

C1.3 FORMS OF SECURITIES

Pro-formas for Bonds & Guarantees

For use with the NEC3 Engineering & Construction Contract (June 2005) (ECC3)

The *conditions of contract* stated in the Contract Data Part 1 may include one or more of the following Secondary Options:

- Option X4: ~~Parent company guarantee~~
Option X13: Performance Bond
Option X14: ~~Advanced payment to the Contractor~~

Each of these Secondary Options requires a bond or guarantee "in the form set out in the Works Information".

Pro forma documents for these bonds and guarantee are provided here for convenience but are to be treated as part of the Works Information.

The organisation providing the bond / guarantee does so by copying the pro forma document onto his letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Employer* within the time stated in the contract.

This pro forma document is available for use by the Surety on the *Employer's* web page at www._____

Drafting instructions:

1. Select the required pro-formas by deleting the ones not required, then complete all the details except that which the bond / guarantee provider is required to complete.
2. There are two pro-formas suitable for use with Option X13, but only one of them can be used; the Reducing Value Guarantee is generally used only for building works.
3. Then delete these drafting instructions. Delete this whole Securities section if none of the above secondary Options have been selected by the *conditions of contract*.

Pro forma Performance Bond (for use with Option X13)

(to be reproduced exactly as shown below on the letterhead of the Surety)

Transnet Freight Rail
A Division of Transnet Limited
Table 3/71, Inyanda House 2
P O Box 8617
Johannesburg
2000

Date:

Dear Sirs,

Performance Bond for Contract No. SIC 10005 CIDB

With reference to the above numbered contract made or to be made between

Transnet Freight Rail, A Division of Transnet Limited

(the *Employer*) and

_____ (the *Contractor*), for

The replacement of turnout sleepers with concrete universal sleepers (Koedoespoort, Nelspruit, Ladysmith, Ermelo and Polokwane). (the *works*).

I/We the undersigned

on behalf of the Surety

of physical address

and duly authorised thereto do hereby bind ourselves as Surety and co-principal debtors in *solidum* for the due and faithful performance of all the terms and conditions of the Contract by the *Contractor* and for all losses, damages and expenses that may be suffered or incurred by the *Employer* as a result of non-performance of the Contract by the *Contractor*, subject to the following conditions:

1. The terms *Employer*, *Contractor*, *Project Manager*, *works* and Defects Certificate have the meaning as assigned to them by the *conditions of contract* stated in the Contract Data for the aforesaid Contract.
2. We renounce all benefits from the legal exceptions "Benefit of Execution and Division", "No value received" and all other exceptions which might or could be pleaded against the validity of this bond, with the meaning and effect of which exceptions we declare ourselves to be fully acquainted.
3. The *Employer* has the absolute right to arrange his affairs with the *Contractor* in any manner, which the Employer deems, fit and without being advised thereof the Surety shall not have the right to claim his release on account of any conduct alleged to be prejudicial to the Surety. Without derogating from the foregoing compromise, extension of the construction period, indulgence, release or variation of the *Contractor's* obligation shall not affect the validity of this performance bond.
4. This bond will lapse on the earlier of
 - the date that the Surety receives a notice from the *Project Manager* stating that the last Defects Certificate has been issued, that all amounts due from the *Contractor* as certified in terms of the contract have been received by the *Employer* and that the *Contractor* has fulfilled all his

obligations under the Contract, or

- the date that the Surety issues a replacement Performance Bond for such lesser or higher amount as may be required by the *Project Manager*.

5. Always provided that this bond will not lapse in the event the Surety is notified by the *Project Manager*, (before the dates above), of the *Employer's* intention to institute claims and the particulars thereof, in which event this bond shall remain in force until all such claims are paid and settled.

6. The amount of the bond shall be payable to the *Employer* upon the *Employer's* demand and no later than 7 days following the submission to the Surety of a certificate signed by the *Project Manager* stating the amount of the *Employer's* losses, damages and expenses incurred as a result of the non-performance aforesaid. The signed certificate shall be deemed to be conclusive proof of the extent of the *Employer's* loss, damage and expense.

7. Our total liability hereunder shall not exceed the sum of:

(say) _____

R _____

8. This Performance Bond is neither negotiable nor transferable and is governed by the laws of the Republic of South Africa, subject to the jurisdiction of the courts of the Republic of South Africa.

Signed at _____ on this _____ day of _____ 200_

| | |
|----------------------------|-------|
| Signature(s) | _____ |
| Name(s) (printed) | _____ |
| Position in Surety company | _____ |
| Signature of Witness(s) | _____ |
| Name(s) (printed) | _____ |

“PREVIEW COPY ONLY”



Pro-forma Reducing Value Guarantee (for use with Option X13)

(to be reproduced exactly as shown below on the letterhead of the Guarantor)

Transnet Freight Rail
A Division of Transnet Limited, P O Box 8617,
Johannesburg, 2000

Date:

Dear Sirs,

Reducing Value Guarantee for Contract No. SIC 10005 CIDB

With reference to the above numbered contract made or to be made between

Transnet Freight Rail, A Division of Transnet Limited

(the *Employer*) and

{Insert registered name and address of the *Contractor*}

(the *Contractor*), for

The replacement of turnout sleepers with concrete universal sleepers
(Koedoespoort, Nelspruit, Ladysmith, Ermelo and Polokwane).

(the *works*).

I/We the undersigned

on behalf of the Guarantor

of physical address

and duly authorised thereto, do hereby undertake to pay the *Employer* forthwith on receipt of written demand from the *Employer* up to the maximum guaranteed sum of

(say) _____

R _____

in respect of amounts due by the *Contractor* to the *Employer* for whatever reason in terms of the contract between the *Employer* and the *Contractor* in respect of the *works*. The following further terms shall apply:

- 1 The Guarantor's liability shall be limited to the diminishing amounts of the guaranteed sum as set out below:

| | Guarantor's Liability | Period of Liability |
|-----|---|---|
| 1.1 | Maximum guaranteed sum: R _____ | From the date this demand bond comes into effect and until the date by when the Price for Work Done to Date has reached or exceeds R _____ |
| 1.2 | Reducing to the guaranteed sum of: R _____ | From the date by when the Price for Work Done to Date has reached or exceeds the amount stated in 1.1 above and until the date of Completion of the whole of the <i>works</i> |
| 1.3 | Reducing to the guaranteed sum of: R _____ | From the day after the date of Completion of the whole of the <i>works</i> and until the date of issue of the last Defects Certificate. |

- 1.4 Reducing to the guaranteed sum of: R _____ From the day after the date of issue of the last Defects Certificate and up to and including the day on which there are no amounts due by either Party to the other.
- 1.5 Thereafter this demand guarantee shall lapse.
- 2 The terms *Employer, Contractor, Project Manager, works, Price for Work Done to Date, Completion, Defects Certificate* and Party have the meaning given to them by the *conditions of contract* stated in the Contract Data for the aforesaid Contract.
- 3 The *Employer* shall have the absolute right to arrange his affairs with the *Contractor* in any manner, which the Employer deems, fit and the Guarantor shall not have the right to claim his release on account of any conduct alleged to be prejudicial to the Guarantor. Without derogating from the foregoing, any compromise, extension of the Completion Date, indulgence, release or variation of the *Contractor's* obligation shall not affect the validity of this demand guarantee.
- 4 The Guarantor chooses *domicilium citandi et executandi* for all purposes in connection herewith at the address appearing above.
- 5 This Reducing Value Guarantee is neither negotiable nor transferable and is governed by the laws of the Republic of South Africa, subject to the jurisdiction of the courts of the Republic of South Africa.
- 6 The *Employer* returns this Guarantee to the Guarantor when it has lapsed in terms of clause 1 above or on payment in full thereof whichever is the earlier.

Signed at _____ on this _____ day of _____ 20 _____

Guarantor: _____

| | | | |
|---------------------------|-------|----------------|-------|
| Representative | _____ | Representative | _____ |
| Name (printed) | _____ | Name (printed) | _____ |
| Capacity | _____ | Capacity | _____ |
| As Witness | _____ | As Witness | _____ |
| Guarantor's stamp or seal | _____ | | |

