICULAR CONDITIONS OF CONTRACT

The following Particular Conditions of Contract, add to, vary or otherwise amend the General Conditions of Contract. References pertain to those in the General Conditions.

Clause	Description	Particular Condition
1.1.1.4	Letter of Tender	Delete this sub-clause
1.1.6.10	Employers Requirement's	Add the following sub-clause: "Employer's Requirements" means Part C3 "Scope of Work"
1.1.6.11	Suspensive Condition	Add the following sub-clause: "Suspensive Condition" means (a) Employer's Signature of a "Form of Offer and Acceptance"
1.5	Priority of Documents	Delete sub-paragraph (c).
1.11	Contractor's Use of Employer's Documents	Insert the words: ", with the Employer's consent only," After the words "The Contractor may,"
1.13	Compliance with Laws	Add the following sub-clause: "(c) The Contractor shall comply strictly with all laws, regulation, directions, permissions and other requirements which are applicable to the Contractor's operation in the execution of the Works, including but not limited to the: (i) Compensation for Occupational Injuries and Diseases Act (130/1993) (ii) Unemployment Insurance Act (30/1996) (iii) Health Act and Regulations (63/1977) (iv) Labour Relations Act and Regulations (66/1995) (v) Occupational Health and Safety Act and Regulations (85/1993) (vi) Basic Conditions and Employment Act (75/1977)

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		<p>(vii) National Environmental Management Act (107/1998)</p> <p>(viii) National Environmental Management: Waste Act (59/2008)</p> <p>(ix) The Construction Industry Development Board Act and Regulations (38/2000)</p> <p>(x) The Preferential Procurement Policy Framework Act and Regulations (2017)</p> <p>(xi) The National Industrial Participation Programme (as administered by the Department of Trade and Industry)</p> <p>(xii) Competition Act (89/1998)</p> <p>(xii) Mine Health and Safety Act (29/1996)</p> <p>The Contractor shall also comply strictly with all South African environmental, safety and licensing laws and tax legislation, as well as with the Employer's Work Rules and Regulations (a copy of which is obtainable from the Engineer) and shall ensure that all its personnel and that of its Subcontractors/Suppliers are conversant with these rules and comply with same."</p>
1.15	Corrupt Policies	<p>Add the following after sub-clause 1.14:</p> <p>"The Parties (which for the purpose of this clause 1.15 shall include its directors, employees, agents, shareholders and/or partners) warrant that the performance of their respective obligations in terms of the Contract shall in no way constitute an infringement or other violation of the laws of the Republic of South Africa, and in particular, will under no circumstances engage in any activities which may constitute a Corrupt Act."</p>
1.16	Registered and Licensed	<p>Add the following after sub-clause 1.15:</p> <p>The Contractor shall at its cost:</p> <p>a) at all times during the performance of the Works be; and</p> <p>b) ensure that any person who performs any part of the Works is, registered and licensed in South Africa as required by any law and any government authority to execute the Works, including obtaining all permits, licenses and approvals which the Contractor is required to obtain under Sub-Clause 1.13 (Compliance with</p>

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		Laws).
3.4	Replacement of the Engineer	Replace 42 days with 7 days. Delete the last sentence of the paragraph
4.2	Performance Security	Insert the words after the words "Performance Security" in the first line of the first paragraph of the Sub-Clause. "being an on demand guarantee in the form set out in Part C1.3, issued from an Acceptable Bank and a parent company guarantee in the form set out in Part C1.3 from the parent company of the Contractor, acceptable to the Employer,"
4.25	Employers Policies and Procedures	The following sub-clause included as Clause 4.25: "The Contractor acknowledges and agrees that it has read and understood the Policies and Procedures and shall, in and about the performance of the Works, observe and comply with the Policies and Procedures."
4.26	Corrupt Acts	The following Sub-clause included as Clause 4.26: The Contractor must, without derogating from clause 1.15: a) comply with, and must ensure that its Personnel and Subcontractors comply with all requirements not to engage in Corrupt Acts; b) notify the Employer of the occurrence and details of any Corrupt Act by itself, its Personnel or a Subcontractor promptly on the Contractor becoming aware of its occurrence; and c) Indemnify the Employer from and against any and all liabilities, damages, claims, fines, penalties, fees, costs and expenses of whatever nature arising out of or resulting from any breach by the Contractor of this clause 4.26."
5.9	Shared Data Portal	Add the following sub-clause: "The Employer may require the Contractor at any time during the works to make use of a shared

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		data portal for the project”
7.3	<p>Inspection</p> <p>Applicable on the works contracts that will be awarded in Stage 2 of this Contract.</p>	<p>The following Sub-clause is added to Clause 7.3 as follows:</p> <p>"The Contractor has included in his rates and prices for all costs involved with regard to statutory examinations of plant, machinery and workings to comply with the appropriate laws and regulations."</p> <p>Add “48 hours” after the words “shall give” in the first line of paragraph 4</p>
14.1	The Contract Price	<p>Add the following:</p> <p>“Contractor will be paid in terms of milestones achieved, proposed by the Contractor and approved by the Employer”.</p>
14.6	Interim Payment Certificates	<p>Add the following:</p> <p>“The Contractor shall keep monthly EPWP records and shall submit same to the Employer in the prescribed format with monthly payment certificates. Failure to submit this report may result in payment being withheld”.</p>
17.5	Intellectual and Industrial Property Rights	<p>Insert the following new paragraph at the end of this sub-cause:</p> <p>“The indemnifying Party may at its own expense and sole option, either: (i) procure the right to continue using the relevant intellectual or industrial property rights relating to the works, or (ii) replace or modify the intellectual or industrial property rights relating to the works with non-fringing substitutes, provided that any substitute shall be subject to condition of this clause 17.5 and that such substitution shall be carried out so as to avoid and reduce insofar as possible any interruption to the works”</p>
20.2	Appointment of the Dispute Adjudication Board	<p>Delete the title and wording of this sub-clause and replace with the following:</p> <p>“Mediation Should the parties fail to resolve any dispute by</p>

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		<p>way of mutual consultation as contemplated Clause 20.1, either party shall be entitled to refer the matter for mediation before an independent and impartial person appointed by the Municipal Manager in accordance with Regulation 50(1) of the Local Government: Municipal Finance Management Act No. 56 of 2003 - Municipal Supply Chain Regulations (Notice 868 of 2005). Such referral shall be done by way of notice to the other party 30 (thirty days) after the parties have failed to resolve their dispute. The mediator's ruling shall become final and binding upon the parties only to the extent that it is correctly recorded as being agreed to by the parties in writing.</p> <p>Save for reference to any portion of any settlement or decision which has been agreed to be final and binding on the parties, no reference shall be made by or on behalf of either party, in any subsequent court proceedings, to any outcome of an amicable settlement by mutual consultation, or to the fact that any particular evidence was given, or to any submission, statement or admission made in the course of amicable settlement by mutual consultation or mediation."</p>
20.3	Failure to Agree Dispute Adjudication Board	Delete this sub-clause in this entirety
20.4	Obtaining the Dispute Adjudication Board's Decision	Delete this sub-clause in this entirety
20.5	Amicable Settlement	Replace the words "Sub-Clause 20.4" with words "Sub-Clause 20.2" in the first line
20.6	Arbitration	<p>Sub-clause 20.6 shall be amended as follows:</p> <p>Replace the "DAB" with the word "mediation" throughout the clause.</p> <p>Replace the first paragraph with the following, "Unless settled amicably, any dispute in respect of which the mediation decision (if any) has not become final and binding shall be referred to a single arbitrator to be agreed on between the parties or, failing such agreement within 28 days</p>

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		after delivery to the parties of the Mediator's opinion, nominated on the application of either party by the President for the time being of the Association of Arbitrators (Southern Africa)"
20.7	Failure to Comply with the Dispute Adjudication Board's Decision	Delete this sub-clause in this entirety
20.8	Expiry of the Dispute Adjudication Board's Appointment	Delete this sub-clause in this entirety
20.9	Court of Law	Add the following sub-clause: "Should it not be possible to settle a dispute by means of mediation or arbitration, it shall be settled in a South African court of law."