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# Part C1

## Agreement and contract data

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**C1.1 FORM OF OFFER AND ACCEPTANCE (ECC3)****OFFER**

The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract for the procurement of:

**For the chemical control of vegetation in yards and / or areas as listed on Transnet property in the geographical area controlled by the Depot Engineer: NELSPRUIT.**

The tenderer, identified in the Offer signature block, has

<i>either</i>	examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.
<i>or</i>	Examined the draft contract as listed in the Acceptance section and agreed to provide this Offer.

By the representative of the tenderer, signing this part as well as the Schedule of Deviations of this Form of Offer and Acceptance, the tenderer offers to perform all of the obligations and liabilities of the *Contractor* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data. The representative, when signing this part of the Form of Offer and Acceptance, shall be deemed to be duly authorised by a Resolution of the Board of Directors/Certificate of Partners, a certified copy to be included in the Returnable Documents.

The offered total of the Prices exclusive of VAT is	R
Value Added Tax @ 14% is	R
The offered total of the Prices inclusive of VAT is	R
(in words)	

If Option E or F (Cost reimbursable or management contract) applies, replace table with following sentence: "The offered prices are the Actual Cost plus the fee contained in the Contract Data".

This Offer may be accepted by the Employer by signing the Acceptance part as well as the Schedule of Deviations of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Contractor* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s)

Capacity

**For the tenderer:**

(Insert name and address of organisation)

Name of witness

Signature of witness

Date

Tenderer's CIDB registration number (if any):

**ACCEPTANCE**

By signing this part as well as the Schedule of Deviations of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the *Contractor* the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer shall form an agreement between the Employer and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1	Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: Works Information
Part C4	Site Information

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto as listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or immediately after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the Schedule of Deviations (if any). Unless the tenderer (now *Contractor*) within five working days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

Signature(s)

Name(s)

Capacity

for the  
Employer

**Transnet Limited trading as Transnet Freight Rail, Carlton Centre, 150 Commissioner Street, Johannesburg, 2000**

*(Insert name and address of Employer)*

Name of  
witness

Signature of

witness

Date

Note: If a tenderer wishes to submit alternative tenders, use another copy of this Form of Offer and Acceptance.

**SCHEDULE OF DEVIATIONS**

Note:

1. To be completed by the Employer prior to award of contract. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Employer prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
3. A tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.
4. Any other matter arising from the process of offer and acceptance either as a confirmation, clarification or change to the tender documents and which it is agreed by the parties become an obligation of the contract, shall also be recorded here.

No.	Subject	Details
1		
2		
3		
4		
5		
6		

By the duly authorised representatives signing this Schedule of Deviations below, the Employer and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Agreement shall have any meaning or effect in the contract between the parties arising from this Agreement.

## C1.2 CONTRACT DATA

The General Conditions of Contract are the NEC3 Engineering and Construction Contract (June 2005) (ECC3), copies of which may be obtained from the South African Institution of Civil Engineering (tel. 011-805 5947) or Engineering Contract Strategies (tel. 011 803-3008).

The General Conditions of Contract make several references to the Contract Data for specific data, which together with these conditions collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the Contract. The Contract Data shall have precedence in the interpretation of any ambiguity or inconsistency between it and the general conditions of contract.

### Part One – Data Provided by the Employer

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

#### Statements given in all contracts

1 General

(a) The *conditions of contract* are the core clauses and the clauses for main Option **B**, dispute resolution Option **W1** and secondary Options **X1, X7, X13 and Z** of the NEC3 Engineering and Construction Contract (June 2005) as amended June 2006.

(b) **The Contractor's Offer and the Employer's Acceptance is in Part C1.1 Form of Offer and Acceptance.**

(c) The *works* are:

***The control of vegetation and declared invader plants in yards by means of chemical herbicides (or alternative approved methods) applied by portable approved equipment or method on Transnet property in the geographical area controlled by the Depot Engineer Nelspruit.***

(d) The *Employer* is

Name **Transnet Limited trading as Transnet Freight Rail**  
Address **49<sup>th</sup> Floor Carlton Centre**  
**150 Commissioner Street**  
**JOHANNESBURG**  
**2000**

The address of the Employers Finance Office is: **To be advised**

(e) The *Project Manager* is

Name **Jan Homan**  
Address **Room 1203**  
**138 Eloff Street**  
**Braamfontein**

(f) The *Supervisor* is

Name **To be advised**

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(g) The *Adjudicator* **will be appointed if a dispute arises.**

(h) The Works Information is in **Part C3 - "Scope of Work"**.

(i) The Site Information is in **Part C4 - "Site Information"**.

(j) The *boundaries of the site* are including the geographic area covering all Transnet Freight Rail railway lines falling within the jurisdiction and responsibility of the Infra **Depot Engineer Isando Central**

(k) The *language of this contract* is **English.**

(l) The *law of the contract* is the law of **the Republic of South Africa.**

(m) The *period for reply to a communication* is **3 weeks.**

(n) The *Adjudicator nominating body* is **the Association of Arbitrators (Southern Africa).**

(o) The *tribunal* is **Arbitration.**

(p) The following matters will be included in the Risk Register

- i. **Staged trucks and rolling stock in yards hindering herbicide applications.**
- ii. **Indiscriminate herbicide usage causing damage to vegetation on adjacent properties.**
- iii. **The contractor shall take the presence of drainage works within yards and adjacent area into account and shall ensure that no waterborne movement of herbicides is possible.**
- iv. **Work on railway track near live OHTE electrical equipment holds a danger of electrocution for workers.**
- v. **Working on a railway lines adjacent to lines on which rail traffic continue to run holds the risk of injury or death to workers.**
- vi. **Dry vegetation at or near most worksites is a fire hazard.**

3 Time

(a) The *starting date* is the contract date.

(b) The *access dates* are

Part of the Site Date

1. **Yards and / or areas as listed** Duration of the contract period  
**in the Bill of Quantities**

- (c) The *Contractor* submits revised programmes at intervals no longer than **7 (seven) days**.
- 4 Testing and Defects (a) The *defects date* is **0 months** after completion of the whole of the works.
- 5 Payment (a) The *currency of this contract* is the **South African Rand (ZAR)**.
- (b) The *assessment interval* is stipulated in "Pricing Instructions".
- (c) The *interest rate* is **two percent** per annum above the **prime lending rate** of the **Standard Bank of South Africa Limited as determined from time to time**.
- 6 Compensation events
- (a) The place where weather is to be recorded is at **each site**.
- (b) The *weather measurements* to be recorded for each calendar month are
- (i) the cumulative rainfall (mm)
  - (ii) the number of days with rainfall more than **10mm**
  - (iii) the number of days temperature below zero
  - (iv) the number of days snow lying on the ground at 09h00.
- (c) The *weather measurements* are supplied by the **SA Weather Service**.
- (d) The *weather data* are the records of past *weather measurements* for each calendar month which were recorded by **an official weather station nearest to each site** and which are available from **SA Weather Service**.
- (e) Where no recorded data are available
- N/A**
- Assumed values for the ten year return *weather data* for each *weather measurement* for each calendar month are
- N/A**
- 7 Title **N/A**
- 8 Risks and insurance
- (a) The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *works*, Plant and 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 deems desirable in addition to that provided by the Employer**.
- (b) 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 that **which is prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 as amended.**

**Optional statements**

(a) If the tribunal is arbitration the arbitration procedure is:

- The Rules for the conduct of Arbitrations issued by the Association of Arbitrators (Southern Africa) by an Arbitrator to be mutually agreed by the Parties, and failing agreement to be appointed by the Association of Arbitrators.
- The place where arbitration is to be held is: **[Johannesburg]**
- The person or organisation who will choose an Arbitrator if the Parties cannot agree a choice is **The Chairman of the Association of Arbitrators (Southern Africa).**

(b) **If the Employer has decided the completion date for the whole of the works**

The completion date for the whole of the works is the period stated in the Scope of Work, after the starting date.

(c) **The Employer is not willing to take over the works before the Completion Date,**

(d) **If no programme is identified in part two of the Contract Data**

The Contractor is to submit a first programme for acceptance within **2 weeks** of the Contract Date.

(e) **If the Employer has identified work, which is to meet a stated condition by a key date.**

The *key dates* and *conditions* to be met are:

Not applicable

**All work to be completed is as stated in the Scope of Works by the Contractor.**

(f) **If the period in which payments are made is not three weeks and Y(UK) is not used**

The period within which payments are made is **30 days within receipt of the VAT invoice, based on the progress payment certificate prepared by the Project Manager.**

(g) **If there are additional compensation events**

These are additional compensation events

**1 Any change to the Works Information.**

2

3

4

(h) **If there are additional Employer's risks**

These are additional *Employer's* risks

**1 Non performance on part of contractor**

**2 Slow progress**

3

4

(i) **If the *Employer* is to provide any of the insurances stated in the Insurance Table**

The *Employer* provides these insurances from the Insurance Table

1. Insurance against loss of or damage to the *works*, Plant and Materials is **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**

Cover/indemnity is **to the extent as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**

The deductibles are **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**

2. Insurance against loss of or damage to Equipment (**Temporary Works only**) **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**

Cover/indemnity is **to the extent as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**

The deductibles are **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**

3. Insurance against 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 **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**

Cover/indemnity is **to the extent as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**

The deductibles are **as stated in the insurance policy for contract works and public liability (Principal Controlled Insurance), attached to the tender documents.**

(j) **If additional insurances are to be provided**

The *Employer* provides these additional insurances

**1. Contract Works SASRIA insurance subject to the terms exceptions and conditions of the SASRIA coupon policy.**

Cover/indemnity is to the extent provided by the SASRIA coupon policy.

The deductibles are in respect of each and every theft claim **0,1% of Contract Value subject to a minimum of R2,500.00 and a maximum of R25,000.00.**

The *Contractor* provides these additional insurances

- 1 Where the Contract requires that design of any part of the *works* shall be provided by the *Contractor*, he 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 and 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 and Materials, components or other goods for incorporation in the *works* are adequately insured during manufacture and/or fabrication.
- 3 Should the *Employer* have an insurable interest in such items during manufacture or fabrication, such interest shall be noted by endorsement to the *Contractor's* policies of insurance as well as those of any subcontractor.
4. The insurance coverage referred to in 1 and 2 above shall be obtained from an insurer 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 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*.

**If Option B is used**

All Option B Clauses apply with the following amplification:-

- (a) The method of measurement is as indicated in the measurement clauses of SANS 1200.
- (b) The last sentence of Clause 63.13 of Option B states:-

“The *Employer* and the *Contractor* agree, rates and lump sums to be used to assess a compensation event instead of Defined Cost”.
- (c) When agreed rates and lump sums are used, Compensation Events are assessed as follows:-
  - (i) Where in the opinion of the *Project Manager* work is of a similar character and executed under similar conditions to work priced in the Bill of Quantities, it is to be valued at such rates and prices

(including General Items) contained therein as may be applicable;  
or

- (ii) Where work is not of a similar character or is not executed under similar conditions, the rates and prices in the Bill of Quantities are to be used as the basis for valuation as far as may be reasonable; or
- (iii) Where work cannot reasonably be valued in accordance with Clauses (c)(i) and (c)(ii) above, suitable rates or prices are agreed upon between the *Project Manager* and the *Contractor* after due consultation by the *Project Manager* with the *Employer* and the *Contractor*; or
- (iv) In respect of additional or substituted work, the *Project Manager* may, if in his opinion it is necessary or desirable, issue an instruction that the work be executed in some other appropriate manner.
- (v) If the parties cannot agree, the *Project Manager* notifies the *Contractor* accordingly and makes his own assessment.

**If Option X1 is used the following Price Adjustment for Inflation will apply**

- (i) A contract price adjustment factor to be determined in accordance with the formula described in 2.1.2 will be applied to allow for all increases or decreases in costs, from any cause whatsoever, which may occur after the closing date of the submission of tenders and before the date of completion. **The factor shall be rounded off to six decimal places.**
- (ii) The contract price adjustment factor shall be -

$$(1 - x) \left( 0.20 \frac{L_t}{L_o} + 0.05 \frac{P_t}{P_o} + 0.70 \frac{M_t}{M_o} + 0.05 \frac{D_t}{D_o} - 1 \right)$$

where **x = 0,15** and

*L<sub>o</sub>*, *P<sub>o</sub>*, *M<sub>o</sub>* and *D<sub>o</sub>* are respectively labour, machinery, material and diesel fuel indices ruling for the calendar month four (4) months prior to closing date of the tender;

*L<sub>t</sub>*, *P<sub>t</sub>*, *M<sub>t</sub>* and *D<sub>t</sub>* are respectively labour, machinery, material and diesel fuel indices ruling for the calendar month four (4) months prior to the date of measurement.

(iii) The indices to be used shall be those for the Consumer Price Index and Production Price Index as obtained from the monthly Statistical News Release published by STATS South Africa.

- o *L<sub>o</sub>* and *L<sub>t</sub>* shall be the labour indices for Metropolitan Areas (P0141.1 Table 7.1).

- $P_o$  and  $P_t$  shall be the average of the price indices of Non-Electrical Machinery and Transport Equipment in the ratio of 1:1 (P0142.1 Table 8 item 2.16 and 2.21 respectively).
- $M_o$  and  $M_t$  shall be the price indices of Chemical and Chemical herbicides used in table 8 of the PO142.1 item 2.11 Basic Chemicals
- $D_o$  and  $D_t$  shall be the price indices of "Diesel Oil –Coast & Witwatersrand" (P0142.1 Table 12).

(iv) When the value of an index at the time of calculation is not known the latest available index shall be used and any correction necessary shall be made by addition or subtraction in subsequent monthly payment certificates.

(v) The amounts to be added to or subtracted from the monthly payment certificates shall be calculated by multiplying the amount certified for payment for that month (but excluding amounts not subject to price adjustment) by the contract price adjustment factor for that month.

Adjustment to measurements of previous months' quantities will be included in calculation of the amount certified for payment and will therefore be subject to the price adjustment factor of the current measurement month.

(vi) Any additions to or deductions from the amount payable, brought about by the application of the contract price adjustment factor, shall be deemed to have made full allowance for all increases or decreases in cost from any cause whatsoever, including all overhead costs as well as any increases and decreases therein, and profit.

(vii) Value added tax shall be excluded from individual payment item rates and price adjustment indices as it will be added to the total of the month's measurement, after price adjustment have been made in terms hereof.

(viii) The Price Adjustment Factor calculated at the completion of the works is used for calculating price adjustment after this date.

#### **If Option X7 is used**

Delay damages is a penalty in South African Law and the word penalty is to replace delayed damages throughout the Contract.

- 1) If the Contractor delays any trains and Transnet Freight Rail (TFR) is satisfied that the delay was avoidable, a penalty will be imposed on the Contractor of R10,000 per hour or part thereof for the period of delay, irrespective of the number of trains delayed.
- 2) Penalties for late completion shall not apply to this contract.

#### **If Option X13 is used**

- (a) The amount of the Performance Bond is to be calculated as [10%] of the tender price (excluding VAT).
- (b) The Pro forma Performance Bond is in Part C1.3.

### **If Option Z is used**

The additional Conditions of Contract are:-

#### **Z1.1 Clause 11.2 (34) – Day**

Day is a calendar day and where a specific number of days is allowed in the Contract for the performance of any act or is stipulated for the extinction of any right or the duration of any event or circumstance, public holidays and the annual Christmas break from 16 December to 5 January (both days included) is excluded from the calculation of the number of days concerned.

#### **Z1.2 Clause 28.1 – Intellectual property**

Intellectual property rights (including patents, copyright, trade marks etc) rests with the party owning them and the *Contractor* indemnifies the *Employer* from any liability arising from infringement of such intellectual property rights. [See Clauses 80.1, 83.1 and 83.2]

#### **Z1.3 Clause 28.2 – Assignment & cession**

Neither the *Contractor* nor the *Employer* may, without the written consent of the other, assign the Contract or any part thereof or any obligation under the Contract or cede any right or benefit thereunder.

#### **Z1.4 Clause 28.3 – Non-Waiver**

No grant by the *Employer* or the *Contractor* to the other of any concession, waiver, condonation or allowance is, in respect of any specific event or circumstance other than that in respect of which the grant was made to constitute a waiver of the rights of the grantor in terms of the Contract or an *estoppel* of the grantor's right to enforce the provision of the Contract.

#### **Z1.5 Clause 28.4 – Limitation of the authority of the *Project Manager***

(i) The *Project Manager* is authorised to agree increases to the contract value to a maximum of **R300, 000.00** or 10% of the contract amount (excluding VAT) whichever is the lesser amount without referring it to the management of the Employer.

If referral to management is necessary, a period of **8 weeks** over and above any times allowed in the Contract is to be provided.

## C1.2 CONTRACT DATA

### Part Two – Data Provided by the Contractor

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

#### Statements given in all contracts

(a) The Contractor is

Name .....  
Address .....  
.....  
.....

(b) The *direct fee percentage* is ..... %

(c) The *subcontracted fee percentage* is ..... %

(d) The *working areas* are the Site and .....  
.....

(e) The key people are

(1) Name .....  
Job .....  
Responsibilities .....  
.....  
Qualifications .....  
Experience .....  
.....  
.....

(2) Name .....  
Job .....  
Responsibilities .....  
.....

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Qualifications .....  
Experience .....

(3) Name .....  
Job .....  
Responsibilities .....

Qualifications .....  
Experience .....

(4) Name .....  
Job .....  
Responsibilities .....

Qualifications .....  
Experience .....

(f) The following matters will be included in the Risk Register

.....  
.....  
.....  
.....

**Optional statements**

**(a) If the Contractor is to provide Works Information for his design**

The Works Information for the Contractor's design is in

.....  
.....  
.....

**(b) If a programme is to be identified by the Contract Data.**

The programme identified in the Contract Data is

.....

**(c) If the Contractor is to decide the completion date for the whole of the works**



