

PART C1:

AGREEMENT AND CONTRACT DATA

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C1 AGREEMENT AND CONTRACT DATA**C1.1 FORM OF OFFER AND ACCEPTANCE****C1.1.1 Form of Offer**

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

Contract No: *WS.7342*

Contract Title: *HAMMARSDALE WWTW IMPROVEMENTS TO LIQUID AND SOLIDS TREATMENT FACILITIES*

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.

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.

*** The offered total of the prices inclusive of Value Added Tax is:**

R..... (In words
.....)

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.

For the Tenderer:

*** Name of Tenderer** (*organisation*) :

*** Signature** (*of person authorized to sign the tender*) :

*** Name** (*of signatory in capitals*) :

Capacity (*of Signatory*) :

Address :

:

Telephone :

Witness:

Signature : **Date** :

Name(*in capitals*) : :

Notes: * Indicates what information is mandatory.

Failure to complete the mandatory information and sign this form will invalidate the tender.

C1.1.2 Form of Acceptance

This Form will be completed by the Employer

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 pay the Contractor the amount due in accordance with the Conditions of Contract identified in the Contract Data. Acceptance of the Tenderer's Offer shall form an agreement between the Employer and the Tenderer upon the terms and conditions contained in this Agreement and in the Contract that is the subject of this Agreement.

The terms of the contract are contained in:

- Part C1 : Agreement and Contract Data, (which includes this Agreement)
- Part C2 : Pricing Data, including the Bill of Quantities
- Part C3 : Scope of Work
- Part C4 : Site Information

and the schedules, forms, drawings and documents or parts thereof, which may be incorporated by reference into Parts C1 to C4 above.

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 changes to the terms of the Offer agreed by the Tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Agreement. No amendments to or deviations from said documents are valid unless contained in this Schedule, which must be duly signed by the authorised representatives of both parties.

The Tenderer shall within two weeks after receiving a completed copy of this Agreement, including the Schedule of Deviations (if any), contact the Engineer (whose details are given in the Contract 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 just after, the date this Agreement comes into effect. Failure to fulfill any of these obligations in accordance with those terms shall constitute a repudiation of this Agreement.

Notwithstanding anything contained herein, this Agreement comes into effect on the date when the Tenderer receives one fully completed original copy of this document, including the Schedule of Deviations (if any). Unless the Tenderer (now Contractor) within five days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this Agreement, this Agreement shall constitute a binding contract between the parties.

Signature (*person authorized to sign the acceptance*) :

Name (*of signatory in capitals*) :

Capacity (*of Signatory*) :

Name of Employer (*organisation*) :

Address :

:

Witness:

Signature : Date :

Name (*in capitals*) : :

C1.1.3 Schedule of Deviations

This form will be completed by THE EMPLOYER and ONLY THE SUCCESSFUL TENDERER

1. Subject :
- Details:
- :
2. Subject :
- Details:
- :
3. Subject :
- Details:
- :

By the duly authorised 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 change to the terms of the offer agreed by the Tenderer and the Employer during this process of offer and acceptance.

FOR THE TENDERER**FOR THE EMPLOYER**

.....	Signature
.....	Name (<i>in capitals</i>)
.....	Capacity
.....	Name and Address of Organisation
.....	
.....	
.....	Witness Signature
.....	Witness Name
.....	Date

C1.2 CONTRACT DATA

C1.2.1 Conditions of Contract

C1.2.1.1 General Conditions Of Contract

The Conditions of Contract are the Conditions of Contract for Plant and Design-Build for Electrical and Mechanical Works and for Building and Engineering Works Designed by the Contractor, Second Edition 2017 (Yellow Book) published by the International Federation of Consulting Engineers (FIDIC). Copies of these Conditions of Contract (Yellow Book) may be obtained from the South African Institution of Civil Engineering (SAICE) (tel 011 805 5947) or Consulting Engineers South Africa (CESA) (tel 011 463 2022).

The Contract Data (including variations and additions) shall amplify, modify or supersede, as the case may be, the Conditions of Contract to the extent specified below, and shall take precedence and shall govern.

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

C1.2.2 Contract Data

C1.2.2.1 Data to be Provided by the Employer

Sub-Clause	Item	Data
1.1.27	Defects Notification Period	730 days
1.1.30	Employer's name and address	Ethekwini Water and Sanitation 3 Prior Road Durban
1.1.35	Engineer's name and address.....	Mr. Neal Bromley, PrTechEng. JG Afrika (Pty) Ltd, 6 Pin Oak Avenue, Hilton Pietermaritzburg, KwaZulu-Natal, 3245
1.1.87	Time for Completion	
1.3(a)(ii)	Agreed methods of electronic transmissions:	E-mail
1.3(d)	Address of Employer for communications:	All notices and communication to the Employer to be sent by e-mail to Bhavna.Soni@durban.gov.za
1.3(d)	Address of Engineer for communications:	bromleyn@jgafrika.com
1.3(d)	Address of Contractor for communications (Tenderer to complete)
1.4	Governing Law.....	Republic of South Africa
1.4	Ruling language.....	English
1.4	Language for communications	English
1.8	Number of additional paper copies of Contractor's Documents.....	2

1.9	Period of notification of errors, faults or other defects in the Employer's Requirements	42 Days
2.1	Time for access to, and possession of, the Site	42 Days from the Commencement Date
2.4	Employers Funding Arrangements	Internal Municipal Funding Allocations Fin Yr 2022/23 35% 2023/24 26% 2024/25 38%
4.2	Amount of Performance Security	10% of the Contract Sum
4.4(a)	Maximum allowable accumulated value of work sub-contracted (as a percentage of Accepted Contract Amount)	None
4.7.2	Period for notification of errors in the items of reference	Within 42 days.
4.19	Period of payment for temporary utilities.....	Monthly
4.20	Number of additional paper copies of progress reports.....	Nil
6.5	Normal working hours on the Site	Between 07h30 and 17h00 weekdays "except special non-working days"
8.2	Completion	912 Calender Days including the Builder's Holidays and all Public Holidays.
8.3	Number of additional paper copies of programmes.....	2
8.8	Delay damages payable for each day of delay	R11 000 per day
8.8	Maximum amount of Delay Damages	No limit
9.4	Failure to pass Tests on Completion	Peformance penalties to be applied as per Schedule of Performance Guarantees.
13.4(b)(ii)	Percentage rate to be applied to Provisional Sums for overhead charges and profit.....	As per schedule of quantities
13.7	Adjustments for Changes in Cost	Refer to Cost Indexation Schedule in this document. All adjustments made as per Sub-Clause 13.7.3, shall be claimed for on the second last payment certificate after issuing the Taking Over Certificate.
14.2	Total amount of Advance Payment (as a percentage of Accepted Contract Amount)	Determined by the Employer and up to a maximum of 15 % of the Contract Amount subject to the Employers discretion
14.2	Currency of Advance Payment	South African Rands
14.2.3	Percentage deductions for the repayment of the Advance Payment	10 % to be deducted from every interim payment after the date of payment of the Advance Payment
14.3	Period of payment	30 days

14.3(b)	Number of additional paper copies of Statements.....	1
14.3(iii)	Percentage of retention.....	10% reducing to 5% upon the issue of a Taking-Over Certificate.
14.3(iii)	Limit of Retention Money (as a percentage of Accepted Contract Amount).....	10% of Contract Sum with no limit
14.5(b)(i)	Plant and Materials for payment when shipped	No payment for plant and materials upon shipment
14.5(c)(i)	Plant and materials for payment when delivered to the Site	All plant and materials delivered to site will be subject to payment in terms of this clause, provided cession forms are completed.
14.6.2	Minimum amount of Interim Payment Certificate (IPC).....	No minimum
14.7(a)	Period of payment of Advance Payment to the Contractor	30 days from date of approval by the Employer of the Advance Payment Guarantee
14.7(b)(i)	Period for the Employer to make interim payments to the Contractor under Sub-Clause 14.6 [Interim Payment]	Within 30 days of date of receipt of the invoice by the Employer.
14.7(b)(ii)	Period for the Employer to make interim payments to the Contractor under Sub-Clause 14.13 [Final Payment]	Within 30 days of date of receipt of the final invoice by the Employer.
14.7(c)	Period for the Employer to make final payment to the Contractor	56 Days
14.8	Financing charges for delayed payment (percentage points above the average bank short-term lending rate as referred to under subparagraph (a))	0 percentage points.
14.11.1(b)	Number of additional paper copies of draft Final Statement	2
14.15	Currency/currencies of payment.....	South African Rand, as named in that section of the Form of Offer and Acceptance called "Offer"
17.2(d)	Forces of nature, the risks of which are allocated to the Contractor	Rainfall, lightning, flooding (incl. flooding of sewer system), wind, heat, humidity or cold.
18.1	Exceptional Events	Add the following : (h) The outbreak of an epidemic or pandemic unknown at the time of tender.
19.1	Permitted deductible limits:	At the end of the sub-clause, add the following paragraph: "Except where otherwise provided in the Special Conditions of Contract, the insurance cover effected by the Contractor in terms of this clause shall not carry a first loss amount greater R 100 000."
	- Insurance required for the Works	The insurance policy shall contain a specific provision whereby cancellation of the policy prior to the issue of the Performance Certificate cannot take place without the prior written approval of the Employer.

		<p>Additional Requirements:</p> <ul style="list-style-type: none"> • Minimum amount for additional removal of debris (no damage): R 5 000 000 • Minimum amount for temporary storage of materials off site, excluding Contractor's own premises: R 5 000 000 • Minimum amount for transit of materials to site: R 5 000 000
- Insurance required for Goods		As per Conditions of Contract
- Insurance required for liability for breach of professional duty		Professional Indemnity for design obligations
- Insurance required against liability for fitness for purpose (if required)		Not required. Contractor to take out his own insurance.
		<u>Third Party Insurance (Public Liability)</u>
		<p>Minimum amount for any one occurrence, unlimited as to the number of occurrences for the period of the contract, inclusive of the maintenance period: R 20 000 000 Consequential loss to be covered by policy: YES Maximum excess per claim or series of claims arising out of any one occurrence: R 25 000</p>
- Insurance required for injury to persons and damage to property		<p><u>Third Party Insurance (Public Liability resulting from Vibration and / or removal of Lateral Support)</u></p> <p>Minimum amount for any one occurrence unlimited as to the number of occurrences against any claim for damages of loss caused by vibration and/or removal of lateral support: R 10 000 000 Maximum first excess. R 50 000</p> <p>The limit of indemnity for liability insurance is R 20 000 000 for any single claim. The number of claims during the construction and defects liability period shall be unlimited.</p>
- Insurance required for injury to employees		As per Conditions of Contract
		<u>Principal's own surrounding Property Insurance</u>
		<p>Minimum amount for any one occurrence unlimited as to the number of occurrences against any claim for damage which may occur to the Employer's own surrounding property: R 5 000 000</p>
- Other Insurances required		<p>Maximum first excess: R 50 000</p> <p>SASRIA Coupon Policy for Special Risks to be issued in joint names of Council and Contractor for the full value of the works (incl. VAT).</p>
19.2(1)(b)	Additional amount to be insured (as a percentage of the replacement value, if less or more than 15%)	N/A

19.2(1)(iv)	List of Exceptional Risks which shall not be excluded from the insurance cover of the Works	Insurance cover to include for all exceptional events listed under Clause 18.1, for an amount of R 2 500 000 per event up to a maximum of 2 events. Maximum first excess per claim: R 50 000
19.2.2	Extent of insurance required for Goods	Full replacement value including delivery to site
19.2.3(a)	Amount of insurance required for liability for breach of professional duty	Not required.
19.2.3(b)	Insurance required against liability for fitness for purpose	Not required by Employer but up to the Contractor if he wishes to take out this cover
19.2.3	Period of insurance required for liability for breach of professional duty	If taken out by Contractor then it should be in place up to end of the defects period.
19.2.4	Amount of insurance required for injury to persons and damage to property	To be included in third party cover
19.2.6	Other Insurances required by Laws and by local practice	None
21.1	Time for appointment of DAAB	14 Days
21.1	The DAAB shall comprise	One sole Member
21.2	Appointment entity (official) for the DAAB members	President of South African Institution of Mechanical Engineers or his designated representative

C1.2.3 Particular Conditions of Contract

The Particular Conditions are:

Sub-Clause 1.13 Compliance with Laws

Add the following paragraph after 1.13 (b):

If a construction work permit, in terms of Clause 3(1) of the Construction Regulations (2014), is applicable, the instruction to commence carrying out of the works may only be issued once the construction work permit has been obtained by the Engineer. If a construction work permit is applicable, the contractor shall allow for a minimum period of 37 days, after the submission (or re-submission) of the documentation referred to in Clause 5.3.1., for the issuing of the construction work permit.

Sub-Clause 3.2 Engineer's Duties and Authority

The Engineer shall obtain the specific approval of the Employer to authorise any expenditure requiring use of the contingency sum.

Sub- Clause 5.1 Design

DESIGN SERVICES AND ACTIVITY MATRIX

Component	Responsible	Input information provided by
Concept, feasibility	Employer	
Overall Process	Employer	
Basic Engineering and preliminary design of Civil Infrastructure	Employer	
Detailed design and drawing of mechanical and electrical equipment	Contractor	Employer
Detailed design of control and instrumentation equipment and SCADA	Contractor	Contractor
Detailed design of civil infrastructure	Employer (based on M&E detailed design)	Contractor
Detailed design of building	Employer	Contractor
Building plan approval	Employer	
Detailed design of mechanical, electrical, fire and plumbing for building	Contractor	
Temporary works	Contractor	
As-built drawings (Mechanical & Electrical)	Contractor	
Operation and Maintenance manuals	Contractor	
Monthly operations reports (during operations period)	Contractor	

See section Detailed Mechanical Specification and Detailed Electrical and Electronic specification in **Volume 2** for more detail.

Sub-Clause 7.7 Ownership of Plant and Materials

Add the following paragraph at the end of this Clause:

In consideration of receiving from the Employer payment in respect of items of plant and equipment stored at the Contractor's workshop or his suppliers' premises or his other storage

facilities, the Contractor shall be required to complete and submit a Certificate of Indemnity. In so doing the Contractor:

- (a) acknowledges that the items of plant and equipment are the sole property of and are held on behalf of the Employer.
- (b) indemnifies the Employer against any loss or damage whatsoever of or to the said items of plant and equipment whilst in the Contractor's possession or in transit and undertakes to effect adequate insurance against these risks in the name of the Municipality and to produce of such insurance to the Engineer.
- (c) undertakes to deliver and install, at the site, the said plant and equipment when required by the Employer.
- (d) undertakes that no payment has been received, in respect of the said items of plant and equipment, from any other of his clients or employers and that the Employer (i.e. the Ethekewini Municipality) has prior claim to the value of payments so received for same, prior to all others, from any assets of the Contractor's company.
- (e) undertakes to act in accordance with such instructions as received from the Employer through its officers, to protect the interests of the Municipality.

Payment for plant and equipment stored at the Contractor's workshop or his suppliers' premises or his other storage facilities, shall be at the sole discretion of the Engineer and the Engineer reserves the right to amend the requirements of the standard Certificate of indemnity.

Sub-Clause 8.1 Commencement of Work

Add the following:

The documentation required before commencement of Works are:

- Approved Health and Safety Plan (refer to Clause 4.8)
- Construction Work Permit Issued by Department of Labour (refer Sub-Clause 1.13)
- Initial programme (refer to Clause 8.3)
- Performance Security (refer to Clause 4.2)
- Approved Insurance Cover (refer to Clause 19)

The time to submit the documentation required before commencement of Work is 14 days.

Sub-Clause 8.5(c) Extension of Time for Completion

Abnormal Climatic Conditions (Rain Delays) - The numbers of days per month, on which work is expected not to be possible as a result of rainfall, for which the Contractor shall make provision, is given in the table below. During the execution of the Works, the Engineer will certify a day lost due to rainfall only if at least 75% of the work force and plant on site could not work during that specific working day and if work on the current critical path item on the programme is delayed as a result.

Extension of time as a result of rainfall shall be calculated monthly being equal to the number days certified by the Engineer as lost due to rainfall, less the number of days allowed for as in table below, which could result in a negative figure for certain months. The total extension of time for which the Contractor may apply, shall be the cumulative algebraic sum of the monthly extensions. Should the sum thus obtained be negative, the extension of time shall be taken as NIL.

<u>Month</u>	<u>Days Lost</u>	<u>Average Rainfall</u>	<u>Month</u>	<u>Days Lost</u>	<u>Average Rainfall</u>
January	4*	134	July	1	39
February	3	113	August	2	62
March	3	120	September	2	73
April	2	73	October	3	98
May	2	59	November	3	108
June	1	28	December	1*	102
TOTAL	27	1009mm	* = The number of working days lost allows for the annual statutory Construction holiday in December and January of each year.		

The **non-working days** are **Saturdays and Sundays**.

The **special non-working** days are:

- All statutory holidays as declared by National or Regional Government.
- The year-end break:
 - Commencing on the first working day after 15 December.
 - Work resumes on the first working day after 5 January of the next year.

Sub-Clause 9.4 Failure to Pass Tests on Completion

Add the following:

As stipulated in Sub-Clause 9.4 (Failure to Pass Tests on Completion) and Sub Clause 11.4 (Failure to Remedy Defects) of the standard conditions of contract, this section defines the performance penalties applicable to this contract.

The major process variables as defined in the Detailed Mechanical Specification must be achieved. The results of the TOP, and the relevant Test Period, for each piece of equipment will be used for determining the performance criteria. Testing, where applicable, must be undertaken by an independent SANAS accredited laboratory. A data set will be collected as outlined in the relevant TOP and Test Period instructions within each equipment section of the Detailed Mechanical Specification. The average of a data set will be calculated at the 95% confidence interval and used to apply penalties.

The performance penalties here are applicable to each piece of equipment running at design loads. If design loads cannot be achieved during TOP due to limitations on the upstream or downstream processes, the penalties will be applicable at a reduced load as determined by the Engineer.

The following penalty system shall be applied to the process variables below. The penalties are cumulative.

Inlet Works:

Coarse screen percentage of solids above 25mm in the screen effluent	Penalty (% of Equipment Value)
Greater than 0% but less than 2%	10%
Equal to or above 4% but below 6%	20%
Equal to or above 6% but below 10%	30%
Above 10%	Equipment rejected

Note: Note that the penalty will be applied per individual item of equipment. The equipment value shall be the value stated in 2.1.1 in the Schedule of Quantities.

Fine screen percentage of solids above 6mm in the screen effluent	Penalty (% of Equipment Value)
Greater than 0% but less than 2%	5%
Equal to or above 2% but below 6%	10%
Equal to or above 6% but below 10%	15%
Above 10%	Equipment rejected

Note: Note that the penalty will be applied per individual item of equipment. The equipment value shall be the value stated in 2.1.2 in the Schedule of Quantities.

Screenings moisture content from washer compactors	Penalty (% of Equipment Value)
Greater than 65% but less than 66%	10%
Equal to or above 66% but below 67%	20%
Equal to or above 68% but below 69%	30%
Equal to or above 69% but below 70%	40%
Above 70%	Equipment rejected

Note: Note that the penalty will be applied per individual item of equipment. The equipment value shall be the sum of the values stated in 2.2.1 and 2.2.2 in the Schedule of Quantities.

Grit trap grit separation efficiency	Penalty (% of Equipment Value)
Less than 100% but above 95% of the specification	10%
Equal to or less than 95% but above 90%	20%
Equal to or less than 90% but above 85%	50%
Equal to or less than 85%	Equipment rejected

Note: Note that the penalty will be applied per individual item of equipment. The equipment value shall be the sum of the values stated in 3.1.1, 3.1.2 and 3.1.3 in the Schedule of Quantities.

Grit percentage volatile solids from grit classifier	Penalty (% of Equipment Value)
Greater than 5% but less than 6%	10%
Equal to or above 6% but below 7%	20%
Equal to or above 8% but below 9%	30%
Equal to or above 9% but below 10%	40%
Above 10%	Equipment rejected

Note: Note that the penalty will be applied per individual item of equipment. The equipment value shall be the sum of the values stated in 3.2.1 and 3.2.2 in the Schedule of Quantities.

Grit classifier grit Separation efficiency	Penalty (% of Equipment Value)
Less than 100% but above 95% of the specification	10%
Equal to or less than 95% but above 90%	20%
Equal to or less than 90% but above 85%	50%
Equal to or less than 85%	Equipment rejected

Note: Note that the penalty will be applied per individual item of equipment. The equipment value shall be the sum of the values stated in 3.2.1 and 3.2.2 in the Schedule of Quantities.

Dewatering Building:

Polyelectrolyte consumption exceeding the maximum value guaranteed by the Tenderer	Penalty (% of Equipment Value)
Above 100% but below 105% of specification	5%
Equal to or above 105% but below 110% of specification	10%
Equal to or above 110% but below 115%	15%
Above 115% of specification	Equipment rejected

Note: Note that the penalty will be applied per individual item of equipment. The equipment value shall be the sum of items 5.6.1 and 5.6.2 in the Schedule of Quantities.

Dewatered sludge cake % dryness as given in this specification	Penalty (% of Equipment Value)
Below 16% but above 15.5%	5%
Equal to or below 15.5% but above 15%	10%
Equal to or below 15% but above 14.5%	15%
Equal to or below 14.5% but above 14%	20%
Equal to or below 14%	Equipment rejected

Note: Note that the penalty will be applied per individual item of equipment. The equipment value shall be the sum of items 5.6.1 and 5.6.2 in the Schedule of Quantities.

General:

Overall equipment efficiency (OEE)	Penalty
For each percentage point less than the specified OEE as defined in each equipment section in the detailed specification	R50 000

Notwithstanding the fact that the penalties are only listed for the selected performance criteria as described above, it is still incumbent upon the contractor to ensure the installation conforms to all process parameters as listed in this specification. Non-conformance with any specified process parameter (including those listed above) may lead to non-acceptance of this installation, until such time as the relevant defect is rectified.

Sub-clause 11.10 Unfulfilled Obligations

Replace the following words in the second paragraph,

“occurring more than two years after expiry of the DNP”

With the following

“occurring more than **ten** years after expiry of the DNP

Sub-clause 13.5 Daywork

Add the following paragraph to the end of this Clause:

Where a Daywork Schedule has not been included in the Contract or no allowance made in the schedule for Labour and Materials, then the **percentage allowance** to cover overhead charges for daywork shall be as follows:

- 25 % of the gross remuneration of workmen and foremen actually engaged.
- 15 % of the net cost of materials actually used.

Sub-Clause 13.7 Adjustments for Changes in Cost**13.7.1 Adjustments for Changes in Cost due to Exchange Rate Fluctuation**

- (i) Where the goods are imported, the Contractor shall within 30 days of the notification of acceptance of his tender arrange through his bankers for the foreign commitment to be covered forward down to the Rand in order to fix the rate of exchange, exercising due care in consultation with the said bankers to ensure that the forward exchange is taken out on such terms as will provide the best possible exchange rate. The Contractor shall notify the Employer as soon as possible regarding the rate which has been fixed on such forward exchange.
- (ii) An increase or decrease between the basic rate of exchange as at a date seven days prior to the date of closing of tenders and that existing at the date of establishment of the forward exchange cover within the period stipulated above shall be paid or deducted by the Employer. Upon the failure of the Contractor to arrange cover aforesaid, the Contractor shall then be liable for any such increase or decrease in the basic rate of exchange occurring beyond thirty days of notification of tender acceptance.
- (iii) If price adjustment for variations in the cost of plant and materials imported from outside of South Africa is required, such adjustment shall be based on the information contained on the schedule titled “**Price Basis for Imported Resources**” and as below. For the purposes of this clause the Rand value of imported Plant and Materials inserted on the schedule titled “**Price Basis for Imported Resources** (column (F)) shall be the value in foreign currency (column (A)) converted to South African Rand (column (C)) by using the closing spot selling rate quoted by **Employer’s** main banker, on the Base Date (seven calendar days before tender closing date) rounded to the second decimal place (column(B)), to which shall be added any Customs Surcharge and Customs Duty applicable at that date (columns (D) and (E)).

13.7.1.1. Adjustment for variations in rates of exchange:

- (a) The value in foreign currency inserted in column (A) shall be subject to clause (h) below when recalculating the Rand value.
- (b) The rate of exchange inserted in column (B) shall be the closing spot selling rate quoted by Council’s main banker on the Base Date, rounded to the second decimal place, subject to sub-paragraph (c) below.

- (c) If the rate of exchange inserted by the Tenderer differs from the rate referred to above, then the Employer's banker rate shall apply and the Rand value in columns (C) and (F) shall be recalculated accordingly, without altering the price in the Schedules of Quantities for the relevant items.
- (d) If a tender from a supplier or sub-contractor provides for variations in rates of exchange, the Contractor may **only** claim for variations in rates of exchange if he binds the supplier or sub-contractor to the same provision to take out forward cover as described in Sub-paragraph (e) below.
- (e) The Contractor (or supplier or sub-contractor) shall cover or recover forward by way of a contract with a bank which is an authorised foreign exchange dealer, the foreign exchange component of the cost of any imported Plant and Materials inserted by the Tenderer on the schedule titled **"Price Basis for Imported Resources"**.
- (f) When the Contractor (or supplier or sub-contractor) so obtains forward cover, the Contractor shall immediately notify the Employer of the rate obtained and furnish the Employer with a copy of the foreign exchange contract note.
- (g) Based on the evidence provided in sub-paragraph (f) above, the value in Rand inserted in column (C) of the schedule titled **"Price Basis for Imported Resources"** shall be recalculated using the forward cover rate obtained, and any increase or decrease in the Rand value defined in this clause shall be adjusted accordingly, subject to sub-paragraph (h) below. Failure to provide such evidence shall result in no such recalculation shall be considered by the Employer.
- (h) The adjustments shall be calculated upon the value in foreign currency in the Contractor's (or supplier's or sub-contractor's) **forward cover contract**, provided that, should this value exceed the value in foreign currency inserted in column (A) of the schedule titled **"Price Basis for Imported Resources"**, then the value in column (A) shall be used.

13.7.1.2 Adjustment for variations in customs surcharge and customs duty

- (a) Any increase or decrease in the Rand value between the amounts of Customs Surcharge and Customs Duty inserted on the schedule titled **"Price Basis for Imported Resources"** and those amounts actually paid to the Customs and Excise Authorities, which are due to changes in the percentage rates applicable or to the foreign exchange rate used by the authorities, shall be adjusted accordingly.
- (b) The Tenderer shall state the Customs Duty Tariff Reference applicable to each item and the Contractor shall advise the Engineer of any changes which occur.

Cost Indexation Schedule for Plant and Material in South Africa

(A) Contract Price Adjustment Factor for Mechanical and Electrical Works:

13.7.2 General

The Accepted Contract Amount shall be deemed to have included amounts to cover the contingency of all other rises and falls in costs not covered by the provisions of this or other Clauses.

The following general provisions shall apply in all cases:

Adjustments for changes in cost shall be calculated as if the Works are executed within the time for completion and no additional costs due to any work being executed outside the time for completion shall be payable unless the Engineer allows an extension of time in accordance with Sub-Clause 8.4

Claims for adjustments for changes in cost shall be supported by such documentary evidence that may be required by the Engineer. Failure to render this information may result in the rejection of claims for price adjustment.

No claims for adjustments for changes in cost will be accepted which are submitted later than 28 days after the date of issue of the Taking-Over Certificate.

13.7.3 Plant and Materials Manufactured in South Africa

13.7.3.1 Permissible Adjustments

Adjustment to the Contract Price for the design, manufacture, painting, testing, supply, delivery, offloading and storage of Plant and Materials manufactured in the Republic of South Africa, shall be allowed **only** for variations in the cost of labour and material based on the indices published by the Steel and Engineering Industries Federation of South Africa (SEIFSA) using the method described in Sub-Clause 13.7.3.2.

The following SEIFSA tables shall be regarded as relevant to Mechanical and Electrical Works in this Contract:

Table C3 Index of actual labour cost

Table G Statistics SA - production price index, Mechanical and Electrical Engineering Materials, as applicable

Table E - EX Merchant Steel Price Index, Hot Rolled Sheets

Table Q - (A) Index of stainless steel flat products (excluding imports), Hot rolled steel

Table Q - 1 (A) Corrosion resisting steel 3CR12, Hot rolled plate

Table N Ruling price of certain electrical cable manufacturing materials, Copper rod 7,90 mm

13.7.3.2 Method of Price Adjustment

Adjustment of the total values inserted in the Schedules of Quantities for the design, manufacture, painting, testing, supply, delivery, offloading and storage of Plant and Materials manufactured in the Republic of South Africa shall be based on the following:

- (a) The estimated proportions (represented by the coefficients “b”, “c”, “d” and “e” in the formulae in sub-paragraph (b) below) of the total values shall be adjusted on the basis of the increase or decrease between the indices in the relevant tables at the Base Date and these indices at a date 42 days prior to the valuation date, for each month in which the Plant and Materials are contractually delivered to Site, by multiplying the monthly values certified by the relevant Adjustment Factor in the formulae in sub-paragraph (b) below.

- (b) the applicable formulae are:

Mechanical Plant and Materials

$$A = a + b \frac{L_n}{L_o} + c \frac{M_n}{M_o} + d \frac{S_n}{S_o} + e \frac{SS_n}{SS_o} - 1$$

where A = Adjustment Factor rounded off to the sixth decimal place

a = 0.10 Fixed coefficient (non-adjustable portion)

b = 0.15)

c = 0.35) Coefficients (sum of these coefficients shall be 0,90)

d = 0.25)

e = 0.15)

L_n = Current labour index in Table C3

L_o = Base labour index in Table C3

M_n = Current mechanical engineering materials index in Table G

M_o = Base mechanical engineering materials index in Table G

S_n = Current steel price index in Table E-EX

S_o = Base steel price index in Table E-EX

SSn = Current stainless steel index type 304 in Table Q-(A)
SSo = Base stainless steel index type 304 in Table Q-(A)

“Current” indices are those applicable 42 days prior to date of claim, as stated in sub-paragraph (a) above

“Base” indices are those applicable at Base Date, as stated in sub-paragraph (a) above

Electrical Plant and Materials

$$A = a + b \frac{Ln}{Lo} + c \frac{En}{Eo} + d \frac{CRn}{CRo} + e \frac{Cn}{Co} - 1$$

where A = Adjustment Factor rounded off to the sixth decimal place

a = 0.10 Fixed coefficient (non-adjustable portion)

b = 0.10)

c = 0.30) Coefficients (sum of these coefficients shall be 0,90)

d = 0.20)

e = 0.30)

Ln = Current labour index in Table C3

Lo = Base labour index in Table C3

En = Current electrical engineering materials index in Table G

Eo = Base electrical engineering materials index in Table G

CRn = Current 3CR12 steel index in Table Q -1 (A)

CRo = Base 3CR12 steel index in Table Q -1 (A)

Cn = Current copper rod index in Table N

Co = Base copper rod index in Table N

“Current” indices are those applicable 42 days prior to date of claim, as stated in sub-paragraph (a) above

“Base” indices are those applicable at Base Date, as stated in sub-paragraph (a) above

- (c) The value of any Plant and Materials imported from outside South Africa inserted on the schedule titled “**Price Basis for Imported Plant and Material**” and subject to Sub-Clause 13.7.1 shall be deducted from the total values to be adjusted by the SEIFSA Index adjustment. Any Plant and Materials not inserted in Schedule 20 shall be deemed to be manufactured in South Africa for the purposes of Contract Price Adjustment.

13.7.3.3 Site Installation and General Items

For the purpose of this Sub-Clause, General Items (defined below) are included with Site Installation for the sake of convenience, and which otherwise have no relationship with each other.

General Items shall comprise General Requirements and Conditions, Health and Safety, Environmental Management, Sundries, and any other items so described or implied in the Schedules of Quantities to be adjusted under this Sub-Clause.

Adjustment of the total values inserted in the Schedules of Quantities for Site Installation and General Items, shall be based on the following:

- (a) No Contract Price Adjustment shall be applied to the total values in respect of providing the Performance Security (Demand Guarantee under URDG 758) and Insurances.
- (b) The estimated proportion (represented by the 0.90 coefficient in the formula in sub-paragraph (c) below) of the total values shall be adjusted on the basis of the increase or decrease between SEIFSA **Table C3(A)** Index of actual labour cost (field force) where subsistence allowance is paid, at the Base Date and this index at the valuation date, for each

month in which the work is contractually executed, by multiplying the monthly values certified by the Adjustment Factor in the formula in sub-paragraph (c) below.

(c) the applicable formula is:

Site Installation and General Items

$$A = 0.10 + 0.90 \frac{L_n}{L_o} - 1$$

where A = Adjustment Factor rounded off to the sixth decimal place

0.10 = Fixed coefficient (non-adjustable portion)

0.90 = Coefficient

L_n = Current labour index in Table C3(A)

L_o = Base labour index in Table C3(A)

“Current” index is that applicable at the valuation date, as stated in sub-paragraph (b) above

“Base” index is that applicable at Base Date, as stated in sub-paragraph (b) above

(B) Contract Price Adjustment Factor for Civil & Building Works:

The value of the certificates issued for the Civil components of the work shall be adjusted in accordance with the Contract Price Adjustment Schedule (FOR CIVIL & BUILDING WORKS) on the following page with the following Indices / Descriptions.

Coefficients:

- The proportion not subject to adjustment: **x = 0.10**.
- The base month will be the month prior to the month in which tenders close.
- The Index shall be based on **December 2016 = 100**.

	STATS SA Statistical Release	Table	Description	Coefficient
• "L" is the "Labour Index"	P0141	Table A	Geographic Indices; CPI per Province; Kwa-Zulu Natal	a = 0.28
• "P" is the "Contractor's Equipment Index"	P0151.1	Table 4	Plant and Equipment	b = 0.28
• "M" is the "Materials Index"	P0151.1	Table 6	Civil Engineering Material (excluding bitumen)	c = 0.38
• "F" is the "Fuel Index"	P0142.1	Table 1	Coke, petroleum, chemical, rubber and plastic products; Coal and petroleum products; Diesel	d = 0.06

Price adjustments for **variation in the cost of the special material(s)** listed below, will be allowed.

No special materials identified

CONTRACT PRICE ADJUSTMENT SCHEDULE (FOR CIVIL & BUILDING WORKS)

Reproduced from the SAICE General Conditions Of Contract For Construction Works, Rev 3 (2015)

1. The value of each monthly statement for payment, submitted to the Engineer by the Contractor, shall be increased or decreased by the amount obtained by multiplying "Ac" (defined in Clause 2 of the Contract Price Adjustment Schedule) by the Contract Price Adjustment Factor, rounded off to the fourth decimal place, determined according to the formula:

$$(1 - x) \left[\frac{aL_T}{L_0} + \frac{bP_T}{P_0} + \frac{cM_T}{M_0} + \frac{dF_T}{F_0} - 1 \right]$$

In which the symbols have the following meaning:

"x" is the proportion of "Ac" which is not subject to adjustment. Unless otherwise stated in the Contract Data, this proportion shall be 0.10.

"a", "b", "c" and "d" are the coefficients contained in the Contract Data, which are deemed, irrespective of the actual constituents of the work, to represent the proportionate value of labour, Contractor's Equipment, material (other than "special materials" specified in the Contract Data) and fuel respectively. The arithmetical sum of "a", "b", "c" and "d" shall be unity.

"L" is the Labour Index, "P" is the Contractors Equipment Index, "M" is the Materials Index and "F" is the Fuel Index, all as defined in the Contract Data.

The suffix "0" denotes the base indices applicable to the base month as stated in the Contract Data.

The suffix "t" denotes the current indices applicable to the month in which the last day of the period falls to which the relevant monthly statement relates.

If an index relevant to any particular monthly statement is unknown at the time when the monthly statement is prepared, the Contractor shall estimate the value of such index. Any correction required, when the correct indices become known, shall be made by the Contractor in subsequent monthly statements.

If the organisation publishing the indices, changes any of the indices set out in the Contract Data, the Contractor shall use a correlation factor, which integrates the old and new indices, for adjustment of subsequent payment certificates.

2. For the purposes of calculating the adjustment to the value of the relevant monthly statement, the amount "Ac" shall be determined by the formula:

$$A_c = T - S - D - E - G - A_p$$

In which the formula the symbols shall have the following meaning:

"T" is the summation of the total value of:

- (i) General Items
- (ii) Work done, and
- (iii) The materials on Site

As certified in the monthly statement under consideration without any deduction whatsoever and before any adjustment made in terms of this Schedule.

"S" is the aggregate of (i),(ii), (iii) and (iv) referred to below and included in "T":

- (i) The amounts actually expended and substituted for any Prime Cost Sums;
- (ii) The value of any works done by Selected Subcontractors;
- (iii) The value of any work done against Provisional Sums;
- (iv) The value of any extra or additional work;

Where special arrangements for price adjustments in respect of those amounts were made and recorded at the time the work was ordered.

"D" is the value of work included in "T" and done at new fixed rates, where those rates were not based on labour, Contractor's Equipment or materials costs in force at the time of tendering. Generally new rates may be based on current costs and de-escalated to the base month of the indices, in which case work done at these rates shall not be included in value of "D".

"E" is the amount included in "T" and paid for any daywork carried out at cost plus percentage allowances as set out in Sub-Clause 13.5.

"G" is the amount included for "T" for materials classified and dealt with as "special materials".

"Ap" is the summation of all "Ac" amounts determined in terms of Clause 2 of the Contract Price Adjustment Schedule for all monthly statements preceding in time the monthly statement under consideration.

3. Save only for additional work, or variations ordered to be carried out after the Due Completion Date, the increase or decrease applied to monthly statements in terms of this Contract Price Adjustment Schedule, relating to work done, Plant and/or materials supplied after the Due Completion Date, shall be half the factor calculated by inserting the formula referred to in Clause 1 hereof, the indices Lt, Pt, Mt, and Ft applicable at the Due Completion Date.

- 4.1 The price of each "special material" specified in the Contract Data shall be increased or decreased by the net amount of any variation incurred after the date of tender on the basis set out in the Contract Data, provided that any claim for adjustment in terms hereof shall be substantiated by the submission of acceptable invoices and any other supporting documents that the Engineer considers necessary for the purpose, and provided also that no further adjustment be permitted to the price of any "special material" after the Due Completion Date unless such material forms part of any additional work or variation ordered to be carried out after that date.

- 4.2 For the purposes of Clause 4.1 hereof, "the net amount of any variations" in respect of a particular "special material" shall be calculated by multiplying the difference between the rate or price entered in the Contract Data by the Contractor for that material and the equivalent rate or price actually paid by the Contractor for the material by the quantity of the material in question.
5. If more than one month intervenes between the month applicable to any monthly statement and the month applicable to the immediately succeeding monthly statement, the indices Lt, Pt, Mt, and Ft applicable to such succeeding monthly statement shall each be the arithmetic mean, rounded off to the second decimal place, of the relevant indices applicable to the month of measurement and to such intervening months.

Sub-Clause 14.9 Release of Retention Money

Add the following paragraph to the end of this Clause:

"No interest shall be paid on retention money held by the Employer, irrespective of how long."

Sub-clause 20.2.5 Agreement or determination of the Claim

Add the following paragraph after the words "to which the claiming Party is entitled under the Contract.":

"The value of the additional payment (if any) due to an extension of the Time for Completion, will be calculated based on the value of the priced Time Related Preliminary and General items only for the particular discipline that experienced the delay (e.g. civil, building, mechanical or electrical), or was awarded the extension of the Time for Completion, provided that discipline was on the critical path on the approved programme."

C1.2.3.1 Data to be Provided by Contractor**1.1.3 Contractor's name and address :**

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Contractors Name is:

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1.3(d) The Physical address of the Contractor is:

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The Postal address of the Contractor is:

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The contact numbers of the Contractor are:

Telephone:

Address of Contractor for communications (email)

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C1.2.4 Additional Conditions of Contract

ACC.1 COMMUNITY LIAISON OFFICER

The Ward Councillor(s) in whose ward(s) work is to be done will, collectively, identify a community liaison officer (CLO) for the project and make the person known to the Contractor within two days of being requested to do so. The Contractor will be required to enter a written contract with the CLO that specifies:

- The hours of work and the wage rate of the CLO (200% of the Civil Engineering Industry minimum wage).
- The duration of the appointment.
- The duties to be undertaken by the CLO which could include:
- Assisting in all respects relating to the recruitment of local labour.
- Acting as a source of information for the community and councillors on issues related to the contract.
- Keeping the Contractor advised on community issues and issues pertaining to local security.
- Assisting in setting up any meetings or negotiations with affected parties.
- Keeping a written record of any labour or community issue that may arise.
- Any other duties that may be required by the Contractor.

Responsibility for the identification of a pool of suitable labour shall rest with the CLO, although the Contractor shall have the right to choose from that pool. The Contractor shall have the right to determine the total number labourers required at any one time and this may vary during the contract.

The Contractor shall have the right to replace labour that is not performing adequately. Should such occasion arise, it must be done in conjunction with the CLO.

Payment: The CLO will be reimbursed from the PC Sum item in the Preliminary & General Section of the Bill of Quantities.

ACC.2 CONTRACTOR PARTICIPATION GOAL (CPG)

It is a condition of contract that the Service Provider allow for a **minimum of 30 %** of the contract value (excluding Fixed P&G costs, Prime Cost Sums, Provisional Sum Allowances and cost of Imported Goods) to be sub-contracted to one or more targeted enterprises as highlighted under Additional Conditions of Tender, Clause ACT.4 Empowerment Strategies.

In fulfilling this requirement, it will be incumbent on the Contractor to ensure that priority is given to first employing suitable subcontractors from the local Ward / Area within which the work is being undertaken. In order to facilitate this, a Project Steering Committee (comprising the Contractor, the Ward Councilor and Community and Business Forum Leadership) will be set up at the start of the contract by the Institutional and Social Development (ISD) Facilitator (appointed by the Employer). (Refer to C4.3 for a "Schedule of Local Subcontractors").

Proof of payment to the subcontractors will be required periodically in order to verify that the CPG is being achieved.

The penalty for not achieving the specified CPG will be 0.5% of the contract value (excluding Fixed P&G's, PC Sum items and Fixed Cost allowances) for every 1% of CPG not achieved.

ACC.3 FTE (Full Time Equivalent) EMPLOYMENT INFORMATION

It is a condition of contract that the Contractor supplies the Engineer's Representative with information in respect of the employment of all foremen, artisans and labour (skilled and unskilled) employed to work on this contract. The information required is:

- Initials (per ID doc)
- Last Name (per ID doc)
- ID Number
- Disability (y / n)
- Education Level

Level 1 Unknown	Level 2 No Schooling	Level 3 Grade 1-3	Level 4 Grade 4	Level 5 Grade 5-6
Level 6 Grade 7-8	Level 7 Grade 9	Level 8 Grade 10-11	Level 9 Grade 12	Level 10 Post Matric
Category A: Employed as Local Labour for this contract only Category B: Temporarily employed by the Contractor Category C: Permanently employed by the Contractor				

In addition, the following information is required in respect of each person listed above, on a monthly basis:

- Number of days worked during the month;
- Daily wage rate;
- Number of training days during the month.

The information is to be forwarded in a format acceptable to the Engineer's Representative, but preferably in the form of an emailed EXCEL file (an original file, to be used as a template, will be issued to the Contractor). Contractors without computer facilities will be required to submit a hard copy of the information in a format as agreed to between the Contractor and the Engineer's Representative.

In addition to the tax invoice, to be submitted by the Contractor with his monthly statement, mentioned in Clause 14.3 of FIDIC Yellow 2017, the Employer reserves the right to withhold payment until the monthly FTE information has been forwarded to the Engineer's Representative. No additional payment for complying with the above will be made and the Contractor is to make allowance for complying through the time related P & G items (sum) under Part PSA: Preliminaries, of the Bill of Quantities.

ACC.4 Exceptional Events (Clause 18)

Pursuant to Clause 18 of the Conditions of Contract (FIDIC), the Employer shall not be liable for the payment of standing time costs as a result of the occurrence of any of the "Exceptional Events" (as defined under Clause 18.1) not catered for under the contract insurance cover.

However, the Employer shall reimburse the Contractor in respect of plant de-establishment and re-establishment costs as a result of "Force Majeure" when a written instruction to de-establish is issued to the Contractor.

ACT.5 Provision of documents in electronic format and submission of tender returnable documents

An electronic copy of the full tender document (in PDF format), the tender drawings (in PDF

format) and the bill of quantities (in Excel format) are provided on a CD to be handed to tenderers at the site clarification meeting and Tenderers will be required to comply with the following:

a) Tender Returnable Documents

Tenderers will be required to print all the tender returnable documents (Vol 1) from the electronic document provided and complete by hand or electronically. Once completed and signed, all returnable documents (with associated attachments) shall be collated in the order identical to that in the main tender document, bound and submitted as a separate document. The document of returnable documents shall be submitted preferably by punching and inserting in a file with index tab separators. It shall be attached to the tender document with a heavy-duty elastic band and returned in the same package.

b) Bill of Quantities

Tenderers shall use the electronic copy of the bill of quantities provided to enter the rates. Once completed, Tenderers will be required to print the priced bill and include in the same file as the tender returnable documents above or as a separate document.

Note: The electronic copy of the completed/ priced bill of quantities shall be copied onto the original CD and returned with the main tender document or provided on separate electronic media such as a memory stick, attached to the tender submission.

ACT.6 Lists of Preferred Suppliers and Specification of Supply (new clause)

The supply of all items of mechanical and electrical equipment and instrumentation and automation components shall be based on the Lists of Preferred Suppliers included under the Annexure 6. Where this is not the case or where something considered by the tenderer to be 'similar approved' has been offered, then the tenderer will be required to include in the tender submission a comprehensive Specification of Supply in sufficient detail to enable the Engineer to assess the nature and extent of the offer.

Such specification shall set out clearly (but shall not be limited) to the following information:

- Full description of item
- Manufacturer's name
- Country of manufacture
- Supplier's brochures
- Serial number
- Thickness and materials of construction
- Dimensioned drawings
- Characteristic curves (where applicable)
- Rated output
- Operating efficiencies
- Availability
- Compliance with relevant SABS / BS / ISO Specifications

In the Specification of Supply, the Tenderer shall set out any variations where his offer differs from that of the tender specification, data sheets and drawings. Should no information be provided, it shall be assumed that the Tenderer's offer is to specification and in order in all respects and should the Tenderer, after award, supply items of equipment that are not to specification, it will be required that such items be replaced without delay with those that do comply and at no cost to the Employer. All Equipment Data Sheets/ Schedules provided in the document shall be completed by tenderers BUT is not to be considered the only information required. These schedules are only included to highlight some specific information requirements and a full and comprehensive Specification of Supply is still required from the tenderers, set out in a manner that is logical and easy to check.

ACT.7 Alternative offers (new clause)

In all respects, tenders shall be based on the numbers, physical characteristics and design criteria

of the various items of equipment specified and/or indicated on the drawings and any variations there from must be submitted as an alternative to the main offer.

In such instances the Engineer must be supplied with sufficient details of the alternative design or equipment proposed by way of covering letter, brochures and acceptable evidence of the ability of the equipment to produce satisfactory results.

The alternative proposal shall result in a finished works identical or superior to that which would be achieved by the specified design and/or plant equipment.

The price quoted for any alternative proposal shall cover the complete works and if accepted shall form part of the Contract Value and shall be binding on the Contractor.

Any offers of alternative plant or equipment must be accompanied by a list which details, clearly, the differences between the plant or equipment specified and the alternative plant or equipment offered.

Where plant or equipment is not indicated as an alternative offer it will be deemed that the plant or equipment offered is to specification and in order in all respects.