

## C1.2 Contract Data

### Part one - Data provided by the *Employer*

Clause	Statement	Data
1	<p><b>General</b></p> <p>The <i>conditions of contract</i> are the core clauses and the clauses for main Option</p> <p>dispute resolution Option and secondary Options</p> <p>of the NEC3 Engineering and Construction Contract June 2005 (amended June 2006 and April 2013)</p>	<p><b>A: Priced contract with activity schedule</b></p> <p><b>W1: Dispute resolution procedure</b></p> <p><b>X2: Changes in the law</b></p> <p><b>X7: Delay Damages</b></p> <p><b>X18: Limitation of liability</b></p> <p><b>Z: <i>Additional conditions of contract</i></b></p> <p><b>Z1: Additional clauses relating to Joint Venture</b></p> <p><b>Z2: Additional obligations in respect of Termination</b></p> <p><b>Z3: Right Reserved by the <i>Employer</i> to Conduct Vetting through SSA</b></p> <p><b>Z4: Additional Clause Relating to Collusion in the Construction Industry</b></p> <p><b>Z5: Protection of Personal Information Act</b></p>
10.1	The <i>Employer</i> is:	<p><b>Transnet SOC Ltd</b>  <b>(Registration No. 1990/000900/30)</b></p>



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	Address	Registered address: <b>Transnet Corporate Centre 138 Eloff Street Braamfontein Johannesburg 2000</b>
	Having elected its Contractual Address for the purposes of this contract as:	<b>Transnet Pipelines 202 Anton Lembede Street Durban 4001</b>
10.1	The <i>Project Manager</i> is: (Name)	<b>TBA</b>
	Address	<b>Transnet Corporate Centre 138 Eloff Street Braamfontein Johannesburg 2000</b>
	Tel	.....
	e-mail	.....
10.1	The <i>Supervisor</i> is: (Name)	<b>TBA</b>
	Address	.....
	Tel No.	.....
	e-mail	.....
11.2(13)	The <i>works</i> are	<b>The Provision of a Comprehensive Maintenance Contract including Inspection, Testing and Servicing and Ad-Hoc Repairs of Six passenger lifts and One service lift and associated equipment at the Transnet Building (202 Anton Lembede Street, Durban) for a period of three (3) years</b>
11.2(14)	The following matters will be included in the Risk Register	<b>All those matters in accordance with clause 16.1 of the contract</b>
11.2(15)	The <i>boundaries of the site</i> are	<b>As stated in Part C4.1. "Description of the Site and it surroundings"</b>
11.2(16)	The Site Information is in	<b>Part C4</b>



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11.2(19)	The Works Information is in	<b>Part C3</b>	
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa subject to the jurisdiction of the Courts of South Africa.</b>	
13.1	The <i>language of this contract</i> is	<b>English</b>	
13.3	The <i>period for reply</i> is	<b>2 weeks</b>	
<b>2</b>	<b>The Contractor's main responsibilities</b>	<b>No additional data is required for this section of the <i>conditions of contract</i>.</b>	
<b>3</b>	<b>Time</b>		
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	<b>36 months</b>	
30.1	The <i>access dates</i> are	<b>Part of the Site</b>	<b>Date</b>
		<b>1 The whole site</b>	<b>Start Date Upon approval of Safety File</b>
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	<b>2 weeks of the Contract Date.</b>	
31.2	The <i>starting date</i> is	<b>TBA</b>	
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	<b>3 weeks.</b>	
35.1	The <i>Employer</i> is not willing to take over the <i>works</i> before the Completion Date.		
<b>4</b>	<b>Testing and Defects</b>		
42.2	The <i>defects date</i> is	<b>52 (fifty-two) weeks after Completion of the whole of the <i>works</i>.</b>	
43.2	The <i>defect correction period</i> is	<b>2 weeks</b>	
<b>5</b>	<b>Payment</b>		
50.1	The <i>assessment interval</i> is	<b>18<sup>th</sup> (twenty fifth) day of each successive month.</b>	



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51.1	The <i>currency of this contract</i> is the	<b>South African Rand.</b>
51.2	The period within which payments are made is	<b>Payment will be effected on or before the last day of the month following the month during which a valid Tax Invoice and Statement were received.</b>
51.4	The <i>interest rate</i> is	<b>the prime lending rate of Rand Merchant Bank of South Africa.</b>
<b>6</b>	<b>Compensation events</b>	
60.1(13)	The <i>weather measurements</i> to be recorded for each calendar month are,	<p><b>the cumulative rainfall (mm)</b></p> <p><b>the number of days with rainfall more than 10 mm</b></p> <p><b>the number of days with minimum air temperature less than 0 degrees Celsius</b></p> <p><b>the number of days with snow lying at 08:00 hours South African Time</b></p> <p><b>and these measurements:</b></p> <p>The place where weather is to be recorded (on the Site ) is: <b>The <i>Contractor's</i> Site establishment area</b></p> <p>The <i>weather data</i> are the records of past <i>weather measurements</i> for each calendar month which were recorded at: <b>Durban</b></p> <p>and which are available from: <b>South African Weather Service 012 367 6023 or <a href="mailto:info3@weathersa.co.za">info3@weathersa.co.za</a>.</b></p>
<b>7</b>	<b>Title</b>	<b>No additional data is required for this section of the <i>conditions of contract</i>.</b>
<b>8</b>	<b>Risks and insurance</b>	
80.1	These are additional <i>Employer's</i> risks	<b>None</b>

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84.1	The <i>Employer</i> provides these insurances from the Insurance Table	
1	Insurance against:	<b>Loss of or damage to the <i>works</i>, Plant and Materials is as stated in the Insurance policy for Contract Works/ Public Liability.</b>
	Cover / indemnity:	<b>to the extent as stated in the insurance policy for Contract Works / Public Liability</b>
	The deductibles are:	<b>as stated in the insurance policy for Contract Works / Public Liability</b>
<hr/>		
2	Insurance against:	<b>Loss of or damage to property (except the <i>works</i>, Plant and Materials &amp; Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising out of or in connection with the performance of the Contract as stated in the insurance policy for Contract Works / Public Liability</b>
	Cover / indemnity	<b>Is to the extent as stated in the insurance policy for Contract Works / Public Liability</b>
	The deductibles are	<b>as stated in the insurance policy for Contract Works / Public Liability</b>
<hr/>		
3	Insurance against:	<b>Loss of or damage to Equipment (Temporary Works only) as stated in the insurance policy for contract Works and Public Liability</b>
	Cover / indemnity	<b>Is to the extent as stated in the insurance policy for Contract Works / Public Liability</b>
	The deductibles are:	<b>As stated in the insurance policy for Contract Works / Public Liability</b>
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4	Insurance against:	<b>Contract Works SASRIA insurance subject to the terms, exceptions and conditions of the SASRIA coupon</b>
	Cover / indemnity	<b>Cover / indemnity is to the extent provided by the SASRIA coupon</b>



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The deductibles are

**The deductibles are, in respect of each and every theft claim, 0,1% of the contract value subject to a minimum of R2,500 and a maximum of R25,000.**

Note:

**The deductibles for the insurance as stated above are listed in the document titled "Certificate of Insurance: Transnet (SOC) Limited Principal Controlled Insurance."**

84.1 The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract for any one event is

**The *Contractor* must comply at a minimum with the provisions of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as amended.**

The *Contractor* provides these additional Insurances

- 1 Where the contract requires that the design of any part of the *works* shall be provided by the *Contractor* the *Contractor* shall satisfy the *Employer* that professional indemnity insurance cover in connection therewith has been affected**
- 2 Where the contract involves manufacture, and/or fabrication of Plant & Materials, components or other goods to be incorporated into the *works* at premises other than the site, the *Contractor* shall satisfy the *Employer* that such plant & materials, components or other goods for incorporation in the *works* are adequately insured during manufacture and/or fabrication and transportation to the site.**
- 3 Should the *Employer* have an insurable interest in such items during manufacture, and/or fabrication, such interest shall be noted by endorsement to the *Contractor's* policies of insurance as well as those of any sub-contractor**



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**4 The insurance coverage referred to in 1, 2 and 3 above shall be obtained from an insurer(s) in terms of an insurance policy approved by the *Employer*. The *Contractor* shall arrange with the insurer to submit to the *Project Manager* the original and the duplicate original of the policy or policies of insurance and the receipts for payment of current premiums, together with a certificate from the insurer or insurance broker concerned, confirming that the policy or policies provide the full coverage as required. The original policy will be returned to the *Contractor*.**

84.2 The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the works, Plant, Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) caused by activity in connection with this contract for any one event is

**Whatever the *Contractor* requires in addition to the amount of insurance taken out by the *Employer* for the same risk.**

84.2 The insurance against loss of or damage to the works, Plant and Materials as stated in the insurance policy for contract works and public liability selected from:

**Principal Controlled Insurance policy for Contract**

**9 Termination**

**There is no additional Contract Data required for this section of the *conditions of contract*.**

**10 Data for main Option clause**

**A Priced contract with Activity Schedule**

**No additional data is required for this Option.**



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<b>11</b>	<b>Data for Option W1</b>	
W1.1	The <i>Adjudicator</i> is	<b>Both parties will agree as and when a dispute arises. If the parties cannot reach an agreement on the <i>Adjudicator</i>, the Chairman of the Association of Arbitrators will appoint an <i>Adjudicator</i>.</b>
W1.2(3)	The <i>Adjudicator nominating body</i> is:  If no <i>Adjudicator nominating body</i> is entered, it is:	<b>The Chairman of the Association of Arbitrators (Southern Africa)</b>  <b>the Association of Arbitrators (Southern Africa)</b>
W1.4(2)	The <i>tribunal</i> is:	<b>Arbitration</b>
W1.4(5)	The <i>arbitration procedure</i> is	<b>The Rules for the Conduct of Arbitrations of the Association of Arbitrators (Southern Africa)</b>
	The place where arbitration is to be held is	<b>Durban, South Africa</b>
	The person or organisation who will choose an arbitrator - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is	<b>The Chairman of the Association of Arbitrators (Southern Africa)</b>
<b>12</b>	<b>Data for secondary Option clauses</b>	
<b>X2</b>	<b>Changes in the law</b>	<b>No additional data is required for this Option</b>





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<b>X7</b>	<b>Delay damages</b>	<b>Time/s</b>	<b>Penalty</b>	<b>Time/s</b>	<b>Penalty</b>
	<b>Call-back Rate Penalty</b>	Exceeds <b>six (6)</b>	<b>25% of one (1) months</b> maintenance charges for the unit's	Exceeds <b>twelve (12)</b>	<b>100% of one month's</b> maintenance charges for the unit's
		Exceeds <b>nine (9)</b>	<b>50% of one months</b> maintenance charges for the unit'		
	<b>Down-Time Penalty</b>	per unit per calendar month exceeds <b>four (4) hours</b>	<b>10% of one (1) month's</b> maintenance charges for the unit/s	<i>Note: Should the down time limit be exceeded for two (2) months a credit of 20% shall be passed etc. Exceeding the limit for ten (10) months would mean withholding one (1) full months payment.</i>	
	<b>Call-Back Response Time Penalty</b>	Exceeding 60 minutes	<b>10% of one (1) months</b> maintenance charges for the unit	Exceeding 120 minutes	<b>20% of one (1) month's</b> maintenance charges for the unit

## **X18 Limitation of liability**

X18.1 The *Contractor's* liability to the **Nil** *Employer* for indirect or consequential loss is limited to:

X18.2 For any one event, the *Contractor's* liability to the **The deductible of the relevant insurance policy** *Employer* for loss of or damage to the *Employer's* property is limited to:



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- |       |   |   |
|-------|---|---|
| X18.3 | The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to:  | <b>The cost of correcting the Defect</b>    |
| X18.4 | The <i>Contractor's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than excluded matters, is limited to: | <b>The Total of the Prices</b>              |
| X18.5 | The <i>end of liability date</i> is   | <b>One year after completion of service</b> |
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**Z**      ***Additional conditions of contract are:***

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## **Z1 Additional clauses relating to Joint Venture**

### **Z1.1 Insert the additional core clause 27.5**

**27.5. In the instance that the *Contractor* is a joint venture, the *Contractor* shall provide the *Employer* with a certified copy of its signed joint venture agreement, and in the instance that the joint venture is an 'Incorporated Joint Venture,' the Memorandum of Incorporation, within 4 (four) weeks of the Contract Date.**

**The Joint Venture agreement shall contain but not be limited to the following:**

- **A brief description of the Contract and the Deliverables;**
  - **The name, physical address, communications addresses and domicilium citandi et executandi of each of the constituents and of the Joint Venture;**
  - **The constituent's interests;**
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- **A schedule of the insurance policies, sureties, indemnities and guarantees which must be taken out by the Joint Venture and by the individual constituents;**
- **Details of an internal dispute resolution procedure;**
- **Written confirmation by all of the constituents:**
  - i. **of their joint and several liabilities to the *Employer* to Provide the Works;**
  - ii. **identification of the lead partner in the joint venture confirming the authority of the lead partner to bind the joint venture through the *Contractor's* representative;**
  - iii. **Identification of the roles and responsibilities of the constituents to provide the Works.**
- **Financial requirements for the Joint Venture:**
  - iv. **the working capital requirements for the Joint Venture and the extent to which and manner whereby this will be provided and/or guaranteed by the constituents from time to time;**
  - v. **the names of the auditors and others, if any, who will provide auditing and accounting services to the Joint Venture.**

## Z1.2

**27.6. The *Contractor* shall not alter its composition or legal status of the Joint Venture without the prior approval of the *Employer*.**



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**Z2 Additional obligations in respect of Termination**

**Z2.1**

The following will be included under core clause 91.1:

In the second main bullet, after the word 'partnership' add 'joint venture whether incorporate or otherwise (including any constituent of the joint venture)' and

Under the second main bullet, insert the following additional bullets after the last sub-bullet:

- commenced business rescue proceedings (R22)
- repudiated this Contract (R23)

**Z2.2 Termination Table**

The following will be included under core clause 90.2 Termination Table as follows:

Amend "A reason other than R1 – R21" to "A reason other than R1 – R23"

**Z2.3**

Amend "R1 – R15 or R18" to "R1 – R15, R18, R22 or R23."

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**Z3 Right Reserved by the Employer to Conduct Vetting through SSA**

**Z3.1**

The *Employer* reserves the right to conduct vetting through State Security Agency (SSA) for security clearances of any *Contractor* who has access to National Key Points for the following without limitations:

1. Confidential – this clearance is based on any information which may be used by malicious, opposing or hostile elements to harm the objectives and functions of an organ of state.



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2. **Secret – clearance is based on any information which may be used by malicious, opposing or hostile elements to disrupt the objectives and functions of an organ of state.**
3. **Top Secret – this clearance is based on information which may be used by malicious, opposing or hostile elements to neutralise the objectives and functions of an organ of state.**

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**Z4 Additional Clause Relating to Collusion in the Construction Industry**

**Z4.1** The contract award is made without prejudice to any rights the *Employer* may have to take appropriate action later with regard to any declared tender rigging including blacklisting.

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**Z5 Protection of Personal Information Act**

**Z5.1** The *Employer* and the *Contractor* are required to process information obtained for the duration of the Agreement in a manner that is aligned to the Protection of Personal Information Act.

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## C1.2 Contract Data

### Part two - Data provided by the *Contractor*

The tendering *Contractor* is advised to read both the NEC3 Engineering and Construction Contract - June 2005 (with amendments June 2006 and April 2013) and the relevant parts of its Guidance Notes (ECC3-GN) in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 156 to 158 of the ECC3 Guidance Notes.

Completion of the data in full, according to Options chosen, is essential to create a complete contract.

Clause	Statement	Data
10.1	The <i>Contractor</i> is (Name):	
	Address	
	Tel No.	
	Fax No.	
11.2(8)	The <i>direct fee percentage</i> is	.....%
	The <i>subcontracted fee percentage</i> is	.....%
11.2(18)	The <i>working areas</i> are the Site and	
24.1	The <i>Contractor's</i> key persons are:	<b>TBA</b>
	1 Name:	
	Job:	
	Responsibilities:	
	Qualifications:	
	Experience:	
	2 Name:	
	Job	
	Responsibilities:	
	Qualifications:	



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	Experience:			
			<b>CV's (and further key persons data including CVs) are appended to Tender Schedule entitled TBA.</b>	
11.2(14)	The following matters will be included in the Risk Register			
31.1	The programme identified in the Contract Data is			
<b>A</b>	<b>Priced contract with activity schedule</b>			
11.2(20)	The <i>activity schedule</i> is in	C2		
11.2(30)	The tendered total of the Prices is	<b>R.....(in figures)</b>  ..... ..... <b>(in words), excluding VAT</b>		
<b>A</b>	<b>Priced contract with activity schedule</b>	<b>Data for the Shorter Schedule of Cost Components</b>		
41 in SSCC	The percentage for people overheads is:	.....%		
21 in SSCC	The published list of Equipment is the last edition of the list published by			
	The percentage for adjustment for Equipment in the published list is	.....% (state plus or minus)		
22 in SSCC	The rates of other Equipment are:	<b>Equipment</b>	<b>Size or capacity</b>	<b>Rate</b>





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61	in	The hourly rates for Defined Cost of design outside the Working Areas are	<b>Category of employee</b>	<b>Hourly rate</b>
62	in	The percentage for design overheads is	.....%	
SSCC				
63	in	The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are:	.....%	
SSCC				