

PART THREE – PARTICULAR CONDITIONS

ALTERNATIVE BUILDING TECHNOLOGY (ABT) PROJECT IN ALLIANCE AND EAST RAND STATIONS

TURNKEY CONTRACT

CLAUSE 1 GENERAL PROVISIONS	
Sub-Clause 1.1.6.6 Other Definitions	Delete Sub-Clause 1.1.6.6 and substitute: "Performance Security" means a letter of guarantee or bond issued by a reputable international bank registered mutually agreed to by both Employer and Contractor in the form annexed to the Particular Conditions or in another form approved by the Employer.
Insert a new Sub-Clause 1.1.6.9	Insert Sub-Clause 1.1.6.9 "Local Conditions", which reads: "Local Conditions" means any conditions that has effect on the Permanent Works or the Site where the Permanent Works are to be executed and any other places forming part of the Site.
Insert a new Sub-Clause 1.1.6.10	Insert Sub-Clause 1.1.6.10 "Construction Programme", which reads: "Construction Programme" means the programme referred to in sub-clause 8.3.
Insert a new Sub-Clause 1.1.6.11	Insert Sub-Clause 1.1.6.11 "Particular Conditions", which reads: "Particular Conditions" means the document identified as such, which includes the Appendix to Tender.
Insert a new Sub-Clause 1.1.6.12	Insert Sub-Clause 1.1.6.12 "Building", which reads: "Building" means the Alliance and East Rand Station
Sub-Clause 1.2 Interpretation	Insert the following additional sub-clauses at the end of Sub-Clause 1.2: "This Contract contains all the express provisions agreed on by the Parties with regard to the subject matter of the Contract, and supersedes and novates in its entirety any previous understandings or agreements among the Parties in respect thereof. No agreement varying, adding to, deleting from or cancelling this Contract, and no waiver of any right under this Contract, shall be effective unless reduced to writing and signed by or on behalf of the Parties. The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Contract shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor. In these Conditions, provisions including the words "Cost plus reasonable profit" require this profit to be 10% (ten percent) of this Cost"

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<p>Sub-Clause 1.3 Communications</p>	<p>Insert the following additional sub-clause at the end of Sub-Clause 1.3:</p> <p>“E-mail transmissions will be regarded as valid notification of the subject matter contained therein, unless the recipient can prove that same was not received. All notifications submitted in this manner must comply with the requirements as set out in the Conditions of Contract and any such communications must be attached to the E-mail transmission in a PDF format.”</p>
<p>Sub-Clause 1.4 Law and Language</p>	<p>The Contract shall be governed by the law of the Republic of South Africa and the language of the Contract and communications is English.</p>
<p>Sub-Clause 1.8 Care and Supply of Documents</p>	<p>Delete the words under the first paragraph “six copies of the Contractor’s Documents”, and substitute “two copies of the Contract Documents”.</p> <p>Add a new fourth paragraph, to read:</p> <p>“The Parties agree that the costs of printing and storage of all Contractor’s Documents, shall be for the Contractors account.”</p>
<p>Sub-Clause 1.13 Compliance with Laws</p>	<p>Amend the first sentence of Sub-Clause 1.13 as follows:</p> <p>Amend the first sentence of Sub-Clause 1.13(a) by the addition of the words “pay all taxes, duties and fees and” after the words “the Employer shall”.</p> <p>Amend Sub-Clause 1.13(b) by the deletion of the words “pay all taxes, duties and fees”</p> <p>Insertion of a new Sub Clause 1.13 - "(c) To the extent that the Contractor may be required to pay any taxes, duties or fees which under this Contract are to be paid by the Employer, the Contractor shall be entitled to reimbursement of the amount paid in accordance with the payment procedure in Sub-Clause 14.3 [Application for Interim Payments] .</p> <p>Insertion of a new Sub Clause 1.13 - "(d) the Contractor shall be responsible for all administration duties in connection with the application, submission and clearing of all taxes, duties and fees during importation of goods, materials etc.”</p>

CLAUSE 2 THE EMPLOYER

<p>Insert new Sub-Clause 2.6 Copyright</p>	<p>“The ownership of the copyright in, and to, all drawings, specifications, models and documents of any nature delivered to the Contractor, or produced by, or on behalf of, the Contractor in connection with the Works, and, the artistic character, and/or artistic design of the Works, shall remain vested in, and/or is hereby assigned to, the Employer by the Contractor. As the project is of a highly confidential nature, the Contractor shall: treat all drawings, specifications, models and documents of any nature delivered to the Contractor, or produced by, or on behalf of, the Contractor in connection with the Works as being confidential; keep secret and not directly, or indirectly, disclose, or divulge, to any person (except insofar as may be necessary in connection with the Works) any information contained in the contract documents without the prior written consent of the Employer; not copy, photograph and/or repeat either wholly, or in part, any of the contract documents referred to above (except</p>
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	insofar as may be necessary in connection with the Works); upon submission of his/her tender, return to the Employer all contract documents issued herewith; and, upon completion of the Works, deliver to the Employer copies of all contract documents of any nature pertaining to the Works."
CLAUSE 3 EMPLOYER'S REPRESENTATIVE	
Sub-Clause 3.1	Add this wording before the second paragraph "The Employer shall appoint a suitably qualified and competent Employer's Representative within its employment or an external suitably qualified and competent consultant to act as Employer's Representative. Any changes to the Employer's representative shall be done with notification to the Contractor."
CLAUSE 4 THE CONTRACTOR	
Sub-Clause 4.2 Performance Security	Insert the following paragraph after the first paragraph: The Contractor shall obtain a Performance Security in the amount of 10% of the Contract Price as stated in the contract Agreement (exclusive of VAT).
Sub-Clause 4.5 Nominated Subcontractors	Add the following as the last paragraph of Sub-Clause 4.5: 'Notwithstanding the foregoing, where the Employer has entered into an agreement with a subcontractor prior to the Commencement Date, the Employer may in its absolute discretion and at any time direct the Contractor in writing to enter into a novation agreement with the Employer and such subcontractor with regard to that agreement. Where the Employer so directs the Contractor to enter into such a novation agreement, the Contractor shall within 7 days upon receipt of such direction enter into a novation agreement in the form and substance shown in the Annexures. In respect of that agreement, such a subcontractor shall for the purpose of Sub-Clause 4.4 be deemed a Subcontractor."
Sub-Clause 4.9 Quality Assurance	Add the words "28 days prior to execution, for the Employers review (and subject to the Employers approval)," to the second paragraph, after the words "compliance documents shall be submitted " Add the following new last paragraph to the Particular Conditions: "The Employer shall have deemed to have consented to the Contractor's quality assurance system, if the Employer does not raise any objection to the same within 28 days from its receipt of the Contractor's provision to the Employer of all procedures and compliance documents of the Contractor's quality assurance system."
Sub-Clause 4.18 Protection of the Environment	Add a third paragraph; "The Contractor shall, in the performance of the Works, comply with all applicable environmental laws."

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<p>Sub-Clause 4.21 Progress Reports</p>	<p>Delete third paragraph and substitute with 'Each report shall include:</p> <ul style="list-style-type: none">a) An Executive Summary highlighting progress of the month, key issues that require immediate attention, outstanding information, H&S summaryb) Charts and detailed descriptions of progress of each stage of design, Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection, testing, commissioning and trial operation. The format and template of these charts shall be agreed with the Employers Representative prior to the 1st submissionc) Photographs showing the status of manufacture and progress on Site as well as materials that are manufactured off site.d) For the manufacture of each main item of Plant and materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:<ul style="list-style-type: none">• Commencement of manufacture• Contractors inspections• Tests and• Shipment date and arrival date at the Site;e) the details described in Sub-Clause 6.10f) copies of quality assurance documents, test results and certificates of Materials;g) Budget priced List of Variations, notices under Sub-Clause 2.5 and notices given under Sub-Clause 20.1h) Safety Statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relationsi) Comparisons of actual and planned works, with details of any events or circumstances which may jeopardise the completion in accordance with the Contract, and the measures being (or to be) adopted to overcome delays.j) Submission of an updated projected project cash flowk) Any further information that might be required by the Employers Representative."l) Submit a time programme including the details described in Sub-clause 8.3 with actual progress plotted against the programme included in the Contract, highlighting any risk associated with the time programme.m) Monthly recorded rainfall in mm
<p>Insert new Sub-Clause 4.25 Rights of Access to Contractors Premises</p>	<p>"The Employer reserves the right at any time to enter upon the Contractor's premises at the Site to monitor compliance by the Contractor of the obligations and warranties set out in this Contract and the Contractor is to, upon request, furnish the Employer with any documents (save documents relating to Contractor's commercially sensitive information) he requests, and to co-operate fully in any inspection that the Employer may carry out.</p> <p>The Contractor shall provide a monthly declaration to the Employer that the Contractor has made all necessary payments to its Subcontractors, which shall be a</p>

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	condition precedent to the Contractor's receipt of payment for the following month under Clause 14 [Contract Price and Payment "
CLAUSE 6 STAFF & LABOUR	
Sub-Clause 6.1 Engagement of Staff and Labour	Add the following after the first paragraph: A community Liaison officer (CLO) is to be appointed from the Contractor's ranks for the specific purpose of acting as liaison between management and hired labour.
Sub-Clause 6.5 Working Hours	Normal working hours will be from 07:00 to 17:00 from Monday to Friday
CLAUSE 8 COMMENCEMENT, DELAYS AND SUSPENSION	
Sub-Clause 8.1 Commencement of Work	Delete the first paragraph and substitute with: "The Commencement Date shall be the Commencement Date stated in the Appendix to Tender. Should this condition not be met, the Employer shall give notice to the Contractor of the revised Commencement Date. The Contractor shall not be entitled to an extension of time or cost for such delay. The Time for Completion shall be adjusted based on the Construction Programme duration from the time Commencement."
Sub-Clause 8.7 Delay Damages	Delay damages shall be 3 Cents per R100 of the value of the Contract Price per day or part thereof for the whole of the Works. The maximum amount of delay damages is 10% of the Contract Price.
CLAUSE 11 DEFECTS LIABILITY	
Sub-Clause 11.1 Completion of Outstanding Work and Remedying in Defects	The Defects Notification Period is 12 months from the date of the Taking-over Certificate
Sub-Clause 11.11 Clearance of Site	Delete the first paragraph.
Insert new Sub-Clause 11.12 Latent Defects	Insert new Sub-Clause 11.12 Latent Defects: "Latent Defects Liability Period for the Works shall commence from the Commencement Date and end 5 (five) years after the date of the issuing of the Performance Certificate. The Contractor shall furnish the Employer with a Latent Defects Security in a form acceptable to the Employer within 28 days after both parties have signed the Contract Agreement During the Latent Defects Liability Period should a Latent Defect be noted the Employer shall notify the Contractor to remedy the Latent Defect. The Contractor shall within 28 days or such other time period as may be agreed

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	<p>between the Parties commence with the remedying of the Latent Defect and once having commenced with such work continue with due expedition and without delay.</p> <p>In the event that the Contractor fails to comply with its obligations under this Sub- Clause the Employer shall be entitled to call upon the Latent Defects Security."</p>
CLAUSE 13 VARIATIONS AND ADJUSTMENTS	
Sub-Clause 13.8 Adjustment of Changes in Cost	<p>Delete Sub-Clause 13.8 and substitute with:</p> <p>"Subject to Sub-Clause 13.7 [Adjustments for Changes in Legislation], the Contract Price shall not be subject to any adjustment for any change in the cost of materials, plant, consumables, fuel, power, water, communications charges, freight or insurance rates, taxes and duties, wage rates or allowances in respect of labour and for rises and falls in the exchange rates of currencies."</p>
CLAUSE 14 CONTRACT PRICE & PAYMENT	
Sub-Clause 14.3 Application for Interim Payments	<p>Delete the first paragraph and substitute with the following:</p> <p>"The Contractor shall submit a Statement in 2 copies to the Employer on the 25th of the month, in a form approved by the Employer, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the relevant report on progress in accordance with Sub-Clause 4.21 [Progress Reports]"</p>
Sub-Clause 14.6 Interim Payment	<p>Delete the first paragraph and substitute with the following:</p> <p>Should the Contractor not provide a Performance Security within the times stated in the contract, 10% retention will be withheld on each payment up to a maximum of 10% of the contract price. Thereafter, the Employer shall within 28 days after receiving a Statement and supporting documents, give to the Contractor notice of any items in the Statement with which the Employer disagrees, with supporting particulars. Payment due shall not be withheld, except that:"</p> <p>Add the following to the end of this Sub-Clause:</p> <p>"The Contractor will provide an invoice with each Statement, which invoice shall be payable in accordance with the provisions of Sub-Clause 14.7"</p>

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Sub-Clause 14.7 Timing of Payments	Delete the paragraph (b) and substitute with the following: The amount which is due in respect of each statement, other than the final statement, within 30 days after receiving the statement and supporting documents; and
Sub-Clause 14.9 Payment of Retention Money	Add the following after the last paragraph: "The percentage of retention is 10% and the limit of Retention Money is 10% of the Contract Price stated in the Contract Agreement. Subject to the Contractor providing a Retention Security in a form acceptable to the Employer and from a Bank acceptable to the Employer retention will not be deducted"
Sub-Clause 14.11 Application for Final Payment	Add the following to the end of this Sub-Clause: The Contractor will provide an invoice with the Final Statement, which invoice shall be payable in accordance with the provisions of Sub-Clause 14.7.
Sub-Clause 14.15 Currencies of Payment	Delete this Sub-Clause and substitute: "The Contract Price shall be paid in the currency or currencies set out in the Contract Data."
CLAUSE 18 INSURANCE	
Sub-Clause 18.2 Insurance for Works and Contractors Equipment	Add the following new sixth and seventh paragraphs; "The Contractor shall be responsible for effecting and maintaining Insurance for the Works and Contractor's Equipment. The Contractor shall bear the cost of effecting all insurances and the cost of any deductibles applying to any insurance claims made on the Contractor's insurance policies which arise from occurrences or events for which the Employer is responsible under the Contract or otherwise. The Contractor shall make all of his Subcontractors aware of this obligation. All insurances to be effected by the Contractor under this Contract shall be with insurers and on terms to be approved solely by the Employer. The Contractor shall be deemed to have satisfied himself and shall cause all of his Subcontractors to satisfy themselves with regard to the extent of cover provided under the policies of insurance effected by the Contract."
CLAUSE 19 FORCE MAJEURE	
Sub-Clause 19.1 Definition of Force Majeure	Add the following words to the end of sub-paragraph (iii): ", or epidemic of any nature in South Africa, as declared by the Authorities.*"