

**CONDITIONS OF CONTRACT FOR
EPC/TURNKEY PROJECTS**

**APPOINTMENT OF A 6GB OR HIGHER TURNKEY
CONTRACTOR FOR THE REFURBISHMENT OF KOPANONG
STATION IN THE NORTH GAUTENG REGION**

between

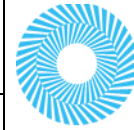
**THE PASSENGER RAIL AGENCY OF SOUTH AFRICA
(Employer)**

and

Registration Number _____

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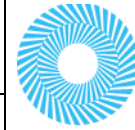
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PART 1: AGREEMENT

CONTRACT AGREEMENT

This Agreement made on the date of last signature thereof,

between: -

THE PASSENGER RAIL AGENCY OF SOUTH AFRICA

(Hereinafter called “the Employer”)

Of

Umjantshi House
30 Wolmarans Street
Braamfontein, Johannesburg

of the one part,

and

COMPANY NAME PROPRIETARY LIMITED REGISTRATION _____

(Hereinafter called “the Contractor”)

of

address

of the other part.

Whereas the Employer desires that the design, execution, delivery, completion, and commissioning of the Works in accordance with the Employer’s Requirements, and the remedying of any defects therein, be executed by the Contractor.

The Employer and the Contractor agree as follows: -

1. In this Contract Agreement words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions of the Contract hereinafter referred to.
2. The following documents shall form part of, and be read and construed as part of the Contract: -
 - Contract Agreement,
 - Particular Conditions of Contract and the appendix thereto,
 - General Conditions of Contract,
 - Employer’s Requirements,

**APPOINTMENT OF A 6GB OR HIGHER TURNKEY
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- The Tender and any other documents forming part of this Contract.
- Payment Milestones

3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to design, execute, complete, and commission the Works and remedy any defects therein and complete the Works in conformity with the provisions of the Employer's Requirements and the Contract, on a fixed price turnkey basis.
4. The Employer hereby covenants to pay the Contractor, as consideration, the Contract Price, or such sum as may become payable under the provisions of the Contract, at the times and in the manner prescribed by the Contract.
5. The Commencement Date is (7) Seven days after the contract has been signed by both parties.

In Witness whereof the Parties hereto have caused this Contract to be executed the day and year first before written in accordance with their respective laws.

FOR AND ON BEHALF OF THE EMPLOYER:

SIGNED at _____ on _____ 202_

SIGNED by:- _____
(Name) (Signature - Director)
[He warranting by his signature that he is duly authorized]

Witness:- _____
(Name) (Signature)

FOR AND ON BEHALF OF THE CONTRACTOR:

SIGNED at _____ on _____ 202_

SIGNED by:- _____
(Name) (Signature)
[He warranting by his signature that he is duly authorized]

Witness:- _____
(Name) (Signature)

PART 2: CONDITIONS OF CONTRACT

General Conditions of Contract

The Conditions of Contract comprise the “General Conditions”, which form part of the “Conditions of Contract for EPC/Turnkey Projects” Second Edition 2017, published by the Fédération Internationale des Ingénieurs-Conseils (FIDIC), and the “Particular Conditions of Contract”, which include amendments and additions to such General Conditions.

These General Conditions are adopted as the General Conditions of Contract for this Contract and are available from:-

Fédération Internationale des Ingénieurs-Conseils (FIDIC)

Web address: - <http://www.fidic.org>

Particular Conditions of Contract-Part A – Contract Data

Clause	Data to be given	Data
1.1.17	Where the Contract allows for Cost Plus Profit, percentage profit to be added to the Cost.	10%
1.1.24	Defects Notification Period (DNP)	1 Year
1.1.30	The Employer’s Representative:	Tbc
1.1.77	Time for Completion: (Tenderer to Complete)	_____ days
1.3 (a)(ii)	agreed methods of electronic transmission	...............
1.3 (d)	address of Employer for communication:	..... ..... .....
1.3 (d)	address of Employer’s Representative for communications:	..... ..... .....
1.3(d)	address of Contractor for communications:	..... ..... .....
1.4	contract shall be governed by the law of :	South Africa
1.4	ruling language:	English
1.4	language of communication:	English
1.8	number of additional paper copies of Contractor’s Documents	3 (three)
1.14	total liability of the Contractor to the Employer under or in connection with the Contract (Tenderer to Complete)	.....
2.1	after the Contract comes into full force and effect, the Contractor shall be given right of access to all or part of the Site within	30 days

2.4	Employer's financial arrangements	Not applicable
4.2	<p>Performance Security (as percentages of the Contract price in Currencies);</p> <p>Percent.....10%.....</p> <p>Currency.....Rands.....</p> <p>Percent</p> <p>Currency.....</p>	<p>10%</p> <p>Only in Rands</p>
4.4 (a)	maximum allowable accumulated value of work subcontracted (as a percentage of the Contract Price)	49 %
4.4 (b)	parts of the Works for which subcontracting is not permitted	<p>.....N/A.....</p> <p>.....</p> <p>.....</p>
4.4	<p>(i) Subcontractors for which the Contractor shall give Notice before appointment (Tenderer to Complete)</p> <p>(ii) Subcontractors for which the Contractor shall give Notice before commencement of the works (Tenderer to Complete)</p> <p>(iii) Subcontractors for which the Contractor shall give Notice before commencement of work on Site (Tenderer to Complete)</p>	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
4.19	period of payment for temporary utilities	250 days
4.20	number of additional paper copies of progress reports	6
5.5	Training of personnel	Before 30 days after Taking over of the works
5.6	As-Built Documents	2 hard copies and 2 in electronic formats DWG, PDF.....

6.5	normal working hours on the Site	Specified in Employer's requirement
8.1	Commencement Date	7 Days
8.3	number of additional paper copies of programmes	2 hard copies and 2 electronic copies
8.8	Delay Damages payable for each day of delay	<p>Basic functionality 0.01% of the Contract Price per day for the first 30 days and 0.02% per day for the next 90 days</p> <p>Improvements 0.05% of the Contract Price per day for the first 30 days and 0.06% per day for the next 90 days</p>
8.8	Maximum amount of Delay Damages	<p>Basic functionality 5% of the Contract Price</p> <p>Improvement 10% of the Contract Price</p>
13.4(b)(ii)	percentage rate to be applied to Provisional Sums for overhead charges and profit	N/A.....

14.2	total amount of Advance Payment (as a percentage of the final Contract Price)	N/A
14.2	Currency or currencies of Advance Payment	N/A.....
14.2.3	percentage deductions for the repayment of the Advance Payment	N/A
14.3	period of payment	N/A
14.3(b)	number of additional paper copies of Statements	1
14.3(iii)	Percentage of retention	10 %
14.3(iii)	Limit of Retention Money (as a percentage of Contract Price)	10 %
14.5(b)(i)	Plant and Materials for payment when shipped	N/A
14.5(c)(i)	Plant and Materials for payment when delivered to the Site	Transformers, Solar plant, Pump Boosters, Containers
14.6.2	Minimum amount of interim payment	N/A
14.7(b)(i)	period for the Employer to make interim payments to the Contractor under Sub-Clause 14.6 [<i>Interim Payment</i>]	default to contract
14.7(b)(ii)	period for the Employer to make interim payments to the Contractor under Sub-Clause 14.13 [<i>Final Payment</i>]	default to contract
14.7(c)	period for the Employer to make final payments to the Contractor	default to contract
14.8	delayed payments finance charges	N/A

14.11.1(b)	number of additional paper copies of draft Final Statement	2
14.15	currencies for payment of Contract Price	Rand
14.15(a)(i)	proportions or amounts of Local and Foreign Currencies are: Local Foreign	Rand N/A
14.15(c)	Currencies and proportions for payment of Delay Damages	N/A
14.15(g)	Rate of exchange	N/A
17.2(d)	Forces of nature, the risks of which allocated to the Contractor	Rain, Wind, Hail and Floods
	<u>INSURANCE INSTRUCTIONS</u>	
19.1	Permitted deductible limits: Insurance required for the Works Insurance required for Goods Insurance required for liability for breach of professional duty insurance required against liability for fitness for purpose (if any is required) insurance required for injury to persons and damage to property insurance required for injury to employees other insurances required by Lays and by local practice; ..... ..... .....	..... ..... ..... ..... ..... ..... ..... ..... ..... .....
19.2(1)(b)	additional amount to be insured (as a percentage of the replacement value, if less or more than 15%)%
19.2(1)(iv)	list of Exceptional Risks which shall not be excluded from the insurance cover for the Works	.....

19.2.2	extent of insurance required for Goods amount of insurance required for Goods	..........
19.2.3(a)	amount of insurance required for liability for breach of professional duty	.....
19.2.3(b)	insurance required against liability for fitness for purpose	yes / no
19.2.3	period of insurance required for liability for breach of professional duty	.....
19.2.4	amount of insurance required for injury to persons and damage to property	.....
19.2.6	other insurance required by Laws and by local practice (give details)	.....
21.1	time for appointment of DAAB	N/A.....days
21.1	the DAAB shall comprise	N/A.....members
21.1	list of proposed members of DAAB -proposed by Employer	1.....N/A..... 2..... 3.....
	-proposed by Contractor	1.....N/A..... 2..... 3.....
21.2	Appointing entity (official) for DAAB members	N/A

Particular Conditions of Contract-Part B – Special Provisions

The General Conditions of Contract are amended as indicated below, to reflect the specific requirements of the Employer. The amendments contain revisions, deletions and/or additions to the General Conditions, and are named the Particular Conditions of Contract.

Clause and Sub-Clause numbers shown reflect, and in the case of additional Clauses and Sub-Clauses, follow on from those used in the General Conditions of Contract.

**FIDIC Clause
No's.**

1 GENERAL PROVISIONS

1.1 Definitions

1.1.10 Contract Price

The content of this Clause.1 is deleted and replaced with the following:-

“**Contract Price**” means the agreed amount recorded in the Contract Agreement as consideration payable to the Contractor for designing, executing, completing and commissioning the Works and remedying any defects therein and includes adjustments (if any) in conformity with the provisions of its obligations under the Contract.”

1.2 Interpretation

The following Sub-Clauses are added after Sub-Clause 1.2 (j):

1.2 (k) This Contract is the entire contract between the Parties regarding the matters in this Contract. No representations, terms, conditions, or warranties not contained in this Contract shall be binding on the Parties. No agreement or addenda varying, adding to, deleting or cancelling this Contract shall be effective unless reduced to writing and signed by the Parties.”

1.6 Contract agreement

The following is deleted.

“The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer” and replaced with

“The costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by both Parties”

1.11 Confidentiality

The following Sub-Clause is added after Sub-Clause 1.11 (c):

(d) is required by Law

2 THE EMPLOYER

2.4 Employers financial arrangements

The contents of Sub-Clause 2.4 (a) is deleted

3. THE EMPLOYER'S ADMINISTRATION

3.3 Delegated Persons

In Sub Clause 3.3 (b) '7 days' is deleted and replaced with '14' days'

3.4 Instructions

In Clause 3.4 last paragraph, '7 days' is deleted and replaced with '14' days'

4 THE CONTRACTOR

4.8 Health and Safety Obligations

In Sub Clause 4.8 last paragraph after Sub Clause (g) '21days' is deleted and replaced with '14' days'

4.20 Progress Reports

In Sub Clause 4.20 first paragraph '7days' is deleted and replaced with '3' days'

The following shall be added after Sub Clause (h);

- (i) Employment Statistics
- (j) Cost performance

5 DESIGN

5.2 Contractor's Documents

In Sub-Clause 5.2.2 first paragraph, '21 days' is deleted and replaced with '30 days':

12 TESTS AFTER COMPLETION

The following content of clause 12 .1 third paragraph) is deleted.

The Employer shall provide electricity, water, sewage, fuel, consumables and material

13 VARIATIONS AND ADJUSTMENTS

13.1 Right to Vary

Add the following after the second paragraph:-

Any Variation shall be approved, in writing, by a duly authorised official of the Employer.

13.7 Adjustments for Changes in Costs

Sub Clause 13.7 is deleted and replaced with the **following sub-clause 13.7.**

13.7 Value of Variations

13.7.1 No variation orders shall exceed 20% (20 per cent) of the Contract Price as required by the Employers procurement policies.

13.7.2 No variation orders shall be valid unless approved, in writing, by the duly authorised official of the Employer.

Sub-Clause 13.8 is added after Sub-clause 13.7.

13.8 CONTRACT PRICE ADJUSTMENT PROVISIONS

13.8. The Contractor shall factor in escalation in their pricing, pricing will be fixed for the duration of the contract.

14 CONTRACT PRICE AND PAYMENT

14.2 Advance Payments

Sub Clause 14.2 is deleted.

14.7 Payment

In paragraph (b) (i) replace “56 days” with “45 days”.

15 TERMINATIONS BY THE EMPLOYER

The following Sub –Clause is added after Sub-clause 15.7, as 15.8

15.8 Change in control and BBBEE

15.8.1 The Contractor shall not, during the term of this Contract, be allowed to proceed with any of the following matters without the prior written consent from the Employer's Chief Procurement Officer and Group Chief Executive Officer:

15.8.1.1 any transfer of any amount of shares of the Contractor;

15.8.1.2 any change in the composition of the Contractor;

15.8.1.3 any change in the ownership of the Contractor;

15.8.1.4 any material change in the constitution, memorandum, articles of association or memorandum of incorporation or similar document providing for the creation, formation or incorporation of the Contractor; or

15.8.1.5 any change on the BBBEE component of the Contractor.

15.8.2 provided that the Contractor shall not require any approval and/or consent of the Employer and/or Employer's Chief Procurement Officer and Group Chief Executive Officer where any change as contemplated in clause 15.1.1 to 15.1.5 Employers not have impact of the BBBEE Status of the Contractor.

15.8.3 Any breach of this clause 15 by the Contractor shall result in immediate termination by the Employer

18 Exceptional Events

18.5 Optional Termination

In Sub Clause 18.5 the following changes are made

Sub Clause 18.5 (e) is deleted

21 Disputes and Arbitration

The contents of Sub-Clauses 21.1 to 21.8 are deleted and replaced with the following;

21.1 Dispute Resolution

21.2.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 (ten) Business Days of such dispute arising.

21.2.2. If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to arbitration, which proceedings shall be held in Johannesburg in accordance with the Arbitration Foundation of South Africa Rules.

- 21.2.3. This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause.
- 21.2.4. This clause is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 21.2.5. This clause shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

PART 3: EMPLOYERS REQUIREMENTS

Refer to tender

PART 4: TENDER AND OTHER DOCUMENTS

Refer to tender

PART 5: PAYMENT MILESTONE SCHEDULE