

GERRIT VLUG AND ASSOCIATES

CONSTRUCTION CLAIM CONSULTANTS AND ARBITRATORS

In many earlier newsletters, I have explained the importance of a proper contract. Still clients (old and new) are approaching us about issues, which are usually of a contractual nature.

THE NEW FIDIC

A BAD EXAMPLE

Many problems will occur when the agreement is taken too lightly and when a situation arises which is not covered in the contract. A simple example is the client who contracts a builder for the construction of a house for P 500 000 on a plot in Phakalane.

The agreement, made in a single letter, but signed by both parties, stipulated the building price, the plot number and the drawing numbers. At the end of the first month, the contractor requested a progress payment in order to pay his labour and his creditors.

The client, who had put his money on fixed deposit, informed the contractor that he would only pay him when the house is finished. Is this an unreal situation? No, it has happened. There was no arbitration agreement in this one-page contract and the contractor had two choices: either to finish the house and be paid, or to take the matter

to Court. As the "contract" did not provide for any interim payment his attorneys advised him that he should finish the house! Court action would have taken six years and the judge would probably have found that the owner was within his rights to pay for the finished project only.

I can quote hundreds of examples, which have happened because of an insufficient agreement. Despite my warnings, people still do not take this matter seriously and enter into verbal agreements, or an agreement consisting of a one-page letter. Afterwards they want us to get them out of trouble, which in most cases does not work.

WHAT IS A CONTRACT?

A contract is a written confirmation of a verbal agreement and not everything has been recorded on paper, either party can do what he likes, as it is usually assumed that nothing else has been agreed upon save for what has been written. Where in my first example the contractor was the suffering party, in the following example it was the employer.

NEWSLETTER 24

Educational Information for the Construction Industry in Botswana - January 2004

ANOTHER BAD EXAMPLE

In an agreement, which provided for interim payments and even an advance payment, the contractor disappeared after having been given the advance. From time to time, he worked on the house, which was not even finished after two years. There was no determination clause in the agreement. The employer then cancelled the contract by writing a letter to the contractor, accepting the contractor's repudiation (a situation where one party proves by his actions or non-actions no longer to be bound by the contract). The contractor did not accept the employer's reasons for cancellation and his attorney summonsed the employer for loss of profit and the like. If there had been a termination clause in a proper contract, this all would not have been necessary. The contractor would have been given notice to perform. Failure to do so would have resulted in termination.

READ BEFORE YOU SIGN....!

There are many good contract documents available in Botswana. They vary from a four-page document (the BIDP agreement for small projects) to a document in excess of 100 pages (the FIDIC agreements), in which most possible situations have

been covered. A good contract should prevent the parties to have a different interpretation of the clauses.

Each contract creates a right and an obligation. Where one party has the right to demand that the other party constructs a project, the other party has the obligation to do so. On the other hand, where the party constructing the project has the right to demand payment for the work done, the other party has the obligation to pay.

THE FIDIC CONTRACTS

The FIDIC contract or the contract of the Fédération Internationale des Ingenieurs Con-seils has been in existence for more years than I remember. It was developed in Europe and found its way to Africa where it was extensively used for civil projects. The last version is the 1987 edition with revisions of 1992. The Civil contract normally consists of two parts: part I, which includes the clauses of general nature, applicable to all projects, and part II the Conditions of Particular Application, which has been drafted to suit a specific project. Both Part I and Part II comprise all the conditions governing the rights and obligations of the parties.

Recently four new contracts appeared in the FIDIC range:

1. The contract for building construction, which is recommended for building and engineering work designed by the employer or by his representative, the engineer. A test edition was issued in 1998 and we have been informed that it is now being used on some building projects in Botswana. I am particularly interested in the new hospitals.
2. The conditions of contract for plant and design-build, recommended for the provision of electrical and/or mechanical plant and for the design and execution of building or engineering works.
3. The conditions of contract for EPC Turnkey Project (Engineering, Procurement and Construction), which are recommended where one entity takes total responsibility for the design and execution of a building project.
4. The Short Form of Contract, which is comparable to the BIDP contract for small projects.

With exception of the short-form contract, all the contract

comprise of Parts I and II, similar to the civil contract.

Amazingly, there is no sub-contract document for the FIDIC building contract, as there is for civil works. Recently I had to scrutinise a subcontract agreement drafted by Stocks and Stocks, based on the FIDIC building contract. Although not "official", the clauses were linked to the main contract and we could not find major discrepancies, save that the lead times and notice periods were even longer.

Although FIDIC is a well-known name in the construction industry I have scrutinised the new contracts and found that they are not suitable for the work in Botswana. They are too good! I will substantiate this allegation at the end hereof.

☞ newsletter has a limited capacity and I will therefore only discuss the new building contract. Figures between brackets refer to contract clauses therein.

ENGINEER/ARCHITECT

The major difference with other building contracts is that the engineer has replaced the architect as main agent in the project. Rather unusual as in many countries, including

Botswana. The architect is the main agent of the employer and is in some instances even responsible for the engineer's work.

This change, however, could easily be resolved by an amendment in Part II where the name of the architect could be mentioned and in which could be stipulated that the word "engineer" should be replaced by "architect" throughout the agreement.

MY OBJECTIONS.

My objection to this contract is three-fold:

1. Too many notices must be given. In addition, what is worse, when some notices are not given within the stipulated period the contractor loses his entitlement to claim.

2. The contract is not completely balanced, i.e. it does not give both parties the same duties and rights (the employer can cancel the contract at will, the contractor cannot).

3. Lead times in which some activity has to happen, are too long.

LONG LEAD TIMES

In terms of clause 2.4 the employer must submit proof to the contractor (within 42 days

after his written request) that he has enough money to pay him. Suppose that the contractor has been building for a month, is not paid his first certificate after another month, requests proof of financial arrangements and hears after six weeks that the employer has no money and cannot get a loan. A period of 3.5 months has lapsed!

Clause 15.5 makes matters even more suspect! It allows the employer to cancel the contract **without having to give reasons to the contractor.** At such cancellation, the contractor must stop working and hand back all the documents, which he has received (16.3) and will be paid in accordance with clause 19.6.

This means that the employer will be faced with a claim for 3.5 months work (or longer), for materials ordered by the contractor, delivered or undelivered, the cost of repatriation of the contractor's staff (19.6d) but no loss of profit as clause 19.6c reads "*...he will be paid any cost or liability which in the circumstances was reasonably incurred by the contractor in the expectation of completing the works....*" The word "incurred" refers to expenditure, which the contractor has made and not for any monies, which he expected to get.

To make matters worse, in Botswana a builder's lien does not exist. It is an unlawful act to delay handing over of the unpaid building until the contractor has been paid. (See the Tacit Hypothecations Act).

Many other contract clauses refer to long lead times. The contractor can only determine the contract (16.2b) 56 days (2 months) after the failure of the engineer to issue a certificate. I have experience with engineers who failed to issue payment certificates within 3 months after having received the contractual statements simply because the matter was too complicated!

When the building is finished, the engineer must within 28 days after the contractor's notice issue a taking over certificate. There is no reason whatsoever for such a long period!

UNBALANCED

One unusual clause, which one does not find in any other contract, is clause 15.5, which entitles the employer to terminate the agreement at will, provided that he does not finish it himself or that he does not give it to another contractor.

Notwithstanding the fact that the contractor also should have the

right to terminate the contract to balance both parties' rights, it is a very dangerous clause, which is open for malpractice.

Assume a hypothetical example where a contractor signs a contract of P 10m with a developer. After signing, the client meets another contractor, who informs him that he can build the same building for P 8.5m. Now the developer cancels the contract and tells the contractor that he could not get any finance. Both parties go their own way and "suddenly" the client finds other finance and employs the cheaper contractor.

THE SHREWD CLIENT

A shrewd employer could get his building for nothing, employing various contractors in succession! In addition, any contractor who would take this matter to the dispute adjudication board might find that although the decision might be in his favour, the client might ignore the decision and the matter should then proceed to arbitration. With clever attorneys and the reference of the award to Court, this matter might take years!

DISPUTE RESOLUTION

Despite my many objections, the new FIDIC agreement also has

good points. One of them is the provision for a dispute adjudication board. (DAB).

Most of the time disputes arise because of the engineer and the contractor having different perceptions of the situation. In the past, it was the engineer who had to make a decision about a problem, which he might have caused himself.

Now, when a dispute arises there is a third party who decides who is wrong and who is right. It is no longer the engineer, but an independent adjudicator, or a board consisting of three people in bigger projects.

NOTICES

There are certain notices that must be given, as e.g.

1. Delayed drawings and instructions (1.9).
2. Further notice about extra costs incurred (1.9).
3. Delay for access to site (2.1) and further notice about extra costs incurred (2.1.)
4. The request for approval of subcontractors (4.4b).
5. The commencement dates of each subcontractor (4.4c).
6. Delay in setting out, as well as extra cost incurred (4.7).
7. Unforeseeable physical conditions (4.12)

8. Delivery of major goods (4.16).
9. Progress reports (six copies) every month (4.21). The clause specifies a multitude of items, which should be included in these reports.
10. Fossils (4.24)
11. Further notices about the time delays and the expected costs (4.24).
12. The work is ready for inspection (7.3).
13. Testing (7.4)
14. Probable future events affecting the program (8.3). The old principle that "the program is the contractor's property" is completely overthrown by this clause.
15. Delays as stated (8.4). The delays do not include the failure by the engineer to issue a certificate or the delay in payment by the employer.
16. Consequences of suspension (8.9).
17. Application for taking over (10.1).
18. Payment records to be verified (12.1).
19. Costs of omitted work (12.4).
20. Right to vary the work (13.1).
21. Delay caused by changes in legislation (13.7).
22. Suspend work (16.1).
23. Termination by contractor (16.2).
24. Loss and damage caused by risk (17.4)
25. Right of infringement (17.5).
26. Force Majeure (19.2).

27. Extension of time. Notice must be given within 21 days otherwise the right to claim falls away (20.1).
28. Dissatisfaction (20.4).

The engineer must also give important notices, as e.g.

1. When the employer considers himself to be entitled to any extension of the defects notification period (2.5 and 11.3). A dangerous clause, open for many disputes.
2. Deduction of counter claims (2.5).
3. Determination of disputes (3.5)
4. Engineer's attendance to tests (7.4).

are suitable for the average contractor in Botswana. They may be for the bigger contractors in the E category but not for those in categories A – D. By asking them to sign a FIDIC contract we are asking for trouble. They will not understand it will not be able to adhere to their contractual obligations and finally the problems will result in arbitration.

Because of all the above it is logical that there should be an administrative manager on each building site to cope with the multitude of notices and instructions.

GERRIT VLOG AND ASSOCIATES

Construction Claim Consultants and Arbitrators

P O Box 147 - OTSE - Telefax 533 7249 vlug@mega.bw cell 7120 4237

Experts in:

**Tendering
Programming
Contract administration**

Certificates

**Cost Control
Final accounts
Insurance Claims**

5. To commence the work (8.1).
6. Measurement of work done (12.1).

In some instances, failure to issue the notice means losing entitlement to give notice. This is dangerous for those who do not know what they are doing! All notices should refer to the clause under which the notice is given.

As mentioned above I do not think that the new contracts

My friend Billy Lee, who distributes all FIDIC publications for ACEB in Botswana does not think so. He feels that contractors should learn the hard way about their obligations and should be taught to do so. Time will tell whether he is right!

Contractors, employers and engineers, who are using one of the new FIDIC agreements

should study them intensively.
In other words, prevent
problems before they occur!

Regards,

Gerrit Vlug

- a) the Contractor, in which case the Contractor shall be entitled to an amount equal to the value thereof determined in accordance with Clause 52,
- b) a nominated Subcontractor, as hereinafter defined, in which case the sum to be paid to the Contractor therefore shall be determined and paid in accordance with subclause 59.4.

58.2A

If the Contractor suffers delay and/or incurs costs by reason of the issue of an instruction pursuant to subclause 58.2 in circumstances where the work, goods, materials, plant or services, and/or the timing of the said instruction for the execution or supply thereof (as the case may be) were, in the reasonable opinion of the Engineer, not foreseeable by an experienced contractor, the Engineer shall after due consultation with the Employer and the Contractor determine:

- (a) any extension of time to which the Contractor is entitled under Clause 44, and
- (b) the amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly, with a copy to the Employer.

Selection Process: SIACC - Possible Solutions**23 Extension of Time****Grounds**

The Contract Period and the Date for Completion may be extended and re-calculated, subject to compliance by the Contractor with the requirements of the next following subclause, by such further periods of time and until such further dates as may reasonably reflect any delay in completion which, notwithstanding due diligence and the taking of all reasonable steps by the Contractor to avoid or reduce the same, has been caused by:...

- (h) Architect's Instructions under clause 28 of the Conditions in regard to Contingency Sums *(including, without limitation, in circumstances where the works, materials, goods and/or the timing of the instruction under Clause 28 of the Conditions for the carrying out or supply thereof (as the case may be) were, in the reasonable opinion of the Architect, not foreseeable by an experienced contractor).*

Defects in Works and Materials: Red Book 4th

MC is responsible for the acts, defaults and neglects of any Subcontractor as fully as if they were the acts, defaults or neglects of MC. One possible exception is with regard to the design of any materials supplied by NSC. However, this is unclear.

The subcontract must, however, specify that when NSC is providing design or specification of any part of the Permanent Works or of any Plant to be incorporated therein, he will save harmless and indemnify MC in connection with any failure to perform such obligations or to fulfill such liabilities.

Defects in Works and Materials: SIACC

MC again is fully responsible for all NSCs and for any default by them in the same way as for his own work or that of other subcontractors selected or engaged by MC. On the other hand, the Employer never will be liable to MC for the default of any DSC or NSC.

As if the risk allocation was not clear enough, MC also is deemed to have accepted, as his own responsibilities under the main contract, all the obligations undertaken by NSC in his subcontract, including, as to the design, suitability, quality or performance of his work, materials or goods, or in regard to the provision of design services.

When the Employer actually and reasonably relies upon the skill and judgment of DSC/NSC for the design or suitability of his work or materials, the Employer is regarded as having relied upon the skill and judgment of MC.

Defects in Works and Materials: Possible Solutions

If MC cannot secure suitable amendment of these provisions, then the problems MC will encounter are:

- With the possible exception of the fitness and/or quality of materials used by NSC under the Red Book, NSC still is a subcontractor of MC for whom MC is responsible

to the Employer.

- Whilst under the Red Book 4th there may be the protection of NSC's indemnity with regard to design and specification of Permanent Works, in practice any prudent MC still will need to regard the presence of a design element in a nominated

The solution most likely to gain acceptance does not involve amendments to main contract conditions. Instead, in line with the principles of objection under both Red Book 4th and SIACC, the solution lies in subcontract drafting and reasonable objection.

In this regard, the common use of the ICE form of subcontract without amendment is at least hazardous. Contractors should be looking for their subcontracts with NSCs to include provisions for:

- Equivalent responsibilities or obligations consistent with those undertaken by MC.
- Indemnities against liabilities, claims and damages arising from defaults of NSC in the same terms as MC's indemnity to the Employer.
- Personal injury insurance capped no lower than the potential liability of MC arising from design fault.
- Bonds in stipulated form

Modifications could include:

- .1 On or before the date of this Subcontract, the Contractor has made available for inspection by the Subcontractor copies of the Main Contract (excluding commercially sensitive information). The Subcontractor is deemed to have studied the Main Contract and to be fully aware of the obligations and potential liabilities of the Contractor thereunder. Without derogating from the generality of the foregoing, the Subcontractor is deemed to be fully aware of the adverse financial and other consequences for the Contractor which could arise under the Main Contract in consequence, in whole or in part, of a breach on the part of the Subcontractor of its obligations under this Subcontract (and, in particular, but without limitation, as a consequence of the Subcontract Works failing to be completed in accordance with the requirements of the Main Contract).
- .2 The Subcontract shall assume and properly perform, as part of his obligations under this Subcontract, the Contractor's obligations under the Main Contract in connection with the carrying out and completion of the Subcontract Works and so as to enable the Contractor to fully discharge its obligations under the Main Contract insofar as they relate to the Subcontract Works and so as not to cause to contribute to a breach by the Contractor of the Main Contract.
- .3 The Subcontractor shall indemnify the Contractor against:
 - (a) any breach, non-observance and/or non-performance by the Subcontractor of such obligations;
 - (b) any act and/or omission of the Subcontractor which gives rise to the Contractor incurring liability to the Employer; and
 - (c) any claim, loss, damage and/or expense due to, or resulting from, any act, omission, negligence or breach of duty by the Subcontractor.

Note, the precise wording of this indemnity must be tailored to the equivalent Main Contract wording.

- .1 Insofar as he has not already done so, the Subcontractor shall immediately effect and thereafter maintain throughout the duration of the Subcontract Works:
 - (a) all Insurances required under Law, including [Employer's Liability Insurance] and [Motor Liability] insurance as stated in Appendix __; and
 - (b) until the twelfth anniversary of the Completion Date, professional indemnity insurance, as stated in Appendix __, in respect of his professional duties in the performance of its professional obligations under this Subcontract.
- .2 The Insurances referred to in Clause .1 shall be effected with such insurers, and in such form and substance, as may be approved from time to time by the Contractor.
- .3 The Subcontractor shall not take any action or fail to take any action or (insofar as it is reasonably within its power) permit anything to occur which would entitle any insurer to refuse to pay any claim made under the Insurances referred to in Clause .1.
- .4 The Subcontractor shall provide to the Contractor, upon reasonable request from time to time, proof (in the form of a letter or certificate from the Subcontractor's insurer or insurance brokers) that all relevant premiums in respect of the Insurances referred to in Clause .1 have been paid and that the policies remain in force and are held by the insured without encumbrance.

The general position underscores the importance to MC of:

- Due diligence, i.e. investigating NSC's capacity to comply with his obligations under the subcontract.
- Reliance where appropriate on the right of reasonable objection.

Delay or Disruption of the Works

Red Book 4th, Clause 44: The extension of time shopping list simply does not include delay caused by NSC as a ground for an extension of time.

SIACC, Clause 23: MC may be entitled to an extension of time for delay caused by:

- An Architect's Instruction under Clause 28 (3) in regard to Contingency Sums; or
- An Architect's instruction under Clause 29 (3) to subcontract with an NSC with whom MC has raised a valid objection

Otherwise, there is no basis for an extension of time for delay caused by NSC.

If MC cannot secure suitable amendment of these provisions, then the problem MC will encounter is that he will carry the risk of delay to the Works and resulting delay costs caused by NSC's acts, defaults and/or breaches of contract.

The Employer is unlikely to agree to expand the extension of time shopping lists, and the most promising risk management solution, therefore, is for MC to lay off the exposure to liquidated damages through a specific indemnity in the Subcontract conditions.

- .1 The Subcontractor acknowledges that failure to achieve Completion of the Subcontract Works by the Subcontract Completion Date may cause the Contractor to suffer prolongation and other costs, expenses and losses
- .2 Without derogating from the generality of Clause .1, the Subcontractor acknowledges that the Employer shall be entitled to recover from the Contractor liquidated damages, calculated at the rate stated in Appendix __ to the Main Contract Conditions, if the Main Contract Works remain incomplete at the latest date for completion of the Main Contract Works pursuant to Clause __ of the Main Contract Conditions.
- .3 The Subcontractor shall indemnify the Contractor for any costs, expenses and losses referred to in .1 hereof and a fair proportion of any liquidated damages referred to in .2 hereof if and to the extent that the delayed completion of the Main Contract Works was caused (in whole or in part) by the Subcontractor, which sums shall be payable on demand as a debt.

Insolvency

Under the SIACC, MC carries the risk of delay to the Work due to the Insolvency of NSC. This is because, unlike some standard form building contracts, SIACC does not require the Architect to replace an Insolvent NSC.

It is unclear whether the Red Book 4th requires a re-nomination, and this probably is why we find references to the "named subcontractor." Named subcontractor provisions represent an attempt by Employers to enjoy the power to select without any duty to re-nominate in the event their "named subcontractor" becomes wholly disabled from discharging subcontract obligations.

Therefore, MC is left to pick up the pieces and procure the completion of the Works.

The most promising solution to the risk of NSC Insolvency is, of course, bonding.

Nominated practice in East Asia does tend to lead to complex bonding issues, as the following contemporary scenario illustrates:

- The Employer nominated an NSC for a critical portion of the main contract works.
- The Employer stipulated to MC the terms and conditions of the subcontract. This did not include providing a bond for the benefit of MC. But, the subcontract required the NSC to procure a bond in favour of the Employer.
- MC did not object to NSC and did not independently require NSC to procure a bond in favour of MC.
- NSC defaulted, and as a result, MC was faced with additional costs to complete the Works.
- The Employer called the bond and, pursuant to the main contract conditions, used the funds to contribute to MC's additional cost of completion.
- NSC reimbursed the bonding company and brought a claim against MC for an account of surplus bond monies under English Law.

Insolvency - Possible Solutions: FIDIC**59.2 Nominated Subcontractors: Objection to Nomination**

The Contractor shall not be required by the Employer or the Engineer, or be deemed to be under any obligation, to employ any nominated Subcontractor against whom the Contractor may raise reasonable objection or who declines to enter into a subcontract with the Contractor containing provisions:

- a) that in respect of the work, goods, materials, Plant or services the subject of the subcontract, the nominated Subcontractor will undertake towards the Contractor such obligations and liabilities as will enable the Contractor to discharge his own obligations and liabilities toward the Employer under the terms of the Contract and will save harmless and indemnify the Contractor from and against the same and from all claims, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection therewith or arising out of or in connection with any failure to perform such obligations or to fulfill such liabilities, and
- b) that the nominated Subcontractor will save harmless and indemnify the Contractor from and against any negligence by the nominated Subcontractor, his agents, workmen and servants and from and against any misuse by him or them of any Temporary Works provided by the Contractor for the purposes of the Contract and from all claims as aforesaid, and
- c) that the nominated Subcontractor shall provide to the Contractor a guarantee or performance bond for the due performance by the Subcontractor of all of its obligations under the subcontract in such form acceptable to the Contractor issued by a bank or insurance company satisfactory to the Contractor, such bond to be for [] per cent of the subcontract price and shall be released on the date of issue of the final certificate under the subcontract.

Insolvency - Possible Solutions: SIACC

FIDIC

Home Site search Site map Contact FIDIC

New News Directories Calendars Products Account  Basket

BOOKSHOP EVENTS USER FORUMS INTERNAL YPs REGIONS FEDERATION

Welcome Contracts Practice Capacity Building Industry

Subcontract Forms

Christopher Wade - Chairman Contracts Committee

New Contracts Seminar, FIDIC 2004 Annual Conference

Copenhagen 16 September 2004

1. Relevant Factors

As mentioned earlier, one of CC's Task Groups is being formed to develop a standard form of Subcontract for use with the 3 major Contract forms. It will of course be for use between the main contractor and his subcontractor(s).

FIDIC is embarking on this initiative with a certain amount of trepidation. A form of Subcontract was produced for use with the existing Red Book. A great deal of trouble and time went into its production, and when it had been produced not a great number of copies were sold. The reason may have been that it was published so long after the Red Book had been in operation that parties had long since arranged their subcontract conditions. In any case, as far as FIDIC was concerned, the Red Book Subcontract form was not a financial success. Obviously FIDIC does not have the wish to produce a new standard form if the demand is not sufficient to warrant the work and cost involved.

The second cause for consideration is whether FIDIC should really be involving itself in such a document, which is really an internal matter between contractors and their subcontractors. Surely it is a matter to be sorted out between contractors' organisations and subcontractor and/or supplier organisations. In fact FIDIC has sounded out the EIC (the European International Contractors' Association) as regards FIDIC's embarking on this task. The initial reaction of EIC was negative, virtually telling FIDIC that such a form was not the business of a Consultants' organisation and we should not interfere.

However, since the publication of the 1999 Forms, FIDIC has received a steady stream of requests for a form of Subcontract to be prepared. FIDIC prepared one for the Old Red Book, why is there not one for the New? Requests have come from Consultants and from those working on behalf of Contractors and others. The most insistent request of about 2 years ago came from South African Consultants, perhaps because the employer wished to monitor the subcontracts being used between his contractors and their subcontractors, presumably to ensure that the subcontractors were being reasonably treated. It is understood that those Consultants were forced to produce their own Subcontract document. Since then we have noticed an ever-increasing demand for FIDIC to prepare a suitable form to tie in with the major 1999 forms. Most recently we have been approached by a Consultant preparing documentation for a European contractor engaged in large infrastructure projects in Africa. As outside financing is being used, the Employer's contract documents specify FIDIC 1999, and so the subcontracts should obviously tie in with the main contractor's obligations under FIDIC 1999.

2. Within FIDIC's Domain?

And then FIDIC has come in contact with a number of subcontractors who feel, rightly or wrongly, that they are being treated badly by their main contractors, even when the main contract is based on a FIDIC form. I think it is a well-known fact that some large contractors do have a tendency to treat their subcontractors unduly harshly. Many of the subcontractors are smaller organisations who rely entirely on the much larger and more powerful main contractors. They are sometimes forced to accept harsher - and sometimes unreasonable - conditions by their employers, i.e. the main contractors, and they have little chance of redress. If, for example, the main contractor delays or reduces their rightful payment they have very little recourse. They do not have the financial backing or muscle or desire to take legal action for redress, and, if they did, they probably would not get further work.

Whereas FIDIC is loathe to interfere in areas outside its domain, if the main contract is under a FIDIC standard form, is it really outside of FIDIC's domain to have an interest in how the subcontract is formulated? Particularly if the subcontractor comes to FIDIC or the financier and complains that the main contractor is working under a fair FIDIC contract, but the subcontractor is working under a much harsher set of conditions? Do large employers, and particularly major financing organisations, not nowadays have an ever-increasing wish to see that the 'little men' are also being fairly treated?

FIDIC has noticed increasing interest from morally-minded employers, financiers and institutions to ensure fair treatment right down the line from main contractors, to subcontractors and suppliers, to the workmen and local labourers on the site.

Whereas FIDIC would not like to be classed with the 'do-gooder' mentality, as a champion of the 'underdog', FIDIC has always been considered as a fair and impartial organisation, working for the long-term best of the construction industry as a whole. The FIDIC Books are all about fair treatment for all involved, and - if it were not so - the FIDIC Books would never have achieved the universal acceptance that they have. Consequently, where FIDIC sees unfair practices in the construction field, FIDIC should do what it can to correct the situation, just as FIDIC has joined in the fight against corruption. If main contractors are intent upon following fair practices towards their subcontractors - as I am sure most main contractors are - then they should have nothing to fear from FIDIC's production of a fair subcontract form. Furthermore we believe major employers and international financiers will welcome this initiative from FIDIC, not to mention to use it will be to contractors, consultants and others preparing subcontract documents. It is possible that FIDIC may - when the Subcontract form has been published - include a clause in the main Contract forms that requires the main contractor to use the Subcontract form in his subcontracts.

3. Issues for Consideration

After consideration of the above aspects, and in view of the persistent demand, FIDIC is of the opinion that a Subcontract form would be a desirable addition to FIDIC's publications.

However, the question still arises as to who and how many will purchase the Book. As mentioned the previous Subcontract form was no financial success. The persistent requests indicate that there will be a significant demand, but obviously not the same demand as for the major Books themselves. Possibly a requirement in the main Books that contractors utilise the Subcontract form may increase the sales.

Then there is always the question of human resources. First, there is the existing FIDIC Subcontract form for use with the Old Red Book that will provide the basis for the New Book. Then it is hoped that those who themselves have already been forced to draft a subcontract form may be willing to allow their work to be used, and of course there are various other subcontract forms in existence which will be studied. So it is not a question of reinventing the wheel!

In addition an approach has been made to EIC to assist with the work. Obviously it is in the interest of all concerned that the Contractors' organisations takes part in the logic discussions and in due course accepts the final product. Similarly it is of paramount importance that subcontractors' and suppliers' organisations accept and bless the final product, and it is intended to get them involved.

4. Initial Decisions

CC's first task is to locate suitable persons and try to establish a competent Task Group who are prepared to take on this difficult project. At the same time the Terms of Reference and budget are to be prepared for final approval of the Executive Committee.

Major initial considerations include whether there should be one book for use with each of the 3 major Books, or whether there should be 3 separate Subcontract Books: or perhaps one basic book with alternative clauses customised to suit the different Books.

The work will presumably commence with the identification and study of the forms of subcontract currently being used in the industry by various stakeholders. Thereafter there will be major principal decisions to be taken by the Task Group on such issues as 'pay-when-paid' provisions, extent of 'back to back' or other allocation of risks, limit of liabilities, and so on.

CC will welcome all relevant useful tips and comments concerning current forms in use, suitable persons to serve on the TG or who have suitable knowledge and experience who may at least be contacted in this regard, and any other aspects.

Christopher Wade
Chairman Contracts Committee

International Federation of Consulting Engineers

FIDIC Bookshop- Box 311 - CH-1215 Geneva 15 - Switzerland

TEL +41-22-799 49 00 - Fax +41-22-799 49 01 - fidic.pub@fidic.org - FIDIC Bookshop

BIDP PUBLICATIONS REVIEW COMMITTEE

Schedule of meetings

Next Publications Review Committee meeting will be held on Tuesday, 14th October, 2008 at at Wimpy, Riverwalk at 7:30am.

Schedule for 2008:

Tuesday, 5th August, 2008

Tuesday, 11th November, 2008

Proposed extended schedule for 2009:

Tuesday, 10th February, 2009

Tuesday, 12th May, 2009

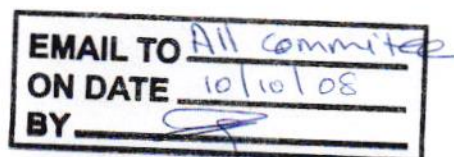
Tuesday, 11th August, 2009

Tuesday, 10th November, 2009

David Young

Adhoc Contract Review Committee Chair

	Fax	Email
Cc: G Vlug	533 7249	vlug@mega.bw
L Hutchings	318 2016	randyb@gbbs.co.bw
B Alemarumo	395 3698	ALEMARUMO@mopipi.ub.bw
M Mogomela	316 4580	mogomela@it.bw
U Soderstrom	397 4465	ulf@mega.bw
A Hakim	577 3530	
President, BIDP		mazhaniet@mopipi.ub.bw



PAYMENT OF ATTENDANCE FEES

paid members by claps

[illegible]

BIDP PRC

11 May 10

- Remove 'the engineer' from the sub-contract; except
- Remember/spelling:

direct payment
[? name]
notify
subcontractor of

free mins

Fidic sub-contract:

DW has done his review:

clause in
by DW
requires can
to require
evidence from
subcontract has been
paid or projected.
→ the main
Certificate
for payment.

- principle: N/A subcontract; employed by main contractor.
- GV says 'but nominated' by ~~main~~ ^{main} contractor.
- Provision for direct payment.
- GV: some of differences between con & subcontract: need to pass [extension of time claims] to the engineer.

Can copy data to engineer, when submitting to contractor, but Jm notes principal agents have refused to act on subcontract data unless channelled through ~~the~~ contractor.

Obligation - To present written ^{subcontract} agreement for OPCS.

Suggest meet 2 weeks time:

BY look at variant sheet form.

When should subcontract be signed.

B&B PLC

8/11

- Turn-key contracts. [take design & build] [payment at handover] (focus on single responsibility, repairing only by consultant advisors)
- PPP contracts [design build finance maintain]

Wednesday am:

move web databases

set up https on web

establish procedure for creating & using accounts is working.

try to get email send working [max 1h] NB sendmail

Setting allows a force site name item.

- Council does not want to fund a short F&B subcontract unless there is demonstrated market.
- Confirm the selling price of the F&B subcontract.
- What utility would there be in slightly editable (ie fill in gaps, define insurance clause) edits versions of contract.

Also: page of advisory notes with main contracts, & also text for publications overall.

5.1 edit the name to include 'and Engineering'

5.2 Drop.

5.3 Price 1200 for now.

5.4 ET may have listed on web site

BIDDP

Labour only on the minor works form:

Help U labour only items raised:

✓ Want to
public res
comm
members

"do not carry insurance of the works"

responsibility for subcontractors, their insurances & indemnifications. [+suppliers]

security for site, materials is by contractor
but by contractor inc for site meeting

"water & power to be supplied by employer" - no temp water connection

contractor to prepare a programme

materials are to be supplied by the employer

confirm with authority the corner pegs for the plot
site notice board extra.

call authority for progress inspections, permit of occupation

Minor works

cut out 2(c)(d) depending on specifics

3: employer will reimburse

7(a) for contractor

7(b) for ~~employer~~ contractor

7c or 7a + ~~employer~~ or 7(b)

8 a employer

10(a) exclude materials on site

11 add mediation step?

12(c) cut improper materials or goods

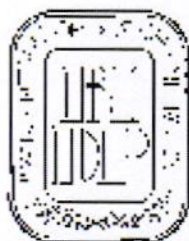
Growth notes

Ensure clarity on p+q costs in adding items in 2

Wastage of materials to be agreed in advance & allowed for in ordering. Marking for contractor or any direct purchaser or subcontractors

2

Clarify who supplies tools [other large items]
Site storage ^{see 6} & accommodation
Site security 24x7.



Mr Keatletse of KHM
not happy with the quality
2014.12

BOTSWANA INSTITUTE OF DEVELOPMENT PROFESSIONS

ARCHITECT'S APPOINTMENT

1980 Edition, revised January, 1986, August, 1989, November, 1998 and November 2001

CONTENTS

Page	2	Introduction
	3	Part 1 : General
	6	Part 2 : Normal Services
	9	Part 3 : Fees for Normal Services
	13	Part 4 : Other services
	15	Part 5 : Time charges
	16	Part 6 : Out of pocket expenses
	17	Part 7 : Abandoned works and interpretation
	19	Appendix A
	20	Appendix B
	23	Index

Tables

12	Table 1 : New Works
12	Table 2 : Works to existing buildings
12	Table 3 : Apportionment of fees between stages of services

The numbering of clauses

Each part is divided into sections, clauses and sub-clauses which are numbered as follows:

Sections have 2 digits, thus	1.2
Clauses have 3 digits	3.20
Sub-clauses have 4 digits	3.401

It is advisable to read clauses in the context of the Section as a whole in which they appear, and essential to read sub-clauses in conjunction with the main clause to which they are related.

NOTES GIVEN BY L HUTCHINGS :



NEC 3 ADJUDICATOR'S CONTRACT JUNE 2005

REVIEW COMMENTS

The NEC 3 Contract is a sound method of providing an alternative means of dispute settlement between Parties in conflict in the United Kingdom, which is fairly new in concept and application in Botswana.

The NEC 3 Contract (June 2005) does not include the 2009 revisions, which can be downloaded from <http://www.neccontract.com/amendments> free of charge (These apply only to England, Scotland and Wales)

Page 1

FORM OF AGREEMENT

This sets out the contacts of the Parties appointing the Adjudicator and the agreement details and signatures under the terms as set out in the Contract data at the end of the publication.

Page 2

GENERAL

- This sets out the fact that the Parties are bound by the conditions of the contract and requires the Adjudicator to act impartially and declare any conflict of interest and provides a definition of expenses which includes any specialist advice that the adjudicator may require to complete the adjudication from a third party, definitions and the channel of communication procedures are also set out in principle.

Page 3

ADJUDICATION

- The adjudicator does not decide the basis of the dispute and the decision is made in respect of the prescribed disputed only.
- Any information required by the Adjudicator from a third party if made available for comment by the Parties.
- The adjudication is confidential to the Parties.
- The documents are kept for a prescribed period of retention.

PAYMENT

- The Party referring the dispute makes an advanced payment as required within one week of the referral, unless other wise agreed the Parties share the cost of the adjudication.
- The Adjudicator calculates the fee and provides invoices to the Parties for each Party's share.
- The amount due is related to the time spent on the dispute issue, the time spent on travelling and the disbursements incurred less any advanced payments made by the Parties and any tax which is required such as VAT.
- Payment is to be made by the Parties within three weeks of the receipt of the Adjudicator's fee in the specified currency unless other wise stated.

Page 4

LATE PAYMENT

- Late payment is subject to an interest charge from the date of specified payment on a daily payment compounded annually at the prescribed rate.

NON- PAYMENT

- If one of the Parties fails to make payment, the other Party makes payment with interest and the defaulting Party then pays the other Party.

TERMINATION

- The Parties may terminate at any time by agreement and must notify the Adjudicator
- The ~~termination~~ ^{Adjudicator} may terminate by notifying the parties.
 - If he cannot act because of a conflict of interest
 - He is unable to determine the dispute
 - An advance payment has not been made
 - Payment has not been received within five weeks
- The appointment is terminated on the prescribed date unless otherwise terminated

Page 5

CONTRACT DATA

- The Contract between the parties
- The period of Retention
- The law of the Contract
- The language of the Contract
- The amount of the advanced
- The interest rate % per annum
- The currency of the Contract
- The date of the Termination of the Contract

OPTIONAL STATEMENTS

- The period of payment if not three weeks
- Any other additional conditions of Contract

Comments

The Adjudication process falls under the law of Contract.

The parties may agree under Contract to any variation and thus opt for adjudication under the Contract even if the contract per se makes no mention of adjudication.

In Adjudication the general principles of fairness, lack of bias and the independence of the Adjudicator follow the same criteria as those under the arbitration process, which is a more traditional method of dispute settlement. The adjudicator does not however act in a panel as is done in some cases in Arbitration.

However the Arbitration Act in Botswana does not make any provision for the process of Adjudication

and this has been considered as a delaying tactic used by some parties, who seek after the event to procrastinate payment until a legal case is made under general laws.

NEC3 Documents

- 1 Short contract
- 2 Choosing the right NEC contract
- 3 Adjudicator's contract Guidance notes and flow charts
- 4 Adjudicator's contract

Date	Document	Borrowed by	Returned
5my12	Adjudicator's	L Hutchings	6je12
5my12	Short contract	B Alemarumo	
14ag12	Choosing the right contract	L Hutchings	


NEC3 Documents

Loans

- 1 Short contract
- 2 Choosing the right NEC contract
- 3 Adjudicator's contract Guidance notes and flow charts
- 4 Adjudicator's contract

Date	Document	Borrowed by	Returned
5my12	Adjudicator's	L Hutchings	6je12
*	Short contract	L Hutchings	

8my12 Short contract B Alenarumo

14ag12 ~~8my12~~ Choosing the right L Hutchings contract 

NEC3 Documents

- 1 Short contract
- 2 Choosing the right NEC contract
- 3 Adjudicator's contract Guidance notes and flow charts
- 4 Adjudicator's contract

Date	Document	Borrowed by	Returned
5my12	Adjudicator's	L Hutchings	6je12
5my12	Short contract	B Alemarumo	missing
14ag12	Choosing the right contract	L Hutchings	



[Home](#) [About NEC](#) [Products](#) [News](#) [International](#) [FAQs](#) [Contact Us](#)

NEC PRODUCTS

[Contracts](#)
[Books](#)
[Digital](#)
[Training](#)
[Training Franchise](#)
[eLearning](#)
[Events](#)
[Users' Group](#)
[Consultancy](#)
[Academia](#)
[Software](#)

eNews Sign Up

Sign up here for our eNews

Your Name

Your Email Address

* Enter the code

VLC6M1W

Downloads

[NEC Info Pack](#)

[Digital Unsealer](#)

Quick Links

Please Select.....

RSS Newsfeeds

[RSS/XML feeds can provide you with the latest news, as they are added to the NEC.](#)

[Find further information and how to get started with RSS newsfeeds](#)

NEC3 Paperbound Only Contracts Price List

You are here: [NEC](#) : [Products](#) : [Contracts](#) : NEC3 Paperbound Only Contracts Price List

The NEC3 is a modern day family of standard contracts that truly embraces the concept of partnership and encourages designers, contractors and project managers to work together to achieve the client's objectives.

The NEC3 Paperbound contracts:

Found 37 Publications

Page 3 of 8



NEW: NEC3 Supply Short Contract

BookFormat: Paperbound
 ISBN: 9780727736659
 Published Date: 11/02/2010

List Price: £20.00

NEC Platinum/Gold Member Price: £18.00

[* Buy from Thomas Telford Bookshop](#)



NEW: NEC3 Supply Short Contract Guidance Notes and Flow Charts

BookFormat: Paperbound
 ISBN: 9780727736680
 Published Date: 11/02/2010

List Price: £15.00

NEC Platinum/Gold Member Price: £13.50

[* Buy from Thomas Telford Bookshop](#)



NEC3 Engineering and Construction Contract

BookFormat: Paperbound
 ISBN: 9780727733597
 Published Date: 01/06/2005

[See Sample Pages](#)

List Price: £30.00

NEC Platinum/Gold Member Price: £27.00

[* Buy from Thomas Telford Bookshop](#)



NEC3 Engineering and Construction Contract Option A: Priced contract with activity schedule

BookFormat: Paperbound
 ISBN: 9780727733603
 Published Date: 01/06/2005

List Price: £25.00

NEC Platinum/Gold Member Price: £22.50

[* Buy from Thomas Telford Bookshop](#)



NEC3 Engineering and Construction Contract Option B: Priced contract with bill of quantities

BookFormat: Paperbound
 ISBN: 9780727733610
 Published Date: 01/06/2005

List Price: £25.00

NEC Platinum/Gold Member Price: £22.50

[* Buy from Thomas Telford Bookshop](#)

[First](#)

[1](#) [2](#) [3](#) [4](#) [5](#) [»](#)

[Last](#)

Users' Login

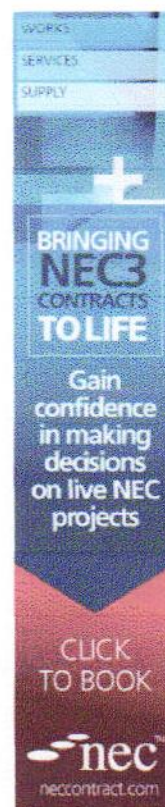
Users' Group & MyNEC Login

Please Select.....

Email Address

Password

[\[password assistance\]](#)





Search ...

[Home](#) | [About NEC](#) | [Products](#) | [News](#) | [International](#) | [FAQs](#) | [Contact Us](#)

NEC PRODUCTS

[Contracts](#)
[Books](#)
[Digital](#)
[Training](#)
[Training Franchise](#)
[eLearning](#)
[Events](#)
[Users' Group](#)
[Consultancy](#)
[Academia](#)
[Software](#)

eNews Sign Up

Sign up here for our eNews

Your Name

Your Email Address

* Enter the code

NEC3

Submit

Downloads

NEC Info Pack

Digital Unsealer

Quick Links

Please Select...

RSS Newsfeeds

RSS/XML feeds can provide you with the latest news, as they are added to the NEC.

Find further information and how to get started with RSS newsfeeds

NEC3 Paperbound Only Contracts Price List

You are here: [NEC](#) : [Products](#) : [Contracts](#) : NEC3 Paperbound Only Contracts Price List

The NEC3 is a modern day family of standard contracts that truly embraces the concept of partnership and encourages designers, contractors and project managers to work together to achieve the client's objectives.

The NEC3 Paperbound contracts:

Found 37 Publications

Page 1 of 8



NEC3 complete family of contracts (30 documents incl guidance notes and flow charts)

BookFormat: Paperbound
 ISBN: 9780727736758
 Published Date: 11/02/2010

List Price: £345.00**NEC Platinum/Gold Member Price:** £310.50
[Buy from Thomas Telford Bookshop](#)


NEC3: Supply Contracts bundle

BookFormat: Paperbound
 ISBN: 9780727740663
 Published Date: 11/02/2010

List Price: £75.00**NEC Platinum/Gold Member Price:** £67.50
[Buy from Thomas Telford Bookshop](#)


NEC3 Engineering and Construction Contract Bundle

BookFormat: Paperbound
 ISBN: 9780727740847
 Published Date: 01/06/2005

List Price: £63.75**NEC Platinum/Gold Member Price:** £57.38
[Buy from Thomas Telford Bookshop](#)


NEC3 Term Service Contract Bundle

BookFormat: Paperbound
 ISBN: 9780727736338
 Published Date: 14/07/2005

List Price: £50.00**NEC Platinum/Gold Member Price:** £45.00
[Buy from Thomas Telford Bookshop](#)


NEC3 Professional Services Contract Bundle

BookFormat: Paperbound
 ISBN: 9780727736345
 Published Date: 01/06/2005

List Price: £37.00**NEC Platinum/Gold Member Price:** £33.30
[Buy from Thomas Telford Bookshop](#)

First

[«](#) [1](#) [2](#) [3](#) [4](#) [5](#) [»](#)

Last

Users' Login

Users' Group & MyNEC Login

Please Select...

Email Address

Password

Submit

[\[password assistance\]](#)




Search ...

[Home](#) [About NEC](#) [Products](#) [News](#) [International](#) [FAQs](#) [Contact Us](#)

NEC PRODUCTS

[Contracts](#)
[Books](#)
[Digital](#)
[Training](#)
[Training Franchise](#)
[eLearning](#)
[Events](#)
[Users' Group](#)
[Consultancy](#)
[Academia](#)
[Software](#)

eNews Sign Up

Sign up here for our eNews

Your Name

Your Email Address

* Enter the code

Submit

Downloads

[NEC Info Pack](#) [Digital Unsealer](#)

Quick Links

Please Select...

RSS Newsfeeds

RSS/XML feeds can provide you with the latest news, as they are added to the NEC.

Find further information and how to get started with RSS newsfeeds

NEC3 Paperbound Only Contracts Price List

You are here: [NEC](#) : [Products](#) : [Contracts](#) : NEC3 Paperbound Only Contracts Price List

The NEC3 is a modern day family of standard contracts that truly embraces the concept of partnership and encourages designers, contractors and project managers to work together to achieve the client's objectives.

The NEC3 Paperbound contracts:

Found 37 Publications

Page 2 of 8



NEC3 Engineering and Construction Short Contract bundle

BookFormat: Paperbound

ISBN: 9780727740854

Published Date: 01/06/2005

List Price: £41.25**NEC Platinum/Gold Member Price: £37.13**[Buy from Thomas Telford Bookshop](#)

NEC3 Term Service Short Contract Bundle

BookFormat: Paperbound

ISBN: 9780727736260

Published Date: 09/03/2009

List Price: £35.00**NEC Platinum/Gold Member Price: £31.50**[Buy from Thomas Telford Bookshop](#)

NEW: NEC3 Supply Contract

BookFormat: Paperbound

ISBN: 9780727736567

Published Date: 11/02/2010

List Price: £25.00**NEC Platinum/Gold Member Price: £22.50**[Buy from Thomas Telford Bookshop](#)

NEW: NEC3 Supply Contract Guidance Notes

BookFormat: Paperbound

ISBN: 9780727736598

Published Date: 11/02/2010

List Price: £20.00**NEC Platinum/Gold Member Price: £18.00**[Buy from Thomas Telford Bookshop](#)

NEW: NEC3 Supply Contract Flow Charts

BookFormat: Paperbound

ISBN: 9780727736628

Published Date: 11/02/2010

List Price: £15.00**NEC Platinum/Gold Member Price: £13.50**[Buy from Thomas Telford Bookshop](#)[First](#)[«](#) [1](#) [2](#) [3](#) [4](#) [5](#) [»](#)[Last](#)

Users' Login

Users' Group & MyNEC Login

Please Select.....

Email Address

Password

Submit

[\[password assistance\]](#)

WORKS
SERVICES
SUPPLY

**BRINGING
NEC3
CONTRACTS
TO LIFE**

Gain confidence in making decisions on live NEC projects

CLICK TO BOOK

nec
neccontract.com



Search ...

[Home](#) | [About NEC](#) | [Products](#) | [News](#) | [International](#) | [FAQs](#) | [Contact Us](#)

NEC PRODUCTS

[Contracts](#)
[Books](#)
[Digital](#)
[Training](#)
[Training Franchise](#)
[eLearning](#)
[Events](#)
[Users' Group](#)
[Consultancy](#)
[Academia](#)
[Software](#)

eNews Sign Up

Sign up here for our eNews

Your Name

Your Email Address

* Enter the code



Submit

Downloads

[NEC Info Pack](#)
[Digital Unsealer](#)

Quick Links

Please Select...

RSS Newsfeeds

RSS/XML feeds can provide you with the latest news, as they are added to the NEC.

Find further information and how to get started with RSS newsfeeds

NEC3 Paperbound Only Contracts Price List

You are here: [NEC](#) : [Products](#) : [Contracts](#) : NEC3 Paperbound Only Contracts Price List

The NEC3 is a modern day family of standard contracts that truly embraces the concept of partnership and encourages designers, contractors and project managers to work together to achieve the client's objectives.

The NEC3 Paperbound contracts:

Found 37 Publications

Page 7 of 8



NEC3 Term Service Short Contract (TSSC) (September 2008)

BookFormat: Paperbound
 ISBN: 9780727736185
 Published Date: 09/03/2009

List Price: £20.00**NEC Platinum/Gold Member Price:** £18.00

* Buy from Thomas Telford Bookshop



NEC3 Term Service Short Contract Guidance Notes and Flow Charts (TSSC) (September 2008)

BookFormat: Paperbound
 ISBN: 9780727736192
 Published Date: 09/03/2009

List Price: £20.00**NEC Platinum/Gold Member Price:** £18.00

* Buy from Thomas Telford Bookshop



NEC3 Framework Contract (FC) (June 2005)

BookFormat: Paperbound
 ISBN: 9780727733795
 Published Date: 01/06/2005

List Price: £10.00**NEC Platinum/Gold Member Price:** £9.00

* Buy from Thomas Telford Bookshop



NEC3 Framework Contract Guidance Notes and Flow Charts (June 2005)

BookFormat: Paperbound
 ISBN: 9780727733801
 Published Date: 01/06/2005

List Price: £10.00**NEC Platinum/Gold Member Price:** £9.00

* Buy from Thomas Telford Bookshop



NEC3 Adjudicator's Contract (AC) (June 2005)

BookFormat: Paperbound
 ISBN: 9780727733740
 Published Date: 01/06/2005

List Price: £15.00**NEC Platinum/Gold Member Price:** £13.50

* Buy from Thomas Telford Bookshop

First

< 6 7 8 >

Last

Users' Login

Users' Group & MyNEC Login

Please Select.....

Email Address

Password

Submit

[\[password assistance\]](#)

WORKS
 SERVICES
 SUPPLY

**BRINGING
NEC3
CONTRACTS
TO LIFE**

Gain confidence in making decisions on live NEC projects

CLICK TO BOOK

neccontract.com



Search ...

[Home](#) [About NEC](#) [Products](#) [News](#) [International](#) [FAQs](#) [Contact Us](#)

NEC PRODUCTS

[Contracts](#)
[Books](#)
[Digital](#)
[Training](#)
[Training Franchise](#)
[eLearning](#)
[Events](#)
[Users' Group](#)
[Consultancy](#)
[Academia](#)
[Software](#)

eNews Sign Up

Sign up here for our eNews

Your Name

Your Email Address

* Enter the code



Submit

Downloads

[NEC Info Pack](#)

[Digital Unsealer](#)

Quick Links

Please Select...

RSS Newsfeeds

[RSS/XML feeds can provide you with the latest news, as they are added to the NEC.](#)

[Find further information and how to get started with RSS newsfeeds](#)

NEC3 Paperbound Only Contracts Price List

You are here: [NEC](#) : [Products](#) : [Contracts](#) : NEC3 Paperbound Only Contracts Price List

The NEC3 is a modern day family of standard contracts that truly embraces the concept of partnership and encourages designers, contractors and project managers to work together to achieve the client's objectives.

The NEC3 Paperbound contracts:

Found 37 Publications

Page 8 of 8



NEC3 Adjudicator's Contract Guidance Notes and Flow Charts

BookFormat: Paperbound
ISBN: 9780727733757
Published Date: 01/06/2005

List Price: £10.00

NEC Platinum/Gold Member Price: £9.00

[Buy from Thomas Telford Bookshop](#)



NEC3: Procurement and Contract Strategies - rev. ed. (Dec 2009)

BookFormat: Paperbound
ISBN: 9780727740656
Published Date: 01/12/2009

List Price: £15.00

NEC Platinum/Gold Member Price: £15.00

[Buy from Thomas Telford Bookshop](#)

First

[6](#) [7](#) [8](#) [»](#)

Last

Users' Login

Users' Group & MyNEC Login

Please Select...

Email Address

Password

Submit

[\[password assistance\]](#)

[WIGGINS](#)
[SERVICES](#)
[SUPPLY](#)

**BRINGING
NEC3
CONTRACTS
TO LIFE**

Gain confidence
in making
decisions
on live NEC
projects

CLICK
TO BOOK

neccontract.com

[Home](#) | [About NEC](#) | [Products](#) | [News](#) | [International](#) | [FAQs](#) | [Contact Us](#) | [Terms & Conditions](#) | [Privacy Policy](#) | [Sitemap](#) | © NEC 2010

Search
[Home](#) [About NEC](#) [Products](#) [News](#) [International](#) [FAQs](#) [Contact Us](#)

NEC PRODUCTS

[Contracts](#)
[Books](#)
[Digital](#)
[Training](#)
[Training Franchise](#)
[eLearning](#)
[Events](#)
[Users' Group](#)
[Consultancy](#)
[Academia](#)
[Software](#)

eNews Sign Up

Sign up here for our eNews

Your Name Your Email Address

* Enter the code

9835-N7

Downloads

[NEC Info Pack](#) [Digital Unsealer](#)

Quick Links

Please Select...

RSS Newsfeeds

RSS/XML feeds can provide you with the latest news, as they are added to the NEC.

Find further information and how to get started with RSS newsfeeds

NEC3 Paperbound Only Contracts Price List

You are here: [NEC](#) : [Products](#) : [Contracts](#) : NEC3 Paperbound Only Contracts Price List

The NEC3 is a modern day family of standard contracts that truly embraces the concept of partnership and encourages designers, contractors and project managers to work together to achieve the client's objectives.

The NEC3 Paperbound contracts:

Found 37 Publications

Page 4 of 8



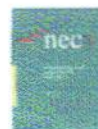
NEC3 Engineering and Construction Contract Option C: Target contract with activity schedule

BookFormat: Paperbound
 ISBN: 9780727733627
 Published Date: 01/06/2005

List Price: £25.00**NEC Platinum/Gold Member Price:** £22.50* [Buy from Thomas Telford Bookshop](#)

NEC3 Engineering and Construction Contract Option D: Target contract with bill of quantities

BookFormat: Paperbound
 ISBN: 9780727733634
 Published Date: 01/06/2005

List Price: £25.00**NEC Platinum/Gold Member Price:** £22.50* [Buy from Thomas Telford Bookshop](#)

NEC3 Engineering and Construction Contract Option E: Cost reimbursable contract

BookFormat: Paperbound
 ISBN: 9780727733641
 Published Date: 01/06/2005

List Price: £25.00**NEC Platinum/Gold Member Price:** £22.50* [Buy from Thomas Telford Bookshop](#)

NEC3 Engineering and Construction Contract Option F: Management contract

BookFormat: Paperbound
 ISBN: 9780727733658
 Published Date: 01/06/2005

List Price: £25.00**NEC Platinum/Gold Member Price:** £22.50* [Buy from Thomas Telford Bookshop](#)

NEC3 Engineering and Construction Contract Guidance Notes ECC

BookFormat: Paperbound
 ISBN: 9780727733665
 Published Date: 01/06/2005

List Price: £20.00**NEC Platinum/Gold Member Price:** £18.00* [Buy from Thomas Telford Bookshop](#)[First](#)[1](#) [2](#) [3](#) **[4](#)** [5](#) [»](#)[Last](#)

Users' Login

Users' Group & MyNEC Login

Please Select... Email Address Password [\[password assistance\]](#)

WORK
SERVICES
SUPPLY

**BRINGING
NEC3
CONTRACTS
TO LIFE**

Gain confidence in making decisions on live NEC projects

CLICK TO BOOK

necontract.com



Search ...

[Home](#) | [About NEC](#) | [Products](#) | [News](#) | [International](#) | [FAQs](#) | [Contact Us](#)

NEC PRODUCTS

[Contracts](#)
[Books](#)
[Digital](#)
[Training](#)
[Training Franchise](#)
[eLearning](#)
[Events](#)
[Users' Group](#)
[Consultancy](#)
[Academia](#)
[Software](#)

eNews Sign Up

Sign up here for our eNews

Your Name

Your Email Address

Enter the code

54714

Submit

Downloads

NEC Info Pack

Digital Unsealer

Quick Links

Please Select...

RSS Newsfeeds

RSS/XML feeds can provide you with the latest news, as they are added to the NEC.

Find further information and how to get started with RSS newsfeeds

NEC3 Paperbound Only Contracts Price List

You are here: [NEC](#) : [Products](#) : [Contracts](#) : NEC3 Paperbound Only Contracts Price List

The NEC3 is a modern day family of standard contracts that truly embraces the concept of partnership and encourages designers, contractors and project managers to work together to achieve the client's objectives.

The NEC3 Paperbound contracts:

Found 37 Publications

Page 5 of 8



NEC3 Engineering and Construction Contract Flow Charts

BookFormat: Paperbound

ISBN: 9780727733672

Published Date: 01/06/2005

List Price: £15.00**NEC Platinum/Gold Member Price: £13.50**[Buy from Thomas Telford Bookshop](#)

NEC3 Engineering and Construction Subcontract (ECS) (June 2005)

BookFormat: Paperbound

ISBN: 9780727733689

Published Date: 01/06/2005

List Price: £20.00**NEC Platinum/Gold Member Price: £18.00**[Buy from Thomas Telford Bookshop](#)

NEC3 Engineering and Construction Short Subcontract (June 2005)

BookFormat: Paperbound

ISBN: 9780727733696

Published Date: 01/06/2005

List Price: £15.00**NEC Platinum/Gold Member Price: £13.50**[Buy from Thomas Telford Bookshop](#)

NEC3 Engineering and Construction Short Contract (ECSC) (June 2005)

BookFormat: Paperbound

ISBN: 9780727733726

Published Date: 01/06/2005

List Price: £20.00**NEC Platinum/Gold Member Price: £18.00**[Buy from Thomas Telford Bookshop](#)

NEC3 Engineering and Construction Short Contract Guidance Notes and Flow Charts (June 2005)

BookFormat: Paperbound

ISBN: 9780727733733

Published Date: 01/06/2005

List Price: £20.00**NEC Platinum/Gold Member Price: £18.00**[Buy from Thomas Telford Bookshop](#)

First

[1](#) [2](#) [3](#) [4](#) [5](#)

Last

Users' Login

Users' Group & MyNEC Login

Please Select...

Email Address

Password

Submit

[\[password assistance\]](#)

WORKS
SERVICES
SUPPLY

**BRINGING
NEC3
CONTRACTS
TO LIFE**

Gain confidence in making decisions on live NEC projects

CLICK TO BOOK

nec
necontract.com



Search ...

[Home](#) [About NEC](#) [Products](#) [News](#) [International](#) [FAQs](#) [Contact Us](#)

NEC PRODUCTS

[Contracts](#)
[Books](#)
[Digital](#)
[Training](#)
[Training Franchise](#)
[eLearning](#)
[Events](#)
[Users' Group](#)
[Consultancy](#)
[Academia](#)
[Software](#)

[eNews Sign Up](#)
[Sign up here for our eNews](#)

Your Name

Your Email Address

Enter the code

780950

Submit

Downloads

[NEC Info Pack](#)
[Digital Unsealer](#)

Quick Links

Please Select...

RSS Newsfeeds

RSS/XML feeds can provide you with the latest news, as they are added to the NEC.

[Find further information and how to get started with RSS newsfeeds](#)

NEC3 Paperbound Only Contracts Price List

You are here: [NEC](#) : [Products](#) : [Contracts](#) : NEC3 Paperbound Only Contracts Price List

The NEC3 is a modern day family of standard contracts that truly embraces the concept of partnership and encourages designers, contractors and project managers to work together to achieve the client's objectives.

The NEC3 Paperbound contracts:

Found 37 Publications

Page 6 of 8



NEC3 Term Service Contract (June 2005)

BookFormat: Paperbound

ISBN: 9780727733764

Published Date: 01/06/2005

List Price: £25.00

NEC Platinum/Gold Member Price: £22.50

[Buy from Thomas Telford Bookshop](#)


NEC3 Term Service Contract Guidance Notes (June 2005)

BookFormat: Paperbound

ISBN: 9780727733771

Published Date: 01/06/2005

List Price: £20.00

NEC Platinum/Gold Member Price: £18.00

[Buy from Thomas Telford Bookshop](#)


NEC3 Term Service Contract Flow Charts (June 2005)

BookFormat: Paperbound

ISBN: 9780727733788

Published Date: 01/06/2005

List Price: £15.00

NEC Platinum/Gold Member Price: £13.50

[Buy from Thomas Telford Bookshop](#)


NEC3 Professional Services Contract (PSC) (June 2005)

BookFormat: Paperbound

ISBN: 9780727733702

Published Date: 01/06/2005

List Price: £25.00

NEC Platinum/Gold Member Price: £22.50

[Buy from Thomas Telford Bookshop](#)


NEC3 Professional Services Contract Guidance Notes and Flow Charts

BookFormat: Paperbound

ISBN: 9780727733719

Published Date: 01/06/2005

List Price: £20.00

NEC Platinum/Gold Member Price: £18.00

[Buy from Thomas Telford Bookshop](#)

First

< 6 7 8 >

Last

Users' Login

Users' Group & MyNEC Login

Please Select.....

Email Address

Password

Submit

[\[password assistance\]](#)

[SOPKS](#)
[SERVICES](#)
[SUPPLY](#)

BRINGING
NEC3
CONTRACTS
TO LIFE

Gain
confidence
in making
decisions
on live NEC
projects

CLICK
TO BOOK

neccontract.com



BOTSWANA INSTITUTE OF DEVELOPMENT PROFESSIONS

**P.O. Box 827
Gaborone**

**Fax: 3971181
Mobile (Executive secretary): 7181 6811
e-mail: bidp@mega.bw
website: <http://www.bidp.bw>**

3rd September, 2011

TO ALL BIDP MEMBERS

Notice of the Annual General Meeting

The Botswana Institute of Development Professions will convene its 34th Annual General Meeting on Tuesday, 25th September, 2012 at the Botswana Craft. The function will start at 18:00hrs

There will be a talk by Leta Mosienyane first at 6pm.

After the intermission, we shall proceed with the AGM.

There will be snacks after the talk.

The AGM agenda will be as follows:

- 1 Introduction
- 2 Notice convening AGM
- 3 Apologies
- 4 Minutes of the 33rd AGM and Matters arising
- 5 Treasurer's report
- 6 President's report
- 7 Election of Officers
- 8 Any other Business

,

,



PAPER MERCHANTS BOTSWANA

Paper Merchants Botswana (Pty) Ltd

"for all your paper requirements"

QUOTATION

PETERS PAPERS



THE WORLD'S FINEST
Distributors for
Peters Papers

CUSTOMER: BIDP FROM: MARTIN
FOR ATT: MR DAVID YOUNG DATE: 06-03-2003
FAX TO: _____

Dear Sir/Madam,

Thank you for your valid inquiry. Our prices are as follows:

65 SHEETS EXPRESSION GRAIN 104gsm 635x965mm
= P161-10
65 SHEETS EXPRESSION ALABASTER 104gsm 635x965mm
= P161-10
Cutting = P11-00
Total = P333-20

VAT 10% INCLUDED

PRICES ARE VALID 30 DAYS ONLY.

Regards,

M. M. M. M.



Distributors for
Airedale Rollers



Distributors for
Spicers Graphic Supplies



Printers Repairs & Parts



BIDP CONTRACT FORMS SALES from 1jy12-30je13

FORM	IN STOCK	SOLD	PRICE EACH	TOTAL AMOUNT
Minor works	22	22	50.00	1100.00
With Quantities	11	44	100.00	4400.00
Without Quantities	12	14	100.00	1400.00
Nominated sub contract	9	9	70.00	630.00
Nominated sub contract – Major works (related to fidic)	3	0	200.00	0.00
Domestic sub contract	13	6	70.00	420.00
Architect appointment	3	6	70.00	420.00
Consultants Agreement	9	12	50.00	600.00
Architectural competitions regulations	1	0	30.00	0.00
Logo for site notice board	61	0	30.00	0.00
Certificate for payment pads	0	0	70.00	0.00
Architect Instruction pads	0	0	70.00	0.00

TOTAL SOLD: 8970.00

Minor labour only

bidp -> bidpmem

Name	Firstname	Current	Profession
Akanyang	Robert	y	4q
Allison-Broomhead	Graham Ian	y	4q
Basiami	Otshegeditse B K	y	4q
Bathuleng-Mookodi	Marina	y	4q
Carrier	Kenneth Michael Morton	y	4q
Chiwila	Amos Gregory Matendeko	y	4q
Davey	Brian Peter	y	4q
Hutchings	Lawrence James	y	4q
Jones	Gordon Barrie	y	4q
Kgosiemang	Gontse J.	y	4q
Kille	Alan Arthur	y	4q
Latilla	Kim Everitt	y	4q
Maina	Anthony Mbugua	y	4q
Mathware	Ogaketse Thopho	y	4q
Matlapeng	Andrew	y	4q
Mhutsiwa	Boyce O.	y	4q
Mmile	Dithologo	y	4q
Mogomela	Martin Molao	y	4q
Moje	Evans	y	4q
Morake	Kabelo	y	4q
Morton	Timothy Paul	y	4q
Motsumi	G. A.	y	4q
Muchengwa	Dorica Milonga Daka	y	4q
Mwitumwa	David Kabuku	y	4q
Nkumba	E	y	4q
Nthase	Phenyo	y	4q
Orando	Marcellus	y	4q
Oranye	Chike Ikemefuna	y	4q
Osemenam	Emeka Azubike	y	4q

Owusu-Appianti	Godfrey	y	4q
Palalani	Koziba Gumbu	y	4q
Price	Owen Sean	y	4q
Rasedibo	Letlhogonolo Shono	y	4q
Rettig	Keith Philip	y	4q
Richards	Peter Maurice	y	4q
Rynn	Marc D.	y	4q
Samman	Joseph	y	4q
Todd	David John	y	4q

End Of Page

Export Data

(Right click on "Export Data" and select "Save Target As..." to save the file to your computer.)

Close Window

Visit the BMS website for updates!

www.busmgtsys.com

BIDP publication review data listing: detailed view of entry

Friday 10th October, 2008

[Restart](#)

[PRC members: add a comment](#)

[View table entries](#)

[Home](#)

Added
14/10/08
by PRC

ID 30

Review
reference 2007-08-22-3

Product
name appconConsultant agreement form

Motivation CRC meeting May 2007

Text as approved by council on 24my07. It was decided that clause 7.3.1 needed further amendment as indicated in the proposed text below.

Existing
text Consultant appointment: Existing 2000 page 4 clause 7
7. DISPUTES.

7.1. Disputed accounts.

If any item or part of an item in an invoice submitted by the Consultant is contested by the Client, the Client shall give prompt notice with reasons and shall not delay payment on the remainder of the invoice.

7.2. Claims for Loss or Damage.

Subject to Clause 6.4 any claim for loss or damage arising out of breach or termination of the Agreement shall be agreed between the Client and the Consultant or, failing agreement, shall be referred to arbitration in accordance with Clause 7.3.

7.3. Arbitration.

Any dispute or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the rules stipulated in Appendix D in force at the effective date of the Agreement.

The parties agree to comply with the awards resulting from arbitration and waive their rights to any form of appeal insofar as such waiver can validly be made.

Proposed
text 7 TERMINATION, Abandoned AND RESUMED works

7.1 Termination

An engagement entered into between the consultant and the client may be terminated at any time by either party on the expiry of reasonable notice, when the consultant shall be entitled to remuneration in accordance with Section 5.

7.2 Abandoned works

7.2.2 Notwithstanding Clause 7.2.1, if instructions for the consultant to continue work are not received from the client six months after such instructions were requested, the commission shall be deemed to have been abandoned.

7.2.3 Where a commission is abandoned or any part of the works is omitted at any time before completion, fees for partial service in respect of the whole or part of the works shall be charged for all services provided with due authority.

7.3 Resumed commissions

7.3.1 If a commission which has been abandoned is resumed without substantial alteration within two years, any fees paid under Section 7.2 shall rank solely as payments on account towards the total fees payable on the execution of the works and calculated on their total construction or such other basis or is agreed in appendix C.

7.3.2 Where a commission which has been abandoned is resumed at any time with substantial alteration or is resumed after two years, any fees paid under Section 7.2 shall be regarded as final payment for the service originally rendered. The resumed commission shall then be deemed separate, and fees charged in accordance with appendix C of these Conditions.

7.3.3 All additional work arising out of a commission which is resumed in accordance with Clause 7.3.1 shall be charged on a time basis.

Comments

Last
updated 2007-11-23

[PRC members: add a comment](#)

[View table entries](#)

[Home](#)

user software developed for BIDP by David Young using LAMP, 2005-7

BIDP publication review data listing: detailed view of entry

Friday 10th October, 2008

[Restart](#)

[PRC members: add a comment](#)

[View table entries](#)

[Home](#)

Approved by
Council 29/9/08

ID 15

**Review
reference** 2007-08-02-1

**Product
name** apparConditions of engagement for architects

Motivation D Young meeting May 2007

Item 4.81 minimum fee of 3 hours

**Existing
text** 4.81 Time charges shall be in accordance with Part 5 except that the time rate for arbitrators shall be not less than P240.00/hour with a minimum fee of P720.00.

**Proposed
text** 4.81 Time charges shall be in accordance with Part 5 except that the time rate for arbitrators shall be as agreed with the arbitrator, with a minimum fee equating to a three-hour charge.

Comments Email from: G Vlug: 23/08/07 at 7.20.08 am

Consultant's Appointment

item: 4.81 *****

Date:

Thursday 7.20.08 am

I only can get this clause in the architect's appointment, not in the consultant's agreement. I do not think that you will get anybody - a qualified arbitrator - to work for this rate. My rate for interlocutory proceedings (attending meetings and writing letters) is P**/hour, whereas it is for hearing evidence and writing the award P **/hour. I am one of the cheapest! Most arbitrators are working for P ** and up.

I would, however, leave it out altogether as an arbitrator must be appointed by both parties. He can never be a person which already has a contract with one of the parties as this would make him biased in favour of his client.

Normally in an arbitration the arbitrator calls for an initial meeting between the parties and discusses his fees, which then form part of the minutes and are supposed to be signed by both parties or their representatives.

For that reason 4.81 should be omitted altogether. Even expert witnesses can claim any amount. Where an architect is called in an arbitration as witness, he will be a witness of fact. He can never act as expert witness. That should be somebody else!

I hope this clarifies the matter.

Last
updated 2007-11-23

[PRC members: add a comment](#)

[View table entries](#)

[Home](#)

User software developed for BIDP by David Young using LAMP, 2005-7

BIDP publication review data listing: detailed view of entry

Friday 10th October, 2008

Approved by
Council 24 May 07

[Restart](#)

[PRC members: add a comment](#)

[View table entries](#)

[Home](#)

ID 32

Review
reference 2007-08-22-5

Product
name appconConsultant agreement form

Motivation CRC meeting May 2007
New clause no. 9.
Change as a result of 2007-08-22-4
This clause would follow inserting of clause 8 'DISPUTES'

Existing
text

Proposed 9. COPYRIGHT.
text

9.1 Publication.

Unless otherwise specified in Appendix D, the Consultant, either alone or jointly with others, can publish material relating to the works and services. Publication shall be subject to approval of the Client if it is within two years of completion or termination of the services.

9.2. Copyright.

The Consultant retains copyright of all documents prepared by her. The Client shall be entitled to use them or copy them only for the works and the purpose for which they are intended, and need not obtain the Consultant's permission to copy for such use.

Comments

Last
updated 2007-11-23

[PRC members: add a comment](#)

[View table entries](#)

[Home](#)

User software developed for BIDP by David Young using LAMP, 2005-7

BIDP publication review data listing: detailed view of entry

Friday 10th October, 2008

[Restart](#)

[PRC members: add a comment](#)

[View table entries](#)

[Home](#)

ID 29

Review
reference 2007-08-22-2

Product
name appconConsultant agreement form

Motivation CRC meeting May 2007

5. PAYMENT

5.1. Payment

Payment for the services shall be calculated, charged and paid as set out in Appendix C. (no default to cover termination).

5.8. Payment on Suspension / Termination.

On suspension or termination of the appointment the Consultant shall be entitled to, and shall be paid, fees for all services provided to that time calculated as incomplete services, and shall be entitled to expenses and disbursements reasonably incurred to that time. (no default to cover termination).

Existing
text Consultant appointment: Existing 2000 page 3 clause 3

5. PAYMENT

5.1. Payment

Payment for the services shall be calculated, charged and paid as set out in Appendix C.

5.8. Payment on Suspension / Termination.

On suspension or termination of the appointment the Consultant shall be entitled to, and shall be paid, fees for all services provided to that time calculated as incomplete services, and shall be entitled to expenses and disbursements reasonably incurred to that time.

Proposed
text

Comments

Last
updated 2007-08-22

[PRC members: add a comment](#)

still on process
14/10/08

10/10/2008

<http://bidp.org/php/omnidetail.php/?id...&bag=crc&baglabel=Publication%20review>

#2

[View table entries](#)

[Home](#)

User software developed for BIDP by David Young using LAMP, 2005-7

BIDP Publications Review Committee

From: Secretary <bidp@mega.bw> (Botswana Institute of Development Professions)

To: Michael G H Yates <mghyates@yahoo.com>

Date: 11/07/2008 11:49

We have not had a response to our inquiry on your continued involvement, so assume that you have withdrawn from participation for the time being.

Thank you for your contribution to the BIDP Publications Review Committee.

Regards,

BIDP Publications Review Committee, Chairman
David Young

BIDP AD-HOC PUBLICATIONS REVIEW COMMITTEE

PROGRAMME: updated 29my08

Reference	Details	Response	Deadline
Consultant Appointment 2007-08-22-1	Add new clause 2.5 to section 2 Interpretation. (Approved by council only to be implemented when clause 8 'Disputes' is created)		
Consultant Appointment 2007-08-22-3	Add a termination clause to consultants appointment: original revised text was approved by council. Further issues were subsequently noted to PRC.		13mr08
Consultant Appointment 2007-08-22-4	Clause 8.3 add word 'The appointed arbitrator's cost will be ...' (Approved await implementation).		
Consultant Appointment 2007-08-22-2	M Mogomela email 8ag07: Defaults to Appendix c will follow: ET to chase MM: ET checked MM on 16no07: MM stated will see when to send.		13mr08
Consultant Appointment 2007-08-22-5	Clause 9 'Copyright' (approved by council will follow after inserting clause 8 'Disputes')		
Architect Appointment 24my07	Clause 7.50 add word 'The appointed arbitrator's cost will be' (Approved await implementation)		
Architect Appointment 2007-08-02-1	Clause 4.81 amend as "Time charges shall be in accordance with Part 5 except that the time rate for arbitrators shall be as agreed with the arbitrator, with a minimum fee equating to three-hour charge". (Approved await implementation)	Approved 25mr08	
Architect Appointment 2007-08-01-1	L Hutchings email 10jy07: Settlement of disputes - mediation clause D Young comment: 23ag07: 'This motivation represents a change of principle in our dealing with differences, which presumably would apply to all agreements. We need to carefully assess whether it is practical and necessary in all the documents including the present one' U Soderstrom comment: 5mr08 sent to all 6mr08.		13mr08
Domestic Subcontract 2007-08-12-1	Proposal received by all: M Yates: stated draft is fine. DY/GV: eliminate capitals at start of sentences: ET to do search and replace – done 23no07 Input on roles needed Approved by council: final form printed.	Approved 29ap08	

BRDP PRC

4 Feb 10

Fidic non million form.

No comments by 3 Feb 10

Still to add direct payment provision. + take out proposed deletions.

Finish: today.

Go to print version A

- Legal scrutiny: per million will find: Limited brief to pick up conflicts with laws of Botswana.

~~MAGO~~

MO GOMELA @ BROBEMAIL.CO.BW
(Small Case)



BOTSWANA INSTITUTE OF DEVELOPMENT PROFESSIONS

P.O. Box 827 – Gaborone
Tel. 7181 6811 - shop fax 397 1181
e-mail: bidp@mega.bw
website: <http://www.bidp.bw>

Gaborone, Botswana

31st August, 2009

D Mutepe
26 Bonnington Crescent
Sherwood
Nottingham NG5 3EY

Dear Member,

MEMBERSHIP SUBSCRIPTIONS

Annual renewal and arrears: P740.00 is due for payment.

2005/06	P120.00
2006/07	P120.00
2007/08	P150.00
2008/09	P150.00
2009/10	P200.00

Payable: P740.00

Executive Secretary, BIDP
Ellen Tshoganetso

Cc: Treasurer, BIDP
File

EMAIL TO	<u>Mutepe</u>
ON DATE	<u>21 09 09</u>
BY	<u>[Signature]</u>

BIDP AD-HOC PUBLICATIONS REVIEW COMMITTEE

PROGRAMME: updated 9se08

+ 0c08

Reference	Details	Response Deadline
Consultant Appointment 2007-08-22-1	Add new clause 2.5 to section 2 Interpretation. (Approved by council only to be implemented when clause 8 'Disputes' is created)	Approved by council 24my07
Consultant Appointment 2007-08-22-3	Add a termination clause (7) to consultants appointment: original revised text was approved by council. Further issues were subsequently noted to PRC.	<div> <div> <p>pass to Council</p> </div> <div> <p>0c08</p> </div> </div>
Consultant Appointment 2007-08-22-4	Clause 8.3 add word 'The appointed arbitrator's cost will be ..' (Approved, awaiting implementation together with other items listed).	Approved by council 24my07
Consultant Appointment 2007-08-22-2	M Mogomela email 8ag07: Defaults to Appendix c will follow: ET to chase MM: ET checked MM on 16no07: MM stated will see when to send. Still nothing received from MM.	covered @ meeting
Consultant Appointment 09oc08.	D Young proposal Appendix C item 6: (if none stated will be on a time basis) and add new item 7: 'Indemnity Insurance'	<div> <div>✓</div> <div>0c08</div> </div>
Consultant Appointment 2007-08-22-5	Clause 9 'Copyright' (approved by council will follow after inserting clause 8 'Disputes')	<div> <div>Approved by council 24my07</div> <div>→ proceed to new text</div> </div>
Architect Appointment 24my07	Clause 7.50 add word 'The appointed arbitrator's cost will be' (Approved, awaiting implementation together with other items listed).	<div> <div>Approved by council 24my07</div> <div rowspan="2">} proceed with new text.</div> </div>
Architect Appointment 2007-08-02-1	Clause 4.81 amend as "Time charges shall be in accordance with Part 5 except that the time rate for arbitrators shall be as agreed with the arbitrator, with a minimum fee equating to three-hour charge". (Approved, awaiting implementation together with other items listed).	<div> <div>Approved by council 29ap08</div> </div>
Architect Appointment 2007-08-01-1	L Hutchings email 10jy07: Settlement of disputes - mediation clause D Young comment: 23ag07: 'This motivation represents a change of principle in our dealing with differences, which presumably would apply to all agreements. We need to carefully assess whether it is practical and necessary in all the documents including the present one'	<div> <div>0c08</div> <div>see also Mogomela quote.</div> </div>

EMAIL TO All Committee
ON DATE 10/10/08
BY [Signature]

U Soderstrom comment: 5mr08: sent to all 6mr08. Another copy delivered to L Hutchings 27my08.
D Young to read and see what to propose 9oc08.

Nominated subcontract

Please bring the latest text of domestic subcontract and nominated subcontract to make a consitent with the domestic.

Oc08

*adopted as
a task.*

add.

Cc:	G Vlug	533 7249
	B Alemarumo	395 3698
	L Hutchings	318 2016
	A Hakim	5773530
	M Yates	3913628
	M Mogomela	3164580
	U Soderstrom	3974465
	President, BIDP	
	File	



Botswana Institute of Development Professions

Consultant appointment

Memorandum of Agreement

BETWEEN

1. THE CLIENT.

2. THE CONSULTANT.

WHEREAS

A. The Client intends to:

..... THE PROJECT.

At

..... THE LOCATION.

B. The Client wishes to appoint the Consultant for the Project and the Consultant has accepted the appointment subject to the schedule of conditions which follows this page.

RELATED DOCUMENTS.

The following documents are deemed to form part of this agreement:

- a) The letter of acceptance.
- b) Schedule of Services.
- c) Scale of fees and schedule of payments.
- d) Additional reference (where applicable):

DATED:

SIGNED:

THE CLIENT

THE CONSULTANT

WITNESSED:

Name:

Address:

Description:

APPENDIX A

Scope of the Work / Services

- 1).....
.....
.....
.....

APPENDIX B

- 1) Equipment and facilities to be provided by the Client.

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

- 2) Provision of services by others to be provided by the Client.

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

APPENDIX C

- 1) Payment to the Consultant

Fees will be calculated on a time basis if no other method of calculating fees is indicated here:

.....

- 2) Stage payments

.....

- 3) Revision of rates

.....

- 4) Expenses

.....

- 5) Disbursements

.....

- 6) Interest on outstanding fees

The interest rate to be used in clause 3.7 is prime plus 2% unless otherwise specified here:

.....

- 7) Indemnity Insurance

A policy giving cover of P1,000,000.00 for any one occurrence and in the annual aggregate P1,000,000.00 for any one period of insurance will constitute sufficient insurance for clause 3.3 unless otherwise specified here:

.....

APPENDIX D:

- 1) Duration of liability

.....

- 2) Arbitration rules

.....

- 3) Right to publish

.....



Consultant appointment

BIDP Publications

Minor works form of contract
Without quantities form of contract
With quantities form of contract
Form of nominated subcontract
Form of domestic subcontract
Electronic forms under a four year licence
Logo for site notice board
Architect instruction pads
Architect's appointment
Consultant's appointment
BIDP regulations for the promotion and conduct of architectural competitions
Site notice board layouts draft

The above are available from the BIDP, PO Box 821, Gaborone, phone 7181 6811.

This form is published by the Botswana Institute of Development Professions

Price Band A

Agreement between consultant and client

January 2000 edition, revised February 2009

© Copyright the Botswana Institute of Development Professions 2009

BIDP AD-HOC PUBLICATIONS REVIEW COMMITTEE

PROGRAMME: updated 18no08

Reference	Details	Response	Deadline
Consultant Appointment 2007-08-22-1	Add new clause 2.5 to section 2 Interpretation. (Approved by council only to be implemented when clause 8 'Disputes' is created)	Approved by council 24my07	Proceed to new text 14oc08 <i>edited</i>
Consultant Appointment 2007-08-22-3	Add a termination clause (7) to consultants appointment: original revised text was approved by council. Further issues were subsequently noted to PRC.	Adopted Pass to council PRC 14oc08	<i>gone to Council</i>
Consultant Appointment 2007-08-22-4	Clause 8.3 add word 'The appointed arbitrator's cost will be ..' (Approved, awaiting implementation together with other items listed).	Approved by council 24my07	<i>edited</i>
Consultant Appointment 2007-08-22-2	M Mogomela email 8ag07: Defaults to Appendix c will follow: ET to chase MM: ET checked MM on 16no07: MM stated will see when to send. Still nothing received from MM.	Covered 14oc08	<i>edited</i>
Consultant Appointment 09oc08.	D Young proposal Appendix C item 6: (if none stated will be on a time basis) and add new item 7: 'Indemnity Insurance'	Text edited 14oc08	<i>edited</i>
Consultant Appointment 2007-08-22-5	Clause 9 'Copyright' (approved by council will follow after inserting clause 8 'Disputes')	Approved by council 24my07	Proceed to new text 14oc08
Architect Appointment 24my07	Clause 7.50 add word 'The appointed arbitrator's cost will be' (Approved, awaiting implementation together with other items listed).	Approved by council 24my07	Proceed to new text 14oc08
Architect Appointment 2007-08-02-1	Clause 4.81 amend as "Time charges shall be in accordance with Part 5 except that the time rate for arbitrators shall be as agreed with the arbitrator, with a minimum fee equating to three-hour charge". (Approved, awaiting implementation together with other items listed).	Approved by council 29ap08	Proceed to new text 14oc08

new master

new master

Architect Appointment L Hutchings email 10jy07: Settlement of disputes - mediation clause
2007-08-01-1

D Young comment: 23ag07: 'This motivation represents a change of principle in our dealing with differences, which presumably would apply to all agreements. We need to carefully assess whether it is practical and necessary in all the documents including the present one'

U Soderstrom comment: 5mr08: sent to all 6mr08. Another copy delivered to L Hutchings 27my08.

D Young to read and see what to propose 9oc08.

See also
MM quote
14oc08

Nominated subcontract Please bring the latest text of domestic subcontract and nominated subcontract to make a consistent with the domestic.

Text
issued to
PRC7no08

Cc: G Vlug 533 7249
B Alemarumo 395 3698
L Hutchings 318 2016
A Hakim 5773530
M Mogomela 3164580
U Soderstrom 3974465
President, BIDP
File

Association of Electrical &
Mechanical Contractors of
Botswana



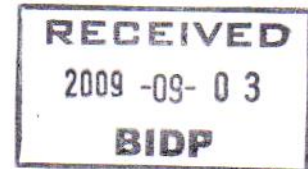
PostNet - KgaleView
Private Bag 149, Suite No. 185
Gaborone, Botswana
(+267) 395-7898 (T)
(+267) 391-3403 (F)

Our Ref: aemcb/BIDP/01

August 29, 2009

To:

The President
Botswana Institute of Development Professions
(BIDP)
GABORONE



Attention: Mr. Groth / Mr Edward Majane

Dear Sir,

**RE: AGREEMENT AND SCHEDULE OF CONDITIONS OF BUILDING SUB-CONTRACT
(NOMINATED SUB-CONTRACT)**

Through BOCCIM, we as an Association have been engaged in several meetings with the Department of Building and Engineering Services (DBES) with regards to the use and context of your above stated document.

The above document has been used by our members extensively in building contracts at sub-contract level. Although the document has been around for some years, it has become apparent that the DBES were not aware of its existence as well as its content.

We have been reviewing the above document (under the blessing of BOCCIM) together with the DBES and indications are that the "Main Document" which the DBES normally signs as the *Employer* with the *Main Contractor* is not in harmony with your above published document (e.g. use of nouns "Engineer" in Main Document and "Employer" used in the Sub-contract Document). These discrepancies have brought about numerous contractual issues in Government projects resulting in decision by Government to procure all sub-contract services under the Domestic arrangement. The Domestic arrangement had its own negative effects to the industry hence our present lobby to Government to revert back to Nominated arrangement.

The main document alluded to above is what is normally referred to as the RED BOOK - Conditions of Contract for Construction, published by FIDIC (copy herewith attached for ease of reference). Please note that the DBES is committed to us (as sub-contractors) using your *nominated sub-contract* document which we normally enter into with the Main Contractors at sub-contract level. However, the document has to be revised to use similar legal language as the Fidic RED BOOK

Through this letter we request yourselves to proceed in undertaking the above revisions OR indeed publication of a separate and aligned document to be used for the above purpose. It would help if you provided us with indication of any costs (if any) associated with the foregoing. We are aware however that copyright of the revised document will rest with BIDP.

Yours faithfully,

J. T. Moilwa
(Chairman)

J. M. Mangadi
(Secretary)

cc:

- PS/MoWT - (Mr. T. Siamisang)
- DBES - (Mr. T. Molotsi)

Association of Electrical &
Mechanical Contractors of
Botswana



PostNet - KgaleView
Private Bag 149, Suite No. 185
Gaborone, Botswana
(+267) 395-7898 (T)
(+267) 391-3403 (F)

Our Ref: aemcb/BIDP/01

August 29, 2009

To:
The President
Botswana Institute of Development Professions
(BIDP)
GABORONE

Attention: Mr. Groth / Mr Edward Majane

Dear Sir,



**RE: AGREEMENT AND SCHEDULE OF CONDITIONS OF BUILDING SUB-CONTRACT
(NOMINATED SUB-CONTRACT)**

Through BOCCIM, we as an Association have been engaged in several meetings with the Department of Building and Engineering Services (DBES) with regards to the use and context of your above stated document.


The above document has been used by our members extensively in building contracts at sub-contract level. Although the document has been around for some years, it has become apparent that the DBES were not aware of its existence as well as its content.

We have been reviewing the above document (under the blessing of BOCCIM) together with the DBES and indications are that the "Main Document" which the DBES normally signs as the *Employer* with the *Main Contractor* is not in harmony with your above published document (e.g. use of nouns "Engineer" in Main Document and "Employer" used in the Sub-contract Document). These discrepancies have brought about numerous contractual issues in Government projects resulting in decision by Government to procure all sub-contract services under the Domestic arrangement. The Domestic arrangement had its own negative effects to the industry hence our present lobby to Government to revert back to Nominated arrangement.


The main document alluded to above is what is normally referred to as the RED BOOK - Conditions of Contract for Construction, published by FIDIC (copy herewith attached for ease of reference). Please note that the DBES is committed to us (as sub-contractors) using your *nominated sub-contract* document which we normally enter into with the Main Contractors at sub-contract level. However, the document has to be revised to use similar legal language as the FIDIC RED BOOK.

Through this letter we request yourselves to proceed in undertaking the above revisions OR indeed publication of a separate and aligned document to be used for the above purpose. It would help if you provided us with indication of any costs (if any) associated with the foregoing. We are aware however that copyright of the revised document will rest with BIDP.

Yours faithfully,


J. T. Moliwa
(Chairman)

373 2711


J. M. Mangadi
(Secretary)

390 2996 / 7279 5172
Fax 391 4293

2 people from AEMCB

2 " " DBES

Botswana Institute of Development Professions

Ad-hoc Publications Review Committee

Members:

L Hutchings MBIDP 2005
G Vlug MBIDP 2005
D Young MBIDP-Chair 2005
B Alemarumo <Botswana Institute of Engineers 2006>
M Mogomela MBIDP 2007
A M D Allen MBIDP 2007
M G Yates MBIDP 2007
A Hakim MBIDP 2007
U Soderstrom MBIDP 2007

Text received by executive secretary Ellen Tshoganetso

Adopted revisions from CRC meeting 8

Held on 12fe08

X: /BIDP /pubs /2007 /ARCAP07P.PMS

Architect's appointment:

Existing 1980 edition 2001 revision page 14 clause 4.81

4.81 Time charges shall be in accordance with Part 5 except that the time rate for arbitrators shall be not less than P240.00/hour, with a minimum fee of P720.00.

Proposed:

Time charges shall be in accordance with Part 5 except that the time rate for arbitrators shall be as agreed with the arbitrator, with a minimum fee equating to three-hour charge.

A
a on 29-08 approved by 2nd SM.

✓ original
OK
21/08/08

this is the charge to be checked 21/08/08

Botswana Institute of Development Professions

Ad-hoc Publications Review Committee

Members:

L Hutchings MBIDP 2005
G Vlug MBIDP 2005
D Young MBIDP-Chair 2005
B Alemarumo <Botswana Institute of Engineers 2006>
M Mogomela MBIDP 2007
A Hakim MBIDP 2007
U Soderstrom MBIDP 2007

*By: thoughts
on these items*

Text received by executive secretary Ellen Tshoganetso

Submission 12fe09 by: G Vlug

PRC meeting 11ag09

Consultant Appointment: "front page"

I think the wording "the client intends to...." and "the client wishes to appoint....." are too vague. What happens if afterwards the client says

"Yes, I intended to but I changed my mind?"

It should be something like "This agreement is made between A and B for the purpose of..... in which the consultant's task will be....."

Submission 31mr09 by: G Vlug

Consultant Appointment

Yame Rakhudu pointed out to me a discrepancy in the consultants appointment form. In his case there are rates given in appendix C. There is no agreement in appendix C other than the rates quoted for various consultants, partners, draftsmen etcetera.

Clause 5.3 talks about revised rates. First of all the question is what is the "independent authority"? We should say either the Government rates or PPADB or what? Secondly what does mean "in line"? Is that a general provision or does it mean "pro rata"?

the clause can be explained in a number of ways:

When rates are provided they can be adjusted or can they not be adjusted? And if they can be adjusted how can they be adjusted? When rates are provided how can they increase in long term projects? Do the provided rates take over from any adjustment?

We must come up with another description.

*Draft: fine
Comments*

AGREEMENT AND SCHEDULE OF CONDITIONS OF BUILDING SUB-CONTRACT

(NOMINATED SUB-CONTRACT)

between

and

dated

BOTSWANA INSTITUTE OF DEVELOPMENT PROFESSIONS PUBLICATIONS REVIEW COMMITTEE NOVEMBER 2008



This contract is published by the Botswana Institute of Development Professions
and endorsed by the Association of Electrical & Mechanical Contractors of Botswana
1999 edition, Revised 2008

ARTICLES OF AGREEMENT made this

day of

, 2

Between

of (physical or postal address)

(hereinafter called "the Contractor") of the one part
and

of (physical or postal address)

(hereinafter called "the Sub-Contractor") of the other part.

WHEREAS this agreement is supplemental to an agreement (hereinafter referred to as "the principal contract") made the

..... day of

2

between

(hereinafter called "the Employer") of the one part, and the Contractor of the other part.

AND WHEREAS the contractor desires to have executed the works of which particulars are set out in the attached schedule (hereinafter referred to as "the sub-contract works") and which form part of the works comprised in and to be executed in accordance with the principal contract (hereinafter referred to as "the contract works") and any authorised variations of the sub-contract works.

AND WHEREAS the contractor, prior to the signing hereof, has given the sub-contractor reasonable opportunity of inspecting all the provisions of the principal contract except the detailed prices of the contractor included in schedules and bill of quantities, and furthermore, whereas it is agreed that the term "the agent" where it appears in this sub-contract, unless inconsistent with the context in which it is used, shall mean the person appointed by the employer in terms of the principal contract to act as principal agent for the employer in terms of that contract as defined in 1.1 on page 5.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. For the consideration hereinafter mentioned, the sub-contractor will execute and complete the sub-contract works upon and subject to the conditions of this sub-contract.
2. The contractor will pay the sub-contractor the sum of

(P) hereinafter referred to as "the sub-contract sum" or such other sum as shall become payable hereunder subject to and at the times and in the manner specified in the conditions of this sub-contract, and shall be payable to the sub-contractor at
3. The contractor chooses domicilium citandi et executandi for all purposes of this sub-contract at
4. The sub-contractor chooses domicilium citandi et executandi for all purposes of this sub-contract at
5. The contractor and sub-contractor choose domicilium citandi et executandi at their respective addresses where all notices or processes or both arising out of or in connection with this agreement may be validly delivered to or served on them. Either contracting party may, at any time, by notice to the other contracting party, change its domicilium citandi et executandi to some other address, provided that such new address shall be in the Republic of Botswana.
6. References in this agreement to other documents shall be to the latest edition thereof, with all amendments thereto, at the date for submission of the tenders.
7. The date of issue of any certificate referred to in this agreement shall be the date on which the certificate is signed by the party authorised in this agreement to issue such certificate and unless the contrary is proved, the date of signature shall be the date appearing on the certificate.
8. All references to days shall mean days of twenty-four (24) hours duration commencing at midnight (00:00) and which shall include non-working days unless otherwise stated.
9. The readings of clauses in this sub-contract agreement are for reference purposes only and shall not be taken into account in construing the content thereof.
10. In this agreement, unless inconsistent with the context, the words 'notice', 'notify', 'notification', 'certify', 'certification', and 'issue' shall connote an act to be carried out in writing.

In this agreement, unless inconsistent with the context, the masculine includes the other gender, the singular includes the plural and vice versa, and persons shall include bodies corporate.
12. Any documentation or notice sent by a party in terms of this agreement by prepaid registered post addressed to the other party at his domicilium et executandi shall be deemed to have reached the other party within seven (7) days from date of posting.
13. This sub-contract agreement constitutes the whole agreement between the parties and no variations or amendments thereto shall have any force or effect unless reduced to writing and signed by both the contractor and sub-contractor.
14. The only law applicable to this agreement is the law of the Republic of Botswana.
15. The original hereof is kept by the person named in the Schedule, but each party shall be entitled to a real copy thereof.

16 The following documents comprise the Contract:
This agreement and schedule of conditions.

SIGNED BY THE CONTRACTOR

IN THE PRESENCE OF (Witness Name in Block Letters)

WITNESS SIGNATURE

WITNESS ADDRESS

SIGNED BY THE SUB-CONTRACTOR

IN THE PRESENCE OF (Witness Name in Block Letters)

WITNESS SIGNATURE

WITNESS ADDRESS

BOTSWANA INSTITUTE OF DEVELOPMENT PROFESSIONS PUBLICATIONS REVIEW COMMITTEE NOVEMBER 2008

June

THE AGREEMENT IS SUBJECT TO THE FOLLOWING CONDITIONS:

- 1.1 "AGENT" means the architect, the quantity surveyor, engineer or other party appointed as principal agent by the employer in terms of the principal agreement and named in the sub-contract schedule.
- 1.2 "CERTIFICATE OF FINAL COMPLETION" means a certificate issued by the agent to the contractor in terms of the principal agreement accepting that final completion of the works has been achieved.
- 1.3 "CERTIFICATE OF PRACTICAL COMPLETION" means a certificate issued by the agent to the contractor in terms of the principal agreement confirming that practical completion of the works has been achieved.
- 1.4 "CONTRACTOR" means the contracting party so named in the schedule.
- 1.5 "CONTRACTOR'S INSTRUCTIONS" means instructions issued by the contractor to the sub-contractor in accordance with the contractor's authority in terms of this agreement. Instructions issued to the sub-contractor by agents of the employer shall have no authority unless authorised by the contractor.
- 1.6 "DAY" means a calendar day starting at 00h00 and ending at 24h00 Botswana time.
- 1.7 "DEFECT" means any aspect of the works which is not to the reasonable satisfaction of the agent and without limiting the generality of the foregoing, includes the lack of an essential element of completeness of any aspect of the works.
- 1.8 "EMPLOYER" means the party so named in the schedule.
- 1.9 "FINAL COMPLETION" means the state of completion of the works where in the opinion of the agent the works are complete and free from all patent defects.
- 1.10 "INTEREST" means in monetary terms current bank lending prime rate plus two per cent.
- 1.11 "LATENT DEFECT" means a defect which a reasonable inspection of the works by the agent would not disclose.
- 1.12 "LATENT DEFECTS LIABILITY PERIOD" means the period which begins on the date of commencement of the construction period in terms of the principal agreement and terminates five (5) years from the date of the certificate of final completion.
- 1.13 "MATERIALS AND GOODS" means materials and goods delivered to the sub-contractor for inclusion in the sub-contract works whether stored on site, adjacent to the site, off site or in transit to the site but not yet part of the works.
- 1.14 "PATENT DEFECT" means a defect which a reasonable inspection of the works by the agent would disclose.
- 1.15 "PATENT DEFECTS LIABILITY PERIOD" means the period commencing on the day after the date of issue of the certificate of practical completion and terminating at midnight (00:00) ninety (90) days from that date.
- 1.16 "PAYMENT CERTIFICATE" means a certificate indicating the amount due and payable by the employer to the contractor in terms of the principal agreement.
- 1.17 "PRACTICAL COMPLETION" means the state of completion where in the opinion of the agent the works are substantially complete and can effectively be used for the purpose intended.
- 1.18 "PRACTICAL COMPLETION OF THE SUB-CONTRACT WORKS" means the state of completion where in the opinion of the agent the sub-contract works are substantially complete and can effectively be used for the purpose intended.
- 1.19 "PRINCIPAL AGREEMENT" means the agreement made between the employer and the contractor for the execution of the works.
- 1.20 "PROGRAMME" means the programme and provision thereto, all as agreed between contractor and sub-contractor, indicating the dates for commencement, execution, interim completion and practical completion of sub-contract works and which is intended to allow the sub-contractor to achieve practical completion of the sub-contract works so as to enable the contractor, in turn to achieve practical completion of the works within the construction period in terms of the principal agreement.
- 1.21 "SCHEDULE" means the schedule as attached to this agreement.
- 1.22 "SETTLEMENT DISCOUNT" means the discount to which the contractor is entitled when he pays the sub-contractor within the period stipulated in this agreement, and has the same meaning as "cash discount".
- 1.23 "SITE" means the place so described in the schedule.

check all present full stop

Definitions and Interpretation

- 1.24 "SUB-CONTRACT BILLS OF QUANTITIES" means the document describing and quantifying the sub-contract works priced by the sub-contractor in terms of the accepted tender or negotiated sum to reflect the value of the sub-contract works.
- 1.25 "SUB-CONTRACT BUDGETARY ALLOWANCE" means a sum of money provided in the sub-contract bills of quantities for work intended for execution by the sub-contractor, the extent of which is not defined.
- 1.26 "SUB-CONTRACT CONSTRUCTION PERIOD" means the period of time commencing and ending on the dates indicated in the schedule and shall include all extensions granted in terms of clause 10.5.
- 1.27 "SUB-CONTRACT DOCUMENTS" means this sub-contract agreement, the drawings and specifications relating to the sub-contract, the sub-contract bills of quantities and such other documents as are identified in the schedule.
- 1.28 "SUB-CONTRACT FINAL ACCOUNT" means the document prepared by the agent in which is scheduled the valuation of all the variations to the sub-contract sum in terms of clause 13.16 resulting from contractor's instructions, reflecting the adjusted sub-contract sum which, in the opinion of the agent, is the value of the sub-contract works at final completion.
- 1.29 "SUB-CONTRACTOR" means the contracting party so described in the schedule.
- 1.30 "SUB-CONTRACTOR PRIME COST AMOUNT" means a sum of money provided in the sub-contract documents for materials and goods to be obtained from a supplier nominated by the agent and to be fixed by the sub-contractor.
- 1.31 "SUB-CONTRACT SUM" means the value of the sub-contract works as reflected in the sub-contract bills of quantities or other sub-contract tender documents and stated in the schedule.
- 1.32 "SUB-CONTRACT WORKS" means that portion of the works which is to be executed by the sub-contractor, together with the sub-contractor's temporary works as described in the schedule and detailed in the sub-contract documents and any variation thereto in terms of the sub-contract agreement.
- Sub-contract works in the context of the clauses herein shall further include materials and goods as defined in clause 1.1.13 as well as materials and goods supplied free or otherwise by the employer to the sub-contractor.
- 1.33 "WORKS" means the works and temporary works designed by the employer, the agent or other agents of the employer as described in the schedule and detailed in the contract documents and any variations thereto in terms of the principal agreement.

Knowledge of Principal Contract	2	The sub-contractor shall at all times be entitled to reasonable opportunity of inspecting and acknowledges that he has inspected all the provisions of the principal contract and shall be deemed for the purpose of the succeeding requirements of the sub-contract to be fully informed regarding all such provisions except the detailed prices of the sub-contractor included in schedules and bills of quantities.
Execution of the Sub-Contract works	3	The sub-contractor shall execute and complete the sub-contract works subject to and in accordance with this sub-contract in all respects in conformity with all the reasonable directions and requirements of the contractor and to the reasonable satisfaction of the contractor and the agent or, if no agent is appointed in terms of the principal contract, then the employer.
Clearance of rubbish and excess material	4	The sub-contractor shall clear away all the rubbish and excess materials resulting from his execution of the sub-contract works as the work proceeds and upon practical completion of the sub-contract works shall leave the sub-contract works clean and tidy to the reasonable satisfaction of the contractor.
Sub-Contractors liability	5	<p>5.1 All the provisions of the principal contract requiring observance, performance or compliance on the part of the contractor shall be observed, performed and complied with by the sub-contractor in so far as they relate and apply to the sub-contract works (or any portion of the same) and are not repugnant to or inconsistent with the express provisions of this sub-contract as if all the same were severally set out herein.</p> <p>5.2 The sub-contractor shall, subject to the exclusions of liability in terms of clauses 6.1.1, 6.1.2 and 6.1.3, assume full responsibility for and hereby does identify the contractor against any breach, non-observance or non-performance by the sub-contractor, his servants or agents of the said provisions of the principal contract, or any of them; provided that nothing in this sub-contract shall create any privacy of contract between the sub-contractor and the employer or any other sub-contractor.</p>
Indemnity	6	<p>6.1.1 The sub-contractor shall and hereby does indemnify the contractor against any liability, loss, claim or proceedings whatsoever, whether arising in common law or by statute, consequent on personal injuries to or the death of any person whomsoever arising out of or in the course of or caused by the execution of the sub-contract works unless due to any act or omission of the employer, the contractor, other sub-contractors or of their respective servants or agents.</p> <p>6.1.2 The sub-contractor shall and hereby does indemnify the contractor against any liability, loss, claim</p>

or proceedings consequent on loss of or damage to any movable or immovable property arising out of or in the course of or caused by the execution of the sub-contract works and due to any act or omission of the sub-contractor, his servants or agents, provided that the term "property" for the purpose of this clause 5.1.2 shall exclude the sub-contract works, any temporary works and the materials and goods intended for incorporation therein.

6.1.3 Where, in terms of the principal contract, the loss or damage results from a risk insurable by a policy insuring fire, riot, strike, malicious damage and special perils as issued by a registered insurer in the Republic of Botswana and regardless of the cause of such loss or damage, the contractor does not indemnify the employer against such loss of or damage to any structure/s being altered or added to in pursuance of the principal contract or any part/s of the contract works handed to or taken over, or for the benefit of the employer before completion of the contract works as a whole or any property belonging to the employer or for which the employer is responsible contained in such structure/s or part/s or against any consequence of any such loss or damage, then the sub-contractor similarly does not indemnify the contractor for any loss or damage or consequence thereof in respect of the sub-contract works forming part of the contract works.

6.1.4 The contractor hereby warrants that the indemnity against any loss or damage in the circumstances referred to in clause 6.1.3 which is provided by the employer shall be in respect not only of the contractor but also of the sub-contractor.

6.2 The sub-contractor shall insure and shall remain insured in respect of public liability, common law liability and, in particular, without limiting the generality of the foregoing, workmens compensation or any other statute in force for the time being, in respect of injuries to persons and/or property, until the issue of the principal agent certificate of completion of the contract works or the amounts stated in the attached schedule. The public liability, common law liability, or other policies shall contain clauses indemnifying the contractor against risks arising out of the execution of the sub-contract. The provisions of this clause shall not in any way limit the liabilities assumed by the sub-contractor or the contractor or the indemnities given by them in terms of clause 6.1.1

6.3 The sub-contractor or the contractor, as the one may be, shall provide the other one of them with proof in the form of a written statement from the insurance company concerned that the insurances required by this sub-contract have been effected.

Certificate of insurance

7.1.1 The sub-contract works (including the temporary works as defined hereafter) and the materials and goods intended for incorporation in the sub-contract works and placed on or adjacent to the site shall be at risk of the contractor for all risks of loss or damage insurable under the contract works or contractor's all insurance policy as effected in terms of the principal contract, except where the contract is for alteration and/or additions to any existing structures/s or where a part or parts of the said contract works are stated in the schedule attached to the principal contract to be required to be handed over for occupation, before completion of the contract works as a whole in which event the contractor warrants that, under the provisions of the principal contract, the employer shall carry those risks insurable by a policy insuring fire, explosion, earthquake, riot, strike, malicious damage and special perils as issued by a registered insurer in the Republic of Botswana.

Work risk

7.1.2 The contractor further warrants that, under the provision of the principal contract, any existing structure/s will be entirely at the risk of the employer.

7.1.3 Notwithstanding the provisions of clause 7.1.1 neither the contractor nor the sub-contractor shall in any case be liable for any loss or damage to the said sub-contract works, materials or goods:

7.1.3.1 caused by an excepted peril as hereinafter defined;

7.1.3.2 occurring after the date of the relevant certificate of practical completion or, if earlier, the date on which the contract works are handed over or taken into use or occupation by or for the benefit of the employer in whole or part provided that, where the contract works consist of two or more physically separate structures, the provisions of this sub-clause shall apply only to the structure or structures so certified or handed over or taken into use or occupation and not the remaining contract works, temporary works, materials and goods.

7.1.4 For the purposes of clause 7.1.1 the term "all risk" includes, but is not restricted to, the risks of damage by any act or omission of the contractor or any sub-contractor or the employer or the servant or agent of any of them and the party at risk shall have no right to recover any part of such or damage from any other party by reason of any such act or omission the excepted perils are:

7.1.4.1 any consequence whether direct or indirect or proximate or remote of war, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, military rising, insurrection, military or usurped power or martial law or state of siege or any other event or cause which determine the proclamation or maintenance of martial law or state of siege; any risk or peril only insurable in the Republic of Botswana by means of a political riot risk insurance policy issued by or on behalf of the Botswana Special Risks Insurance Association; ionizing radiations or contamination by radio-activity from any nuclear waste from the combustion of nuclear, fuel, nuclear weapons material; confiscation, nationalization or requisition or destruction or damage by or under the order of government de jure or de facto or of any public or local authority.

7.1.4.2 the design of the contract works including the sub-contract works or temporary works by the

employer or by the employer's servants or agents;

- 7.1.4.3 any latent defect in any materials or goods specified by trade name in the tender documents, provided that the sub-contractor shall and hereby does cede to the contractor who in turn in accordance with the provisions of the principal contract will cede to the employer any right of action that may exist against the supplier and/or manufacturer of such materials or goods;

Insurance

- 7.2 The sub-contract works, materials and goods referred to in the clause 7.1 will be included in the policy of insurance effected in terms of the principal contract.
The contractor warrants that, under the provisions of the principal contract, such insurance will be taken out by the employer where the contract is for alterations and/or additions to any existing structure/s or where part/s of the contract works are stated in the schedule attached to the principal contract to be handed over for occupation before practical completion of the contract works as a whole. In every instance such insurance will be taken out by the contractor.
The policy will be kept in force until the date of the certificate of practical completion of the contract works or of the final part of the contract works, as the case may be.

Certificate of Insurance.

- 7.3 The party responsible for insurance is, in terms of the principal contract, required to provide the agent with proof in the form of a written statement from the insurance company concerned that the insurances required by the principal contract have been effected. The contractor shall if so requested by the sub-contractor, confirm in writing that the insurance provisions of the principal contract are in effect.

Reinstatement

- 7.4 The contractor warrants that, under the provision of the principal contract, the costs of reinstatement of any loss or damage not at the risk of the contractor in terms of clause 7.1 will be borne and paid by the employer.
- 7.4.1 The contractor warrants that where the employer carries the risk in terms of the principal contract, the costs of reinstatement will be measured and valued in terms of the principal contract and all payments due to the contractor and the sub-contractor will be certified by the agent in accordance with the provisions of the principal contract.
- 7.4.2 The contractor warrants that, under the provision of the principal contract, where the contractor carries the risk and where reinstatement takes place, any insurance monies in respect of such reinstatement will be held in trust for his benefit and through him for the benefit of the sub-contractor. Such monies will be paid out in accordance with agent certificates.
- 7.4.3 Where reinstatement of damage is required, the sub-contractor shall carry out and complete the sub-contract works with due diligence. The principal contract provides that a reasonable extension of time for the completion of the contract works will be granted by the agent.
- 7.4.4 Where the contract is for alterations and/or additions to the existing structure and in the event of the whole or substantially the whole of the contract works and/or the existing structure being destroyed, then the continued employment of the contractor under the principal contract may, at the option of the employer, be determined by notice by registered post to the contractor in which event the contractor may similarly determine the employment of the sub-contractor. In such event the provisions of clauses 24.1 to 24.6 shall apply mutatis mutandis.

Responsibility for plant and other property

- 8 8.1 The plant and other property belonging to or provided by the sub contractor, his servants or agents shall be at the sole risk of the sub-contractor and any loss or damage to the same caused by the same shall, subject to the provisions of clause 7, be the sole responsibility of the sub-contractor who shall and hereby does indemnify the contractor against any loss, claim or proceeding in respect thereof.
- 8.2 The sub-contractor shall insure against any loss or claim as contemplated in clause 8.1 and shall, on request, supply the contractor with proof that such insurance has been effected.

Variations and instructions

- 9 9.1 If the Contractor
- 9.1.1 requires or authorizes in writing any variations of the sub-contract works; or
- 9.1.2 issues in writing to the sub-contractor any instructions of the agent, or if no agent is appointed in terms of the principal contract, any instructions of the employer in relation to the sub-contract works (whether in regard to variations or otherwise howsoever),
- then the sub-contractor shall forthwith comply with and carry out the same in all respects accordingly.
- 9.2 Any verbal instructions, directions or explanations involving a variation given to the sub-contractor or his foreman by the contractor may be confirmed in writing by the sub-contractor to the contractor and within 7 days thereafter shall be deemed to be a variation of the sub-contract works
- 9.3 If compliance with written instruction, directions or explanations as aforesaid involves any variation, or if work executed by the sub-contractor consequent upon verbal instructions, directions or explanations given to the sub-contractor or his foreman by the contractor is subsequently proved and involves a variation, then such variation shall be dealt with under the clause 12 as an authorized extra or omission and the value thereof adjusted in accordance with the relevant payment provisions

of this sub-contract.

- 9.4 If compliance with written instructions, directions or explanations as aforesaid involves expense or loss beyond that provided for in or reasonably contemplated by this sub-contract, then, unless the same were issued owing to some breach of this sub-contract by the sub-contractor the contractor shall avail himself of his rights under the principal contract to have the amount of such expense or loss ascertained by the agent under the principal contract or by the employer if no agent is appointed in terms of the principal contract and the amount so ascertained shall be added to the sub-contract sum and adjusted in accordance with the relevant payment provisions of this sub-contract.
- 10 10.1 The sub-contractor shall commence and complete the sub-contract works or the respective parts thereof in compliance with the requirements specified in the attached schedule.
- 10.2 The Contractor shall supply the Sub-contractor with a copy of his original works programme and advise the Sub-Contractor thereafter of any subsequent amendments thereto.
- 10.3 The Sub-Contractor shall commence the Sub-Contract Works on site within 7 days after receipt by him of an instruction in writing under this sub-contract from the Contractor to that effect. If the Sub-Contractor has had prior notice of the approximate on site commencement date of the Sub-Contract Works, he shall proceed with the Sub-Contract Works with due expedition. The Contractor shall inform the Sub-Contractor in writing of any change in the Contract Works affecting the time of commencement of the Sub-Contract Works and shall amend such time of commencement accordingly.
- 10.4 If the Sub-Contractor fails to complete the Sub-Contract Works or any part thereof within the period specified or any extended period as hereafter provided, he shall pay to the Contractor any loss or damage suffered or incurred by the Contractor and caused by the failure of the Sub-contractor as aforesaid of which loss or damage the Contractor shall at the earliest opportunity give reasonable notice in writing to the Sub-Contractor that the same is being or has been suffered or incurred.
- 10.5 If the Sub-Contract Works or any section thereof is delayed and such delay:
- 10.5.1 Shall be caused by or be due to any of the matters specified in clause 9 or caused by or be due to any act or omission of the Contractor and/or any other sub-contractors on the Contract Works and/or his or their respective servants or agents; or
- 10.5.2 shall be within any of the causes for which the Contractor would be entitled to obtain an extension of the period or periods for the completion under the principal contract; or
- 10.5.3 shall be due to any other causes which the Agent or, if no Agent is appointed in terms of the principal contract, the Employer may under the principal contract consider sufficient;
- then the Contractor shall grant a fair and reasonable extension of the said period or periods for completion of the Sub-Contract Works or each part thereof (as the case may require) and such extended period or periods shall be the period or periods for completion of the same respectively and this clause shall be read and construed accordingly; provided that where the provisions of clause 9.1 apply, no extension of the period or periods for the completion of the Sub-Contract Works shall be granted by the Contractor in respect of delays which also affect the duration of the Contract Works unless an extension has first been granted by the Agent, or if no Agent is appointed in terms of the principal agreement, then by the Employer. Any dispute in regard to such matters shall be deemed to be a dispute within the provisions of clause 30.
- 10.6 Immediately upon receipt of the Certificate of Practical Completion by the Contractor, he will send a copy thereof to the Sub-Contractor. The Sub-Contractor's work will be deemed to be practically complete at the day mentioned in the certificate and the Sub-Contractor will enjoy the same rights as the Contractor regarding retention and return of performance guarantee.
- 10.7 Immediately upon receipt of the Certificate of making Good Defects by the Contractor, he will send a copy thereof to the Sub-Contractor, who will be relieved of all further duties in terms of the Contract.
- 11 11.1 All defects, shrinkages or other faults in the Sub-Contract works, which the Contractor (whether at his own cost or not) shall be bound to make good under the principal contract, shall be made good by the Sub-Contractor within a reasonable time after the receipt by him from the Contractor of the Agent's written instruction or a copy thereof relating to the same or, if no agent is appointed in terms of the principal contract, the written instruction of the employer. Where the contractor is required to make good such defects, shrinkages or other faults but not at his own cost, then the contractor shall secure a similar benefit to the sub-contractor and shall account to the sub-contractor for any money actually received by him in respect of the same, subject to the deduction of a 5 per cent settlement discount as provided by clause 13.8.
- 11.2 If the contractor executes, or has executed any work to the contract works rendered necessary through the default of the sub-contractor or in consequence of defects or faults under clause 11.1, then the sub-contractor shall pay to the contractor the cost of such work. If, in lieu of executing such work, the contractor, after agreement thereto with the sub-contractor, agrees to pay or allow to the employer the value of such work or other agreed sum not exceeding the estimated cost thereof then the sub-contractor shall pay the same amount to the contractor and the contractor shall indemnify the sub-contractor against any liability arising out of the non-execution of his work.

Commence-
ment and
completion

Time of
Defects and
non-
compliance

Contract sum:
Valuation of Sub -
Contract works
of variations

Certificates and
payments

Disputes as to
certificates

11.3 If the sub-contractor executes work to or in connection with the sub-contract on the instructions of the contractor or rendered necessary by reason of any act or omission of the employer or the agent or the contractor or his agent, including any other sub-contractor appointed in terms of the principal contract, then the contractor shall pay to the sub-contractor the costs of the execution of such work.

12.1 The price of the sub-contract shall be the sum named in the attached schedule or such other sum as shall become payable by reason of any authorized variations or other adjustments in accordance with the provisions of this sub-contract.

12.2 The value of any omissions or authorized variations ordered in accordance with this sub-contract shall be valued in accordance with the principals and provisions governing the valuation of extras, omissions and variations contained in the principal contract.

12.3 The sub-contractor shall be given an opportunity of being present when the sub-contract works including omissions and variations being measured on the contract works to take such notes and measurements as he may require. Details of final measurements, in accordance with the provisions of the principal contract, shall, in so far as they concern the sub-contractor works, and upon application, be disclosed to the sub-contractor by the contractor at the latter's office.

12.4 The provisions of the principal contract governing prime cost amounts and provisional sums including in bills of quantities shall apply mutatis mutandis to any prime cost amounts and provisional sums specified as such in relation to any works, materials or goods comprised in the sub-contract.

13.1 The contractor will apply for certificates of payment in terms of the Principal agreement.

13.2 The amount applied for shall, at the date of the aforesaid certificate, fairly represent, on the basis of detailed information timeously supplied by the sub-contractor, the value of the sub-contract works and of any variations authorized under this sub-contract then executed and of the materials and goods delivered upon the site for use in the sub-contract works.

13.3 The contractor shall, at the commencement of the sub-contract works, advise the sub-contractor of the date in the month by which the sub-contractor is to provide such detailed information.

13.4 The contractor's application shall in respect of the sub-contract works, only include the value of the aforesaid materials and goods as and from such time as they are reasonably, properly and not prematurely brought upon the site and then only if adequately stored and protected against weather and other damages. The contractor shall embody in or annex to the said application any representations of the sub-contractor in regard to such value.

13.5 After receipt of a certificate and detailed supporting statement in accordance with the provisions of the principal contract, the contractor shall disclose to the sub-contractor upon application all details concerning the sub-contract works included in such certificate and/or statement. Any payments made to the sub-contractor in terms of this contract shall, except where otherwise herein provided, be fully in accordance with certificates and supporting detailed statements issued to the contractor by the agent, or if no agent has been appointed under the principal agreement, by the employer.

13.6 No payment shall become due to the sub-contractor by the contractor in respect of the sub-contract works or of any authorized variation thereof until the same shall have been certified by the agent to be due from the employer to the contractor in respect of such works by a certificate issued in accordance with the provisions of the principal contract and then only for the amount so certified.

13.7 If an agent is not employed under the principal contract, the provisions of clause 13.5 and 13.6 shall be deemed to be superseded by the requirement that the contractor shall, exercise his rights to obtain from the employer monthly or other agreed periodic payments in respect of such portions of the sub-contractor works as are completed from month to month, or from time to time as the case may be.

13.8 Payment of the amount so certified less the appropriate proportion of retention money (as referred to in clause 14) and less a settlement discount as recorded in the schedule shall, subject to the provisions of clause 13.10, be made to the sub-contractor by the contractor in accordance with the provisions of the principal agreement.

13.9 The contractor shall forfeit the settlement discount as aforesaid if he fails to make payment within the period stipulated in clause 13.8.

13.10 Notwithstanding anything elsewhere provided and without prejudice to any rights the sub-contractor may have under this sub-contract, the contractor shall be liable to pay the sub-contractor interest at the rate of 2 per cent greater than the minimum lending rate charged by commercial banks to their clients on the amount certified but not paid. Interest shall become due and payable and be calculated from the due date for payment by the contractor to the sub-contractor.

13.11 If the sub-contractor feels aggrieved by the amount certified by the agent in any certificate or by his failure to certify, then, subject to the sub-contractor giving to the contractor such indemnity and security as the contractor shall reasonably require, the contractor shall allow the sub-contractor (if he so requires) to use the contractor's name and if necessary will join with the sub-contractor as claimant in any dispute resolution proceedings by the sub-contractor in respect of the said matters complained of by the sub-contractor. Such proceedings shall be held in accordance with the relevant

provisions of the principal contract. The provisions of this clause 13.12 shall not affect the sub-contractor's rights under clause 30.

- 13.12 Failure by the contractor to apply for any certificate of payment as provided in clause 13.1, or to make payment to the sub-contractor within 14 days after the due date for payment to the contractor by the employer shall entitle the sub-contractor, on giving 7 days written notice to the contractor, to cease work under this sub-contract until application shall have been made for such certificate or until such payment shall have been made to him, as the case may be. The time during which such works shall be suspended shall be regarded as an extension of time for completion within the meaning of clause 10 and shall not constitute a delay for which the sub-contractor is liable under that clause, or at all. The sub-contractor may avail himself of the provisions of this clause to suspend the execution of the sub-contract works without prejudice to his rights to determine his employment under this sub-contract in accordance with the provisions of clause 25.

Right of the Sub-Contractor to suspend execution of sub-Contract works

- 13.13 If after the issue of the last monthly certificate but before the issue of either the penultimate or the final certificate in accordance with the principal contract, the sub-contractor shall have completed any work upon the sub-contract works, he may request the contractor in writing to make application to the agent for certificates certifying the value of such work and the contractor shall make such application. The provisions of this clause 13.14 shall apply to such certificates as if they were certificates for payment expressly provided for in the principal contract.

Special payment

- 13.14 If before the issue of a final certificate to the contractor under the principal contract the agent desires to secure final payment to the sub-contractor on completion of the sub-contract works and, in accordance with and subject to the provisions of the principal contract relating to prime cost amounts and provisional sums, issues a certificate to the sub-contractor, the amount so certified by the agent as aforesaid less a settlement discount as determined by clause 13.8, shall be paid to the sub-contractor. In the absence of any express indemnity or security furnished in terms of the above provisions, the sub-contractor shall be deemed to have automatically indemnified the contractor in accordance with the requirements hereof upon the acceptance of payment as prescribed.

Final payment to the Sub-Contractor

- 13.15 In the event of the contractor having provided the sub-contractor, by registered post, with the details as envisaged in clause 12.3 for verification, then the sub-contractor shall confirm or set out and substantiate in writing his objection to the said amount within 30 days after being presented therewith. Should the sub-contractor fail to confirm or set out his objection to the amount within the period stipulated, he shall thereby forfeit any rights he may have to dispute the amount subsequently certified by the agent and his failure either to confirm or object to the aforesaid details within the period stipulated shall be conclusive proof of his acceptance of the said details, notwithstanding anything elsewhere to the contrary herein contained.

Verification of final account

- 14.1 While any retention money is held by the employer or invested in a joint account in the name of the employer and the contractor under the principal contract, retention money as certified by the agent shall also be held on the sub-contract works.

Retention money

- 14.2 Where the sub-contract sum exceeds P30 000 (Thirty Thousand Pula) and interest is payable by the employer to the contractor in terms of the main contract the contractor shall pay the sub-contractor interest earned on his portion of the retention money in accordance with the procedure prescribed in the principal contract. Payments made in terms of this clause shall not be subject to a less settlement discount in terms of clause 13.8. The contractor, on application, shall make available to the sub-contractor such information as shall be necessary to calculate his share of interest.

- 15 The contractor shall so far as he lawfully can at the request and cost of the sub-contractor obtain for him any rights or benefits of the principal contract so far as the same are applicable to the sub-contract works but not further or otherwise.

Sub-Contractor's claim to right

- 16 Should the sub-contractor be liable to the contractor in respect of any breach of this sub-contract or otherwise for payment of any sum to the contractor arising out of this sub-contract, the contractor shall give written notice to the sub-contractor within fourteen days of the event giving rise to the liability first arising. The sub-contractor shall remedy the cause of the liability within a reasonable period of receiving notice, otherwise the contractor shall be entitled to set off the cost of such remedy against any monies due to the sub-contractor. The contractor shall not be entitled to set off any cost without first giving due notice as aforesaid.

Set off

- 17 The contractor and the agent (and authorized representative of the contractor and the agent) or, if no agent is appointed in terms of the principal contract, then the employer or his authorized representatives shall at all reasonable times have access to the sub-contract works and/or to the workshops or other places under the control of the sub-contractor where work is being prepared for the sub-contract.

Access to work

- 18 The sub-contractor shall not without the written consent of the contractor and the agent or, if no agent is appointed in terms of the principal contract, then the written consent of the contractor and the employer cede, assign, sub-let or delegate his obligations or part thereof under this sub-contract, provided that such consent shall not be unreasonably withheld to the prejudice of the sub-contractor and provided further that any consent given to the sub-contractor in terms of this clause shall not relieve him of the conditions as set out in clause 5.2.

Assignment or sub-letting

- 19 If and so far as it is so provided in the principal contract (but not otherwise) the contractor shall supply at his own cost all necessary water, lighting, electric power for hand tools where this can reasonably be made available on site, watching and attendance for the purpose of the sub-contract works. Subject as aforesaid the sub-contractor shall make all necessary provision in regard to the said matters and each of them.

Provision of water and other attendance

Temporary workshops, sheds and telephones

20 Unless otherwise provided for in the principal contract, the sub-contractor shall provide at his own expense all temporary workshops sheds or other buildings required for his workmen at such places on the site as the contractor shall appoint and the contractor shall give to the sub-contractor all reasonable facilities for the erection of the same.
The contractor may, if it be reasonably possible, place at the disposal of the sub-contractor a room in the contract works which is to be erected under the principal contract without any charge or expense, under such conditions as may be agreed upon.
If and when a telephone is installed on the site, it shall be available for the use of the Sub-Contractor, provided that he shall be liable to pay for all his outgoing calls.

Scaffolding

21 The sub-contractor shall provide scaffolding for his own use. the sub-contractor, his employers and workmen in common with all other persons having the like right shall for the purpose of the sub-contract works (but not further or otherwise) nevertheless be entitled to use any scaffolding belonging to or provided by the contractor while it remains so erected upon the site; provided that such use as aforesaid shall be on the express condition that no warranty or other liability whatsoever on the part of the contractor or his other sub-contractor shall be created or implied in regard to the fitness, condition or suitability of the said scaffolding.

Wrongful use of or interference with property

22 The contractor and the sub-contractor respectively, and/or their respective servants or agents shall not wrongfully use or interfere with the plant, ways, scaffolding, temporary works, guards, appliances or other property respectively belonging to or provided by the other of them or be guilty of any breach or infringement of any Act of Parliament or by-law, regulation, order or rule made under the sanction of any local or other public or competent authority; provided that nothing herein contained shall prejudice or limit the rights of the contractor or of the sub-contractor in the carrying out of their respective statutory or contractual duties under this sub-contract or under the principal contract.

Determination by Contractor

23 23.1 If the sub-contractor

23.1.1 without reasonable cause wholly suspends the sub-contract works before completion;

23.1.2 fails to proceed with the sub-contract works with reasonable skill, diligence and expedition;

23.1.3 refuses or to a substantial degree persistently neglects after notice in writing from the contractor to remove defective work or improper materials;

then, if so constructed by the agent or, if no agent is appointed, by the employer, the contractor shall give written and registered notice to the sub-contractor of default as specified by the agent and if such default shall continue for 14 days after such notice the contractor shall upon further instructions from the agent, determine the employment of the sub-contractor.

Insolvency of Sub-Contractor

23.2 If the sub-contractor's estate is sequestrated as insolvent, or if, being a company, it is placed in voluntary or compulsory liquidation, the contractor shall, upon instruction from the agent or, if no agent is appointed, from the employer, by written and registered notice determine the employment of the sub-contractor under this sub-contract.

Agent's or Employer's instruction

23.3 Notwithstanding anything to the contrary herein provided, nothing contained in this sub-contract shall operate to exclude, restrict or to affect in any way the obligation of the contractor to comply with the terms and conditions of an instruction by the agent or, if no agent is appointed in terms of the principal contract, then an instruction by the employer under the principal contract, to determine the services of the sub-contractor under this sub-contract.

Liability of Contractor

23.4 If the employment of the sub-contractor under this sub-contract is determined under clause 23.1 or 23.2, the sub-contractor shall be deemed to be in breach of this sub-contract and the contractor shall only be liable for:

23.4.1 the value, less a settlement discount as recorded in the schedule of any work actually and properly executed and not paid for at the date of such determination, such value to be calculated in accordance with clause 12.

23.4.2 the value, less a settlement discount, as recorded in the schedule of any unfixed materials and goods delivered upon the site for use in the sub-contract works, the ownership in which has passed to the employer under the terms of the principal contract;

23.4.3 the value of any unfixed materials and goods delivered upon the site for use in the sub-contract works, the ownership in which has not passed to the employer in terms of the principal contract if the Contractor wishes to acquire same, failing which the Sub-contractor shall be at liberty to remove same;

and for no other sum or sums whatsoever. The contractor shall have the right to recover, or to deduct from or set off against any such amount of damage suffered and/or of loss and expense incurred by him by reason of the determination of the employment of the Sub-Contractor under this sub-contract.

Determination of Contractor's employment

24 If for any reason the contractor's employment under the principal contract is lawfully determined (whether by the Contractor or by the Employer and whether due to any default of the Contractor or otherwise), then the employment of the Sub-Contractor under this sub-contract shall thereupon also determine and the Sub-Contractor shall be entitled to be paid:

- 24.1 the value, less a settlement discount as recorded in the Schedule, of the Sub-contract Works completed at the date of such determination, such value to be calculated according to clause 12;
- 24.3 the value, less a settlement discount as recorded in the Schedule, of any unfixed materials and goods delivered upon the site for use in the Sub-Contract works, the ownership in which has passed to the Employer in terms of the principal contract;
- 24.4 the cost, less a settlement discount as recorded in the Schedule, of materials or goods properly ordered and delivered for the Sub-Contract Works actually paid for by the Sub-Contractor or of which he is legally bound to take delivery;
- 24.5 any reasonable cost of removal from the site of his temporary buildings, plant, machinery, appliances, goods and materials;
- 24.6 any loss or damage caused to the Sub-Contractor owing to such determination as aforesaid, provided that the provisions of this sub-clause 24.6 shall not apply where the employment of the Contractor may, at the option of the Employer, be determined under the principal contract when a contract for alterations and/or additions to existing structure, the whole or substantially the whole of the contract works and/or the existing structure is destroyed and the employment of the Contractor is determined accordingly.
- 25 25.1 If the Contractor does not pay the Sub-Contractor within the period stated in clause 13.8 and thereafter for 7 days after written notice from the Sub-Contractor fails to pay the amount due in terms of this sub-contract, or if the Contractor's estate is sequestrated as insolvent or if, being a company, it is placed in voluntary or compulsory liquidation, the Sub-Contractor may, without prejudice to any other rights herein contained, by written and registered notice determine his employment under this sub-contract. The right to determine the employment of the Sub-Contractor under this sub-contract as hereby conferred may be exercised irrespective of whether or not the employment of the Contractor has been determined under the principal contract.
- 25.2 Upon such determination the Sub-Contractor shall be entitled to be paid in accordance with the provisions of clauses 24.1 to 24.6, subject to the deduction of the settlement discount as recorded in the Schedule where applicable.
- 26 Where the Contractor has in terms of the principal contract been required to provide a performance guarantee in respect of the Sub-contract Works, then an equivalent performance guarantee, to the reasonable satisfaction of the Contractor, shall on request be submitted to the Contractor by the Sub-Contractor.
- 27 Notwithstanding any other remedies set down in this agreement, should the Sub-Contractor require a payment guarantee from the Contractor, then the Contractor shall be obliged to provide such a guarantee prior to the commencement of the Sub-contract works. The cost, if any, for such a guarantee shall be for the account of the Sub-Contractor, provided that the terms of such a guarantee and the cost thereof shall be to the reasonable satisfaction of the Sub-Contractor. The extent of such guarantee shall be ten per cent of the sub-contract sum or such other amount as may be agreed between the parties, payable on first demand by the Sub-Contractor, but not due for payment until 28 days after any payment is due from the Contractor to the Sub-Contractor. Should the contractor fail to provide such guarantee and/or to provide such guarantee at a reasonable cost, the Contractor shall provide the Sub-Contractor with sufficient information to enable the Sub-Contractor to obtain such a payment guarantee.
- The Contractor shall cede to the Employer any warranty and/or guarantee furnished to him by the Sub-contractor in relation to the quality of materials, workmanship or any other factor having a bearing on the adequacy of the Sub-Contract Works, where the operative period of such warranty or guarantee extends beyond the duration of the principal contract. Written and registered notice shall forthwith be given by the Contractor to the Sub-Contractor of such cession
- 29 29.1 Any cessions granted by the Contractor prior to the signing hereof shall be recorded on the attached schedule.
- 29.2 The Contractor undertakes to consult the Sub-Contractor on any further cessions which he may contemplate, and the Contractor further undertakes not to grant cessions to which the Sub-Contractor may reasonably object on grounds that such cessions after payment would leave insufficient funds according to the Contractor to enable him to pay the Sub-Contractor the amount ultimately due to the latter.
- 29.3 The Sub-Contractor shall not, without the prior written consent of the Contractor, which consent shall not unreasonably be withheld, cede, assign or over to any other person or persons whatsoever any rights to receive payment of monies due to him under this sub-contract.
- 29.4 The Sub-Contractor shall indemnify the Contractor against any loss or damage suffered as a result of having granted the consent referred to in clause 29.3 or having inadvertently made any payment to the Sub-Contractor instead of the cessionary or cessionaries.
- 30 30.1 Should any disagreement between the contractor and the sub-contractor arise out of this agreement, the architect may determine such disagreement by a written decision given to the contractor and the

Determination
by Sub-
Contractor

Performance
guarantees

Payment
guarantees

Cessions of
guarantees

Cessions

Settlement of
disputes

sub-contractor within fourteen¹⁴ days of a written request so to do.

Such decision shall be final and binding on the parties, unless either party within fourteen(14) days of receipt thereof disputes the same by notice to the other party and to the architect in which case the disagreement shall be deemed a dispute.

Should the architect fail to give a written decision within the said period of fourteen(14) days, then either party may within a further fourteen(14) days give notice to the other party that the disagreement be declared a dispute.

30.2 A dispute may in the first instance be decided by meditation as follows:

- 30.2.1 should the parties be unable to agree, in writing within fourteen (14) days of the date on which the dispute is declared, upon the use of meditation as a means of settling the dispute, or upon the person to be appointed by them as a mediator, the dispute shall be resolved by the submission thereof to arbitration.
- 30.2.2 should both parties agree upon mediation, such dispute shall be referred within a further period of fourteen (14) days for opinion to a mediator mutually selected by the parties. The parties shall not be entitled to be represented at such mediation by a practicing advocate or attorney.
- 30.2.3 the parties shall within fourteen (14) days of the appointment of the mediator or such other period as the mediator considers reasonable submit written representation to him. Thereafter the mediator shall give his opinion in writing on the matter and furnish the contractor and the sub-contractor each with a copy thereof, provided that the mediator may, in his discretion, convene a hearing of the parties and their witnesses, or may hold discussions with either or both parties, before giving his opinion, with the objective of reconciling the opposing views.
- 30.2.4 in giving this opinion in writing the mediator shall be deemed to be acting as an expert and not as arbitrator with the proviso that no claim for damages shall be made against him at the instance of either party for any want of care, skill or diligence in the exercise of his duties.
- 30.2.5 the cost of the mediation and the apportionment thereof shall be determined by the mediator.
- 30.3 The opinion of the mediator shall be binding on the parties unless either party disputes the opinion of the mediator in writing to the other party within thirty (30) days of the furnishing to them by the mediator of his opinion, in which event the dispute shall be resolved by the submission thereof to arbitration.
- 30.4 Where the dispute is submitted to arbitration, then the arbitration shall be held in terms of the Arbitration Act and shall be conducted in accordance with the current Rules for the Conduct of Arbitrations published by the Association of Arbitrators (Southern Africa) and shall be heard by a sole arbitrator unless otherwise agreed by the parties.
- 30.5 The arbitrator shall be chosen by the sub-contractor from a panel of three (3) persons nominated by the President of the Botswana Institute of Development Professions at the written request of either party within seven (7) days of receipt of the notice advising the names of the said panel. Failing this the President of the Botswana Institution of Development Professions shall appoint the arbitrator. The appointed arbitrator's cost will be divided equally between the parties until the arbitrator decides to the contrary.
- 30.6 In the arbitration proceedings the rights of the parties shall not be prejudiced in any manner whatsoever by anything said or done at the mediation or by the opinion of the mediator.
- 30.7 The arbitrator shall have power to open up, review and revise any certificate, opinion, decision, requisition or notice relating to all matters in dispute submitted to him and to determine all such matters in the same manner as if no such certificate, opinion, decision, requisition or notice had been issued.
- 30.8 Reference to either mediation or to arbitration shall not relieve either party from any liability for the due and timeous performance of his obligations in terms of this agreement.
The validity of clause 30 shall not be affected by the cancellation of this agreement in terms of clauses 23, 24 and/or 25.

Identification particulars of 'the principal contract'

1 Date: 2

2 Employer's
name:

address:

3 Contractor's
name:

address:

4 Nature of the contract works:

5 Location of the contract works:

6 Name of Principal Agent:

'Sub-Contract works'

The items of work comprised in the principal contract which it is agreed the Sub-Contractor shall execute are:

Amount of insurance shall be:

Commencement and completion

The items of work comprised in this sub-contract and as enumerated above shall
commence on:

and be completed by:

Value of Sub-Contract works:

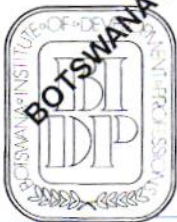
Period for payment by the employer to the
contractor:

Details of guarantees mutually agreed upon by
the contracting parties:

Details of all cessions on the principal agreement
granted prior to the signing of this contract:

Settlement discount for payment within 7 days
after receipt of payment by contractor:

BOTSWANA INSTITUTE OF DEVELOPMENT PROFESSIONS PUBLICATIONS REVIEW COMMITTEE NOVEMBER 2008



<http://www.bidp.bw>

(to go on to all eventually)

Copyright © Botswana Institute of Development Professions 1999-2006
January, 1999 edition, Revised 2004, 2006
Price band C