

CONDITIONS OF CONTRACT FOR PLANT AND
DESIGN BUILD PROJECTS

between

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

and

Registration Number _____

TABLE OF CONTENTS

<u>PART 1 : AGREEMENT</u>	3
<u>CONTRACT AGREEMENT</u>	3
<u>PART 2: CONDITIONS OF CONTRACT</u>	5
<u>GENERAL CONDITIONS OF CONTRACT</u>	5
<u>PARTICULAR CONDITIONS OF CONTRACT</u>	6
PART A CONTRACT DATA.....	6
PART B- SPECIAL PROVISIONS.....	11
<u>PART 3: EMPLOYERS REQUIREMENTS</u>	16
PART 4 : TENDER AND ANY OTHER DOCUMENTS	17
<u>PART 5: PAYMENT MILESTONE SCHEDULE</u>	18

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,

- 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 Contract Price, including VAT, is the fixed price, lump sum amount of R_____ (in words).).
 6. The Commencement Date is (1) one day 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 _____ 201__

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 _____ 201__

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 Plant and Design-Build” 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
1.1.20	Where the Contract allows for Cost Plus Profit, percentage profit to be added to the Cost	10%
1.1.27	Defects Notification Period (DNP)	365 days
1.1.30	Employer's name and address:.....	_____
1.1.35	Engineer's name and address:.....	_____
1.1.87	Time for Completion	365_ days
1.3(a) (ii)	Agreed methods of electronic transmissions:	tbc.....
1.3(d)	Address of Employer for communications:	
1.3(d)	Address of Engineer for communications:	
1.3(d)	Address of the Contractor for communications:	
1.4	Contract shall be governed by the law 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	

1.9	Period for notification of errors, faults or other defects in the Employer's Requirements	_____ days
1.15	Total liability of the Contractor to the Employer under or in connection with the Contract:	Plus Thirty Percent (+30%)_ (sum)
2.1	after receive the Letter of Acceptance, the Contractor shall be given right of access to all or part of the Site within:	_____ days
2.4	Employer's financial arrangements	N/A.....
4.2	Performance Security (as percentages of the Contract price in Currencies); Percent.....10%..... Currency.....Rands..... Percent Currency.....	
4.4(a)	maximum allowable accumulated value of work subcontracted (as a percentage of the Contract Price)	_____
4.4(b)	parts of the Works for which subcontracting is not permitted	_____
4.7.2	Period for notification of errors in the items of reference	_____ days
4.19	Period of payment for temporary utilities	_____ days
4.20	Number of additional paper copies of progress reports..	
6.5	Normal working hours on the Site	
8.3	Number of additional paper copies of programmes	
8.8	Delay Damages payable for each week of late delivery delay. (Based on the Tenderer's commitment letter on delivery lead time as required in the Evaluation criteria)	1% of the price value of the items purchased

13.4(b)(ii)	Percentage rate to be applied to Provisional Sums for overhead charges and profit	_____ %
14.2	Total amount of Advance Payment (as a percentage of Accepted Contract Amount)	N/A
14.2.3	Percentage deductions for the repayment of the Advance Payment	_____ %
14.3	Period of payment	_____
14.3(b)	Number of additional paper of Statements	_____
14.3(ii)	Percentage of retention	10%
14.3(iii)	Limit of Retention Money (as a percentage of Accepted Contract Amount)	_____ %
14.5(b)(i)	Plant and Materials for payment when shipped	_____
14.5(c)(i)	Plant and Materials for payment when delivered to the Site	_____
14.6.2	Minimum amount of Interim Payment Certificate (IPC)	_____
14.7(a)	Period for payment of Advance Payment to the Contractor	_____ days
14.7(b)(i)	Period for the Employer to make interim payments to the Contractor under Sub-Clause 14.6 [Interim Payment]	_____ days
14.7(b)(ii)	Period for the Employer to make interim payments to the Contractor under Sub-Clause 14.13 [Final Payment]	_____ days
14.7(c)	Period for the Employer to make final payment to the Contractor	_____ days
14.8	Financing charges for delayed payment (percentage points above the average bank short-term lending rate as referred to under sub-paragraph (a))	0_ %
14.11.1(b)	Number of additional paper copies of draft Final Statement	_____

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	Rand
14.15(g)	Rate of exchange	N/A
17.2(d)	Forces of nature, the risks of which are allocated to the Contractor:	_____ _____ _____
19.1	##NO INSURANCE TO BE TAKEN BY EMPLOYER. BIDDERS TO BE RESPONSIBLE FOR ALL INSURANCE REQUIREMENTS 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 <i>(delete as appropriate)</i>
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	_____
21.1	The DAAB shall comprise	_____ members
21.1	List of proposed member of DAAB - Proposed by Employer - Proposed by Contractor	1. _____ 2. _____ 3. _____ 1. _____ 2. _____ 3. _____
21.2	Appointing entity (official) for DAAB members	_____ <i>(Unless otherwise stated her, it shall be the President of FIDIC or a person appointed by the President)</i>

Definition of Sections (if any): N/A

Description of parts of the Works that shall be designated a Section for the purposes of the Contract (Sub-Clause 1.1.76)	Value: Percentage* of Contract Price (Sub-Clause 14.9) (Tenderer to complete)	Time for completion (Sub-Clause 1.1.86) Tenderer to complete	Delay Damages (Sub-Clause 8.8)

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, manufacturing, delivering, off-loading, installation, test and commissioning and training 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-Clause is 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’

1.12 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

3.4 Delegation by the Engineer

In Sub Clause 3.4 ‘7 days’ is deleted and replaced with ‘14’ days’

3.5 Engineer’s Instructions

In Clause 3.5 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':

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.

15 TERMINATION BY EMPLOYER

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.

22 The following new clause is inserted after clause 21:

“22 Black Economic Empowerment and Preferencing

The BEE and Preferencing Points claim by the Contractor is as indicated in the Black Economic Empowerment and Preferencing Declaration Affidavit. The Contractor acknowledges that the penalty for claiming BEE and Preferencing Points that is incorrect at any stage, for whatever reason, shall be 1% of the accepted contract amount. The penalty amount shall be deducted from any payments due by the Employer, in the payment certificate/s issued after the Project Controls Manager becomes aware of the incorrect BEE and Preferencing Points claim.”

23 The following new clause is inserted after the new clause 22:

“23 Training And Development

“The Contractor shall undertake the following initiatives, which shall be managed by the Project Manager, within 1 month of the Commencement Date or any other period agreed to by the Project Manager:

23.1 Training shall be provided to a minimum of 3 operators (beginner and intermediate levels) and 3 maintenance personnel following commissioning and handover of the Lifting Jacks system. It shall be noted that this could be up to a period of 12 months following Handover.

23.2 The training shall be carried out to enable the operating and maintenance staff to be proficient in the Re-profiling activities, fault finding and maintenance using all functions of the Lifting Jacks system.

23.3 At the satisfactory completion of the training course, the Contractor **shall issue a certificate of competency to the trained personnel.**

23.4 The Contractor shall advise with the returned tender a synopsis of the training course content and duration

PART 3: EMPLOYERS REQUIREMENTS

Refer to tender.

PART 4: TENDER AND OTHER DOCUMENTS

Refer to tender.

PART 5: PAYMENT MILESTONE SCHEDULE

#	Description	Date	% of Works	Amount (VAT Inclusive)
DESIGN, MANUFACTURE, DELIVERY, OFF-LOAD, INSTALLATION, TEST, COMMISSIONING AND TRAINING OF ROLLING STOCK MOBILE SYNCHRONISED VEHICLE LIFTING JACKS FOR PRASA NEW TRAINS				
#	Description	Date	% of Works	Amount
1	Detail Design Approval	[•]	10%	R [•]
2	Factory Acceptance Testing (FAT): At source, prior to shipment	[•]	20%	R [•]
3	Delivery to site	[•]	40%	R [•]
4	Site Acceptance Testing (SAT): Verification against equipment shipped, acceptance and signoff by Engineer/Project Manager	[•]	20%	R [•]
5	Release of retention	[•]	10%	R [•]
Total payments for design, manufacture, deliver, installation, commissioning and training (Contract Price)		[•] - [•]	100%	R [•]