

## C1.2 Contract Data (TSC3)

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

Please read the relevant clauses in the conditions of contract before you enter data. The number of the principal clause is shown for each statement however other clauses may also use the same data.

Rows containing the statement and data for options in the core clauses and for main & secondary option clauses, according to the options chosen, are identified by shading in the left-hand column.

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

Clause	Statement	Data
PART 1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option: dispute resolution Option and secondary Options of the NEC3 Term Service Contract (June 2005)	<b>A: Priced contract with price list</b> <b>W1: Dispute resolution procedure</b> <b>X1: Price adjustment for inflation</b> <b>X13: Performance bond</b> <b>X17: Low service damages</b> <b>Z: Additional conditions of contract</b>
10.1	The <i>Employer</i> is (name): Address  Tel No. Fax No.	<b>Transnet Freight Rail, A Division of Transnet Ltd.</b> <b>49<sup>th</sup> Floor, Carlton Centre, 150 Commissioner Street, Johannesburg</b> <b>(011) 3082435</b> <b>(011) 3082430</b>
10.1	The <i>Service Manager</i> is (name): Address Tel Fax e-mail	<b>Mr Jan Homan</b> <b>Room 1203, 138 Eloff Street, Braamfontein</b> <b>(011) 773-3250</b> <b>(011) 773-9068</b> <b>Jan.Homan@transnet.net</b>
11.2(2)	The Affected Property is	<b>Open lines in the geographical area controlled by the Infrastructure Depots: Bloemfontein, Port Elizabeth, Bellville and Kimberley as listed in the Price List.</b>
11.2(13)	The <i>service</i> is	<b>The chemical control of all vegetation by means of herbicides applied by an on-track mechanised method on Transnet property (Open Lines).</b>

11.2(14)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"><li>i. <b><i>The shortage of wagons, locomotives and locomotive driver crews may disrupt logistics on railway lines.</i></b></li><li>ii. <b><i>Staged trucks and rolling stock in yards hindering herbicide applications.</i></b></li><li>iii. <b><i>Indiscriminate herbicide usage causing damage to vegetation on adjacent properties.</i></b></li><li>iv. <b><i>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.</i></b></li><li>v. <b><i>Work on railway track near live OHTE electrical equipment holds a danger of electrocution for workers.</i></b></li><li>vi. <b><i>Working on a railway lines adjacent to lines on which rail traffic continue to run holds the risk of injury or death to workers.</i></b></li><li>vii. <b><i>Dry vegetation at or near most worksites is a fire hazard.</i></b></li><li>viii. <b><i>Limited availability of water suitable for herbicidal application. TFR water replenishing points could be up to 200km apart.</i></b></li><li>ix. <b><i>Road vehicle accessibility to the work site via service roads is not always possible.</i></b></li></ul>
11.2(15)	The Service Information is in	<b>Part C3 : Service Information (Works Information)</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>
PART 2	<b>The Contractor's main responsibilities</b>	<b>Refer to part C3</b>
PART 3	<b>Time</b>	
30.1	The starting date is	<b>The Contract date</b>
	The <i>service period</i> is	<b>As stated in the service information.</b>
PART 4	<b>Testing and defects</b>	<b>No data is required for this section of the conditions of contract.</b>
PART 5	<b>Payment</b>	
51.1	The <i>currency of this contract</i> is the	<b>South African Rand (ZAR).</b>

- 51.2 The period within which payments are made is **Payment will be made 30 days from invoice date. The assessment interval is a calendar month.**
- 51.4 The *interest rate* is **2% Per annum above the prime lending rate of the Standard Bank of South Africa Ltd as determined from time to time.**
- PART 6 **Compensation events** **No data is required for this section of the conditions of contract.**
- PART 7 **Use of Equipment Plant and Materials** **No data is required for this section of the conditions of contract.**
- PART 8 **Risks and insurance**
- 8.3.1 The *Employer* provides these insurances
- (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.**

#### **Indemnities and insurance**

- i. The Contractor shall take every precaution not to cause damage to property or injury to any person as a result of his execution of the work.
- ii. Transnet will insure in the joint names of Transnet Freight Rail and the Contractor against all legal liabilities which may arise from the accidental death of or injury to third party persons and/or accidental loss of, or damage to third party property in the course of the Contractor's execution of the Work.
- iii. The insurance policy will be for an indemnity limit as stated in the policy and will be maintained in force during the entire period of the Contract.
- iv. The Contractor shall in the case of a liability arising out of a negligent act or omission on the part of the Contractor be responsible for payment of the amount(s) stated in the policy as being the deductible.
- v. The insurance to be provided in terms of clause 8.3.1(ii) will have a cross liabilities cover in respect of which each party shall be separately indemnified in respect of claims made by any one of them against the other as though a separate policy has been issued to each of them.
- vi. The Contractor shall insure against loss of or damage to his own machinery, tools, equipment, materials and site establishments and any consequential financial losses arising from such damage. This insurance is to be maintained in force during the entire period of the Contract. The Contractor shall likewise arrange his own insurances in respect of motor vehicle liabilities and employer's common law liabilities of the Contractor.

**PART 9 Termination**

Refer to part C3

**Dispute Resolution: Option W1**

W1.1	The <i>Adjudicator</i> is (Name)	<b>Will be mutually agreed upon by the parties if a dispute arises.</b>
W1.2(3)	The <i>Adjudicator nominating body</i> is:	<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 Arbitrators of the Association of Arbitrators (Southern Africa)</b>
	The place where arbitration is to be held is	<b>Johannesburg</b>
	The person or organisation who will choose an arbitrator	<b>The Chairman of the Association of Arbitrators (Southern Africa)</b>
	- if the Parties cannot agree a choice or	
	- if the arbitration procedure does not state who selects an arbitrator, is	

**DATA FOR SECONDARY OPTION CLAUSES**

**1 OPTION X1: PRICE ADJUSTMENT FOR INFLATION:**

1.1. 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.**

1.2. The contract price adjustment factor shall be -

$$(1 - x) \left( 0.20 \frac{Lt}{Lo} + 0.05 \frac{Pt}{Po} + 0.70 \frac{Mt}{Mo} + 0.05 \frac{Dt}{Do} - 1 \right)$$

where **x = 0,15** and

*Lo, Po, Mo* and *Do* are respectively labour, machinery, material and diesel fuel indices ruling for the calendar month four (4) months prior to closing date of the tender;

*Lt, Pt, Mt* and *Dt* are respectively labour, machinery, material and diesel fuel indices ruling for the calendar month four (4) months prior to the date of measurement.

1.3. 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.

- *Lo* and *Lt* shall be the labour indices for Metropolitan Areas (P0141.1 Table 7.1).
- *Po* and *Pt* shall be the average of the price indices of Non-Electrical Machinery multiplied by an equalizing factor of 1.00866 and Transport Equipment in the ratio of 1:1 (P0142.1 Table 10 item 2.16 and 2.21 respectively).
- *Mo* and *Mt* shall be the price indices of Chemical and Chemical herbicides used in table 10 of the PO142.1 item 2.11 Basic Chemicals
- *Do* and *Dt* shall be the price indices of "Diesel Oil –Coast & Witwatersrand" (P0142.1 Table 16).

- 1.4. 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.
- 1.5. 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.
- 1.6. 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.
- 1.7. 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.
- 1.8. 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.
- 1.9. The Price Adjustment Factor calculated at the completion of the works is used for calculating price adjustment after this date.

## 2. **OPTION X13: PERFORMANCE BOND:**

- 2.1. Transnet Freight Rail requires a Performance Bond of 5% of the total value of the Contract as security for the due and faithful performance by the Contractor of all the duties and obligations resting upon and assumed by him in terms of the Contract.
- 2.2. The Performance Bond is to be returned to the Contractor upon completion of the contract after certification from the Service Manager that all contract requirements have been met.

## 3. **OPTION X17: LOW SERVICE DAMAGES:**

### 3.1. **REMEDIAL WORK**

- 3.1.1. The Contractor shall carry out remedial work to all worklots where control has not been achieved, prior to the official inspections taking place. Such remedial work shall include the removal of dry or dead growth with any dimensions in excess of 150mm and forming a nuisance or hazard to Transnet Freight Rail operations, from the treated worklots.
- 3.1.2. The Service Manager's Deputy may, at any time after the first measurement order the Contractor to carry out remedial action, to commence within 2 weeks after being so ordered. Prior to the commencement of this proposed remedial action an envisaged remedial work program must be submitted to the Service Manager's Deputy for his/her approval. Failing to do so the Service Manager's Deputy may arrange for such action to be carried out by others at the cost of the Contractor.
- 3.1.3. Hoeing (skoffel) will not be allowed on its own as a remedial action.
- 3.1.4. Fire may not be used as a method of vegetation control or as a method of remedial action.

**3.2. OVERALL CONTROL**

3.2.1. The overall standard of control to be achieved by the Contractor over the contract area, defined as “Overall Control” and expressed as a percentage, will be determined by application of the following formula;

$$Overall\ Control = \frac{(Worklots\ treated - Worklots\ rejected)}{Worklots\ treated} \times 100$$

3.2.2. The standard of “Overall Control” (service level table) to be provided on each district by the Contractor shall be:

YEAR	1	2 and Consecutive years
Minimum % of the total work, which shall comply, with the standard of control for individual work-lots.	80	90

3.2.3. Failure by the Contractor to achieve the standard of “Overall Control” shall constitute a material breach of contract by the Contractor, which will entitle the Employer to act in terms of clause 91(Core Clauses) of the TSC3 General Conditions of Contract.

**Option Z Additional conditions of contract**

The Additional conditions of contract are Definitions:

Z.1 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 20 December to 4 January (both days included) is excluded from the calculation of the number of days concerned.

Z.2 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.

Z.3 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 there under.

Z.4 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.



Z.5 Limitation of the authority of the Project Manager

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.

Z.6 Service Manager's Deputy

Service Manager's Deputy means the person appointed by the Service Manager to administer the Contractor's performance and execution of Works according to the powers and rights held by and obligations placed upon the Service Manager's Deputy in terms of the Contract and the appointment.

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