
SUBCONTRACT AGREEMENT

AND

PROVISIONS OF SUBCONTRACT

FOURTH EDITION (2011)

Incorporating:

GENERAL CONDITIONS OF SUBCONTRACT 2011

for use in connection with

SUBCONTRACT WORKS FOR CIVIL ENGINEERING CONSTRUCTION

with Annexure, Appendix, Schedule and
Forms of Tender, Agreement, Guarantee and Final Certificate

The South African Federation of Civil Engineering Contractors has
approved this document and it is recommended for general use

Copies are obtainable from the Federation Offices, Construction Centre,
12 Skeen Boulevard, Bedfordview or P.O. Box 644, Bedfordview,
2008 or on enquiry to admin@safcec.org.za tel : 011 409 0900

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NOTES:

The parties must complete the following pages:

By the Contractor when inviting Subcontract Tenders:		By the Subcontractor when submitting his/her offer:	
Provisions of Subcontract	Page 2	Annexure B	Page 10
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If the tender is accepted by the Contractor, the Contractor and the Subcontractor must sign page 21 and initial each page of the Subcontract Agreement.

PROVISIONS OF SUBCONTRACT

between **(The Contractor)** :

.....

and **(The Subcontractor)** :

.....

.....

for the following works (**The Subcontract Works**) :

.....

.....

Incorporating:

**GENERAL CONDITIONS OF SUBCONTRACT 2011 FOR USE IN
CONNECTION WITH SUBCONTRACT WORKS FOR CIVIL
ENGINEERING CONSTRUCTION**

and further:

Annexure: Special Conditions of Contract:
Annexure A: Alterations by Contractor
Annexure B: Alterations by Subcontractor

Appendix: Appendix in Respect of Subcontract
Part I: To be filled in by the Contractor
Part II: To be filled in by the Subcontractor

Schedules: Provisions of Main Contractor to apply to Subcontract
Part I: To be filled in by the Contractor
Part II: To be filled in by the Subcontractor

Pro-forma Subcontract Performance Guarantee
Form of Subcontract Tender
Form of Subcontract Agreement
Form of Subcontract Completion/Final Certificate
Pro-forma of Subcontract Retention Money Guarantee

GENERAL CONDITIONS OF SUBCONTRACT 2011

1. MAIN CONTRACT

This Subcontract shall be supplemental to an Agreement made or deemed to have been made as defined in the Schedule hereto and for the purpose of this Subcontract such Agreement shall hereinafter be called the Main Contract.

2. GENERAL

2.1 The Subcontractor acknowledges that he has been given reasonable opportunity of inspecting the provisions of the Main Contract in so far as they relate or apply to this Subcontract and he shall be deemed to be fully informed regarding those

provisions. The Contractor shall, if so requested by the Subcontractor, provide the Subcontractor with a true copy of the Main Contract, except the detailed prices of the Contractor included in the Bill of Quantities and/or the Schedule of Rates and Prices (if any).

2.2 The Subcontractor shall observe, perform and comply with the provisions of the Main Contract in so far as they relate or apply to this Subcontract and are not inconsistent with the express provisions of this Subcontract as if the same were severally set out herein. In the event of any inconsistency the express provisions of this Subcontract shall take precedence over the provisions of the Main Contract.

2.3 In the interpretation of the provisions of the Main Contract in so far as they relate or apply to this Subcontract, the Contractor shall have like powers, rights and responsibilities in relation to this Subcontract as the Employer and/or Engineer and/or the Employer's or Engineer's duly appointed agent has in relation to the Main Contract and the Subcontractor shall have like powers, rights and responsibilities in relation to the Contractor as the Contractor has in relation to the Employer and/or Engineer and/or the Employer's or Engineer's duly appointed agent.

2.4 Nothing herein shall be construed as creating any privity of contract between the Subcontractor and the Employer.

2.5 With respect to the Subcontract Works as covered by this agreement the Subcontractor undertakes to the Contractor the like obligations and liabilities as are undertaken by the Contractor to the Employer in terms of the Main Contract and holds harmless and indemnifies the Contractor from and against the same and from all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in connection with any failure to perform such obligations or to fulfil such liabilities and, without limiting the generality of the foregoing, the Subcontractor holds harmless and indemnifies the Contractor from and against:

2.5.1 faulty design of the Subcontract Works if and where such design is the responsibility of the Subcontractor;

2.5.2 faulty materials, faulty workmanship or failure of the goods if and where the goods were manufactured and/or supplied by the Subcontractor;

2.5.3 any negligence by the Subcontractor, his agents, workmen and servants;

2.5.4 any misuse by the Subcontractor of any construction plant, temporary works or materials provided by the Contractor for the purposes of this Subcontract.

2.6 The Subcontract Works shall mean the works described in the Appendix hereto.

2.7 The Subcontract Price shall mean the tendered sum and/or rates named in the Subcontract tender as payable to the Subcontractor subject to such additions thereto or deductions therefrom as may be made from time to time under the provisions of this Subcontract.

2.8 If not otherwise agreed between Contractor and Subcontractor, the Subcontract Price shall be increased or decreased in accordance with the Contract Price Adjustment Formula or other price adjustment arrangements of the Main Contract using the particulars specified in the Appendix hereto.

3. ADMINISTRATIVE MATTERS

The Contractor hereby warrants that the Subcontractor shall be given reasonable notice of and be entitled to attend any meeting, which in any way affects the interests of the Subcontractor. The Contractor further warrants that the Subcontractor shall be given:

GENERAL CONDITIONS OF SUBCONTRACT 2011

- (a) extracts of the minutes of any such meeting regardless of whether the Subcontractor attended the meeting or not;
- (b) reasonable notice of the Contractor's intention to present any claim to the Employer in respect of quantities which relate to the Subcontract Works or any claim which affects the interests of the Subcontractor in any other way;
- (c) the opportunity to present any claim as aforesaid jointly with the Contractor;
- (d) details of any claim as aforesaid presented to the Employer and the results of any such claim.

4. ASSIGNMENT AND SUB-LETTING

4.1 Neither the Subcontractor nor the Contractor shall cede or delegate his rights or obligations in respect of the whole or any part of this Subcontract.

4.2 The Subcontractor shall not sublet the whole or any part of the Subcontract Works without the prior written consent of the Contractor, which consent shall not be unreasonably withheld.

5. SUBCONTRACT PERFORMANCE GUARANTEE

The Subcontractor shall provide the Contractor with the Performance Guarantee to the amount stated in the Appendix hereto and in the form as attached hereto within 14 (fourteen) days after the award of the Subcontract.

6. INSURANCES

6.1 The Contractor shall insure the Subcontract Works against all risks other than the excepted risks specified in the Main Contract and to the full value of such Subcontract Works to be executed from time to time subject to the exclusions from such risks and the deductible amount stated in the Appendix hereto.

To the extent to which the Subcontract Works are not covered by the policy or policies of insurance taken out by the Contractor, any loss or damage thereto from whatever cause arising other than the aforesaid excepted risks, shall be the sole responsibility of the Subcontractor until the date of completion of the Subcontract Works.

At his written request, the Subcontractor shall prior to the commencement of the Subcontract Works, be given reasonable opportunity of inspecting such policy or policies or be provided with a copy of such policy or policies. If the Contractor fails to comply with such request, the Subcontractor shall have no responsibility whatsoever for the Subcontract Works in terms of this clause until his request has been complied with. The Subcontractor shall observe and comply with the conditions of the policy or policies of insurance affected in terms hereof.

6.2 Unless insured in terms of the provisions of Sub-Clause 6.1 hereof, the Subcontractor shall insure the following in the same manner as the Contractor is required to insure in accordance with the provisions of the Main Contract:

6.2.1 the temporary works installed from time to time by the Subcontractor for his use, to their full value, until no longer required by the Subcontractor;

6.2.2 the materials, construction plant and other things brought on to the Subcontract site by the Subcontractor, to their full value.

6.3 The Subcontractor shall insure against such risks as are stated in the provisions of the Main Contract and which may arise out of or in consequence of this Subcontract in respect of:

6.3.1 the Compensation for Occupational Injuries and Diseases Act (Act 130 of 1993) or any other statute in force for the time being or any other legal liability in respect of any accident or injury to any workman or other person in the employment of the Subcontractor;

GENERAL CONDITIONS OF SUBCONTRACT 2011

6.3.2 any accident, injury, damage or loss to any person or property under Third Party or Public Liability to the minimum amount stated in the Appendix hereto.

7. DAMAGE TO PROPERTY

The Subcontractor shall indemnify the Contractor against claims, losses or proceedings arising from damage to the subsurface and/or hidden installations and services which have been adequately indicated on site and are shown on drawings supplied to the Subcontractor.

8. COMMENCEMENT AND PROGRAMME

8.1 The Subcontractor shall commence the Subcontract Works within the period stated in the Appendix hereto after receipt by him of an order in writing to this effect delivered by hand, registered post, facsimile transmission or email and shall proceed with the same with due expedition and without delay except as may be expressly sanctioned or ordered by the Contractor or be wholly beyond the Subcontractor's control. The Subcontractor shall be allowed uninterrupted and continuous working except as may be indicated in the agreed programme for the execution of the Subcontract Works.

8.2 Unless otherwise agreed, the Subcontractor shall not later than 14 (fourteen) days after the award of the Subcontract submit to the Contractor for his approval a programme for the execution of the Subcontract Works and the Contractor shall approve such programme prior to commencement of the Subcontract Works, or not later than 14 days after the date of submission of the programme, whichever is sooner. After the said programme has been approved it shall be initialled and dated by both parties and shall form part of this Subcontract. The programme may be used to determine the Subcontractor's entitlement, if any, to extensions of time to the construction period of the Subcontract Works arising out of delays thereto. In the event of the Contractor, without good cause, not approving and signing the programme by due date, the said programme shall be deemed to form part of the Subcontract as if it had been approved and signed by the Contractor. The parties may mutually agree on revisions of the programme from time to time without prejudice to their rights under the first-mentioned approved programme.

8.3 The Subcontractor shall indicate in his programme the dates upon which the Contractor shall provide the facilities, services and goods described in the Appendix hereto to enable the Subcontractor's programme to be met. If the Contractor shall fail to provide such facilities, services and goods timeously to enable the Subcontractor's programme to be met, the Subcontractor shall be entitled to provide the same by his own workmen or by others and to be paid a reasonable remuneration in respect thereof, without prejudice to his other rights under this Subcontract.

9. TIME FOR COMPLETION

9.1 The whole of the Subcontract Works shall be completed within the Time for Completion stated in the Appendix and/or in accordance with the agreed programme between Main Contractor and Subcontractor calculated from the date of receipt by the Subcontractor of the order in writing in terms of Sub-Clause 8.1 hereof or from the date for commencement provided for in terms of Sub-Clause 8.1 hereof or within such extended time as may be allowed or may be provided for in terms of Sub-Clause 9.2 hereof, subject to any requirement in the Appendix hereto as to the completion of any section of the Subcontract Works before completion of the whole.

9.2 If the Subcontractor shall be delayed in the execution of the Subcontract Works:

- 9.2.1 by any circumstance or occurrence (other than a breach of this Subcontract by the Subcontractor) entitling the Contractor to an extension of his time for completion of the Works under the Main Contract;
- 9.2.2 by the ordering of any variation of the Subcontract Works to which Sub-Clause 9.2.1 hereof does not apply;
- 9.2.3 by any breach of this Subcontract by the Contractor;

GENERAL CONDITIONS OF SUBCONTRACT 2011

then in any such event the Subcontractor shall, without prejudice to this Subcontract, be entitled to such extension of the Time for Completion as may in all circumstances be fair and reasonable, provided always that in any case to which SubClause 9.2.1 or 9.2.2 hereof applies, it shall be a condition precedent to the Subcontractor's right to an extension of the Time for Completion that he shall have given written notice to the Contractor of the circumstance or occurrence which is delaying him. Provided that if any case to which clause 9.2.1 hereof applies, the Subcontractor shall give written notice to the Contractor of the circumstances or occurrence which is delaying him within 21 days of such delay first occurring. Failure on the part of the Subcontractor to fulfil this condition shall not affect his entitlement to extension of time if the Contractor should have been reasonably aware of the delay or have claimed for extension of time in terms of the Main Contract for the particular circumstances or occurrence.

9.3 None of the permanent Subcontract Works shall be performed on any of the special non-working days stated in the Appendix hereto, or outside normal working hours as defined in the Main Contract, except with the prior written consent of the Contractor.

10. PENALTY FOR DELAY

10.1 If the Subcontractor shall fail to complete the Subcontract Works or sections thereof within the Time for Completion prescribed in terms of Sub-Clause 9.1 hereof or the extended time allowed or provided for in terms of Sub-Clause 9.2 hereof, then the Subcontractor shall pay to the Contractor the sum stated in the Appendix hereto as a penalty for every day which shall elapse between the expiry of the aforesaid Time for Completion or extended time as provided for herein and the date of completion of the Subcontract Works. The Contractor may deduct the amount of the penalty from any monies owing to the Subcontractor in terms of this Subcontract Agreement.

10.2 The imposition of such penalty shall not relieve the Subcontractor of his obligation to complete the Subcontract Works or from any of his obligations and liabilities under this Subcontract.

10.3 If before the completion of the whole of the Subcontract Works any portion of the Subcontract Works has been approved or occupied by the Contractor and/or Employer the penalty for delay shall for any period of delay after such approval or occupation be reduced in the proportion which the value of the portion so approved or occupied bears to the value of the whole of the Subcontract Works, unless otherwise provided for by the Contractor in the Appendix hereto.

10.4 The Subcontractor shall be entitled to be paid the amount set out by him in the Appendix hereto for any delays occasioned to the Subcontractor through the breach of the Subcontract by the Contractor, without prejudice to any of the Subcontractor's other rights.

11. MAINTENANCE AND DEFECTS

11.1 The Defects Liability Period in respect of the Subcontract Works shall be stated in the Appendix hereto and shall be calculated from the date of practical completion of the Subcontract Works when the Subcontract Works or parts thereof have reached a stage which allows their use for the intended purpose without danger or undue inconvenience or from the date stated in the Appendix. The date of completion of the Subcontract shall be the date of issue of the Certificate of Completion for the Subcontract Works issued by the Contractor in accordance with clause 16 hereof.

11.2 If the Subcontractor, within a reasonable time of receipt of written notice from the Contractor, fails to make good any defect or omission in the Subcontract Works required by the Contractor and for which the Subcontractor is responsible, the Contractor shall be entitled to recover from the Subcontractor the cost of carrying out such work.

12. VALUATIONS AND PAYMENTS

12.1 The Subcontractor shall submit to the Contractor on a date and in a form that the Contractor may reasonably require a monthly statement of the amount he claims in accordance with the provisions of this Subcontract and the provisions of the Main Contract.

12.2 Unless stated otherwise in the Appendix, the Contractor shall pay to the Subcontractor by the 37th (Thirty-seventh) day (due date) or within 2 working days of the Contractor receiving payment, which ever is the sooner, after the submission of the monthly statement referred to in Sub-Clause 12.1 hereof the amount of the valuation made by the Contractor in

GENERAL CONDITIONS OF SUBCONTRACT 2011

accordance with the provisions of this Subcontract and the Main Contract less the percentage retention stated in the Appendix hereto subject to the limit of Subcontract retention money stated in the Appendix hereto.

12.3 If part of the Subcontractor's claim is in dispute the amount not in dispute shall be paid to the Subcontractor in accordance with the provisions of this Subcontract, and any patent errors or omissions that may be discovered by the Contractor shall not be cause for delay in payment of the adjusted amount.

12.4 Without prejudice to his rights under this Subcontract or any right he may have to determine this Subcontract, the Subcontractor from due date shall be paid interest upon overdue payments calculated on daily balances at a rate per annum equivalent to 2% (two per centum) plus the prime rate current on the date upon which such payment first becomes overdue, but such interest shall not exceed the legal maximum rate. In the event of any variation in the said overdraft rate whilst such payment remains overdue the interest payable for the period that such payment remains overdue shall be correspondingly varied from the date of each such variation.

12.5 When the Subcontractor is expressly required to undertake a continuing obligation beyond the date of the final certificate in respect of the Subcontract Works and gives an indemnity as set out in the Appendix hereto to the satisfaction of the Contractor against any defect, no monies shall be withheld beyond the date of such final certificate.

12.6 If, as stated in the Annexure, a Retention Money Guarantee is permitted and the Subcontractor elects to furnish it, the guarantee shall, at the cost of the Subcontractor, be executed by a Bank or Insurance Company in a form approved by the Contractor and shall be accepted in lieu of retention money until the aggregate of the retention monies which would, but for the guarantee, have been retained by the Contractor is equal to the aggregate liability of the Bank under the guarantee, whereafter the remaining portion of the retention money shall be retained by the Contractor as provided in Clause 12.2

13. DETERMINATION

Should the Contractor's employment under the Main Contract be determined for what ever reason, the Subcontractor's employment under this Subcontract shall thereupon also determine.

14. CLAIMS

Notifications and claims procedures shall strictly follow the provisions of the Main Contract

15. SETTLEMENT OF DISPUTES

15.1 If any dispute or difference shall arise between the Subcontractor and the Contractor, either during the progress or after the completion of the Subcontract Works, or after the determination of the employment of the Subcontractor under this agreement, as to the construction of this agreement, or as to any manner or things arising thereunder, in the first instance an attempt shall be made to settle the dispute amicably. Should all attempts to settle the dispute or difference amicably fail, such dispute or difference shall be referred to the appointed representative of the Contractor, or the Contractor's site agent if no representative is appointed, for his determination by written decision to the Subcontractor. The said decision shall be delivered within 14 days of the date of request and shall be final and binding upon the parties unless the Subcontractor, within 14 days of receipt thereof, by written notice to the Contractor disputes the decision, in which case the matter shall be referred to an adjudicator. Should the Contractor's representative or site agent fail to deliver his decision within 14 days he shall be deemed to have given a decision rejecting the Subcontractor's contentions or claims. The adjudicator shall be appointed by agreement of the parties failing which by the President of the South African Federation of Civil Engineering Contractors upon request of the Subcontractor.

15.2 The opinion of the adjudicator shall be final and binding upon the parties for all disputes involving less than R500 000. For disputes involving amounts in excess of R500 000, should one of the parties, within 28 days of receipt of the opinion, express to the other in writing their dissatisfaction with the opinion, then that party may take the matter to arbitration and/or litigation, provided arbitration and/or litigation proceedings are instituted within a further 28 days. The opinion of the adjudicator shall take immediate effect and shall be maintained until such time as it may be overturned by arbitration and/or litigation.

GENERAL CONDITIONS OF SUBCONTRACT 2011

15.3 If the matter is referred to arbitration, the arbitrator shall be a person agreed upon by the parties or, failing such agreement, appointed by the Chairman of the South African Association of Arbitrators upon the application of either party. Any such reference shall be deemed to be a submission to a single arbitrator in terms of the Arbitration Act (Act No. 42 of 1965 as amended) or any legislation passed in substitution thereof. The arbitration shall be conducted in accordance with the current rules for the conduct of arbitration as published by the South Africa Association of Arbitrators.

16. COMPLETION OF THE SUBCONTRACT WORKS

16.1 When the whole of the Subcontract Works have been substantially complete and have satisfactorily passed any tests prescribed by the Subcontract, the Subcontractor may give notice to that effect to the Contractor together with a written undertaking to finish with due expedition any outstanding works during the maintenance period. Within 14 days of receipt of such notice and undertaking, the Contractor shall issue a Certificate of Completion in respect of the Subcontract Works were substantially completed in accordance with the Subcontract, or alternatively issue the Subcontractor a list specifying all of the work necessary to be completed before the issue of such a certificate. The Contractor shall issue a Completion Certificate within 14 days of the completion, to his satisfaction, of the works specified. The works shall be deemed to be complete upon completion of the works specified if the Contractor, without good cause recorded in writing to the Subcontractor, fails to issue the Completion Certificate within the period stipulated.

16.2 When this Subcontract Agreement provides for handing over the Subcontract Works in parts, or when the Contractor or his Employer takes beneficial occupation of the Subcontract Works, a Completion Certificate shall be issued in respect of that part of the Subcontract Works prior to it being taken over or occupied.

GENERAL CONDITIONS OF SUBCONTRACT 2011

16.3 The maintenance period stipulated in the Appendix shall commence upon the date of substantial completion as stated in the Certificate of Completion and one half of the retention monies shall be paid to the Subcontractor not later than 14 days after the expiry of the maintenance of the Subcontract Works.

16.4 If a Performance Guarantee was provided by the Subcontractor, it shall be released within 14 days of the date of the Completion Certificate for the whole of the Subcontract Works.

17. INDEPENDENT CONTRACTOR

Notwithstanding the provisions of section 200A of the Labour Relations Amendment Act, 2002, the Subcontractor warrants that he is an independent contractor, even though the Contractor may be the only entity for whom he has work.

All work carried out will be entirely under the control of the Subcontractor, except where it may be limited by the works of the Contractor

ANNEXURE A SPECIAL CONDITIONS OF SUBCONTRACT (Alterations by the Contractor)

- NOTE:**
1. This Annexure shall be completed by the Contractor before inviting Tenders.
 2. Where there are no such Special Conditions of Subcontract, the Schedule hereunder is to be marked NIL by the Contractor.

The Contractor undertakes that the only variation from the General Conditions of Subcontract are as set out hereunder, or alternatively as set out in the document attached hereto, marked "Special Conditions of Subcontract", as referred to hereunder:

Page	Clause

Signed for and on behalf of the **CONTRACTOR** at
on this day of 20

.....
Signature

.....
Print Name

.....
Position

ANNEXURE B SPECIAL CONDITIONS OF SUBCONTRACT (Alterations by Subcontractor)

-
- NOTE:**
1. This Annexure shall be completed by the Subcontractor and shall form part of his Tender.
 2. Should the Subcontractor desire to make any departure from or modifications to the General Conditions of Subcontract, Special Conditions of Subcontract, Specifications, Schedule of Quantities or Drawings, or to qualify his tender in any way, he shall set out his proposals clearly hereunder or, alternatively state them in a covering letter attached to his tender and referred to hereunder, failing which the tender will be deemed to be unqualified.
 3. If no departures, modifications or qualifications are desired, the Schedule hereunder is to be marked NIL by the Subcontractor.

Notwithstanding any provision contained in the tender documents to the contrary, this Subcontract Tender is subject to the following conditions which shall be deemed to be expressly included in any Subcontract Agreement resulting from the acceptance of this Tender.

Page	Clause

Signed for and on behalf of the **SUBCONTRACTOR** at
on this day of 20

.....

Signature

.....
Print Name

.....
Position

APPENDIX PART I

(Part I to be completed by the Contractor)

- NOTE:**
1. Part I shall be filled in by the Contractor before inviting tenders.
 2. Part II shall be filled by the Subcontractor and the completed Appendix shall form part of his Tender.
 3. Items which are not applicable shall be marked NIL.
-

	Clause	
Description of Subcontract Work	2.6
Subcontract Price Adjustment: (i) Contract Price Adjustment	2.8	x = a = b = c = d =
Factor for Civil Engineering Work and/or		The Labour Index shall be The Plant Index shall be The Material Index shall be The Fuel Index shall be
(ii) Other Price Adjustment Arrangement (to be set out here or attached hereto as here referred to)
Amount of Subcontract Surety.....	5.	R or per cent of Tendered Sum and/or Rates.
Exclusions (other than excepted risks) from All Risks Insurance of Subcontract Works.....	6.1	R.....
Deductible Amount on All Risks Insurance of Subcontract Works	6.1	R.....
Minimum Amount of Third Party or Public Liability Insurance of Subcontract.....	6.3 days/(date)
Period within which or date by which Subcontract Works to be commenced.....	8.1
Details of discontinuity of Subcontract Works not provided for in the Main Contract.....	8.1	Free of charge:
Facilities, Services or Goods to be provided by the Contractor to the Subcontractor.....	8.3	as Specified:
Time for Completion.....	9.1 days/months
(i) Time for Completion of Subcontract Works	9.3	Section days/months
(ii) Time for Completion of Sections of the Subcontract Works		Section days/months (Statutory Public Holidays)
Special Non-Working days	10.1	R per calendar day
Amount of Subcontract Penalty	10.3	Yes/No.
Will a proportional Reduction in Subcontract Penalty apply.....	11.1 months from date of completion of Subcontract Works, or alternatively months from..... (date)
Defects Liability Period	12.1 12.2 per cent.
Percentage Advance on Unused Materials	12.2	days.
Time for payment	12.2 per cent.
Percentage Retention	12.2	R (See Form of Subcontract Tender).
Limit of Subcontract Retention Money	12.6 days
Period of Validity of Subcontract Tender		Yes/No
Retention Guarantee allowed		

APPENDIX PART 1 (cont'd)

Signed for and on behalf of the **CONTRACTOR** at
on this day of 20

.....
Signature

.....
Print Name

.....
Position

Appendix PART II

(PART II to be completed by the Subcontractor)

Clause

Charges by Subcontractor for Delays in Subcontract Works:

10.4

At Rates as specified.....

(i) Additions to Daywork Allowances set out below

..... per cent.

(ii) Charge for Activity or Section of Work delayed

R per hour in respect of

R per hour in respect of

Indemnity for Subcontract (to be set out here or attached hereto as here referred to).....

12.5

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

Daywork allowances (if not scheduled elsewhere).....

..... per cent on the remuneration of the workmen as defined in the Main Contract

..... per cent on the cost of materials as defined in the Main Contract

..... per cent on hire rates for plant and equipment as defined in the Main Contract unless named below:

..... machine: R per hour

..... machine: R per hour

..... machine: R per hour

Supporting Details (any particulars which the Subcontractor considers necessary in support of his tender shall be set out here or attached hereto as here referred to).....

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

Signed for and on behalf of the **SUBCONTRACTOR** at

.....
Signature

.....

On this day of 20.....

.....
Print Name

.....
Position

PROVISIONS OF MAIN CONTRACT TO APPLY TO SUBCONTRACT

NOTE:

- 1.
- 2.
- 3.

Part I shall be filled in by the Contractor before inviting tenders.

Part II shall be completed by the Subcontractor and the completed Schedule shall form part of his Tender.

Items, which are not applicable, shall be marked NIL.

PART I (to be filled in by the Contractor)

Contract No:

Brief Description of Main Contract Works:

.....

Name of Employer:

Name of Contractor:

1. General Conditions of Main Contract:

- a) The General Conditions of Contract of the Main Contract are:

.....

(identification of the applicable General Conditions of Contract)

and the Contractor hereby undertakes to make these General Conditions of Contract available to the Subcontractor not later than seven days before the closing date for the submission of this Subcontract Tender,

OR

- b) The Contractor hereby nominates the following General Conditions of Contract, which for the purpose of this Subcontract, shall be deemed to be the General Conditions of Contract of the Main Contract:

.....

OR

- c) If the General Conditions of Contract have not been specified by the Contractor in Item 1(a) or 1(b) above or if the General Conditions of Contract specified have not been made available by the Contractor to the Subcontractor not later than seven days before the closing date for the submission of this Subcontract Tender, the General Conditions of Contract for Construction Works as published by the South African Institution of Civil Engineering shall be deemed for the purpose of this Subcontract to be the General Conditions of Contract of the Main Contract.

2. Special Conditions

Special Conditions of Main Contract to Apply to Subcontract:

.....

.....

3. Specification:

PROVISIONS OF MAIN CONTRACT TO APPLY TO SUBCONTRACT

- NOTE:**
- 1.
 - 2.
 - 3.

Portions of Specification of Main Contract to Apply to Subcontract Works:

.....
.....

Part I shall be filled in by the Contractor before inviting tenders.
Part II shall be completed by the Subcontractor and the completed Schedule shall form part of his Tender.
Items, which are not applicable, shall be marked NIL.

PART I (to be filled in by the Contractor)

4. Drawings:

Drawings of Main Contract to Apply to Subcontract Works:

.....
.....

5. Other Aspects:

Other Aspects of Main Contract to Apply to Subcontract Works:

.....
.....

6. Undertaking:

The Contractor hereby undertakes to make the documents specified in Items 2 to 5 above available to the Subcontractor not later than seven days before the closing date for the submission of this Subcontract Tender, failing which the Subcontractor shall not be bound thereby.

Signed for and on behalf of the **CONTRACTOR** at
on this day of 20

.....
Signature

.....
Print Name

.....
Position

PROVISIONS OF MAIN CONTRACT TO APPLY TO SUBCONTRACT

- NOTE:**
- 1.
 - 2.
 - 3.

Part I shall be filled in by the Main Contractor before inviting tenders.
Part II shall be completed by the Subcontractor and the completed Schedule shall form part of his Tender.
Items, which are not applicable, shall be marked NIL.

PART II (to be filled in by the Subcontractor)

Availability of the Main Contract:

The Subcontractor hereby states that the following documents were made available to him not later than seven days before the closing date for the submission of this Subcontract Tender:

the General Conditions of Contract specified in Item 1 above,

the Special Conditions of Contract specified in Item 2 above,

the Specification specified in Item 3 above,

the Drawings specified in Item 4 above,

the Other Aspects specified in Item 5 above.

(delete whichever was not made available)

Signed for and on behalf of the **SUBCONTRACTOR** at
on this day of 20

.....
Signature

.....

PROVISIONS OF MAIN CONTRACT TO APPLY TO SUBCONTRACT

- NOTE:**
- 1.
 - 2.
 - 3.

Print Name

.....
Position

PRO-FORMA SUBCONTRACT PERFORMANCE GUARANTEE

(The Performance Guarantee to be provided within 14 days after the award of the Subcontract)

We, the undersigned.....

Of

.....
undertake to pay [*Name of the Contractor*] (the Beneficiary) the sum of R[*amount in figures and words*] (the Guarantee Amount) on the receipt of a first written demand for payment from the Beneficiary stating that the amount is due and payable by the Subcontractor in terms of the Subcontract Agreement between the Contractor and the Subcontractor.

Our liability under this Performance Guarantee is principal in nature and is not subject to any agreement. Our liability shall not be reduced or in any way affected by any alteration of the terms of the Subcontract, or any other agreement made between the Contractor and the Subcontractor.

We will pay on demand and will not determine the validity of the demand or the correctness of the amount demanded or become party to any claim or dispute of any nature which any party may allege.

This Performance Guarantee is neither negotiable nor transferable, is restricted to the payment of a sum of money only and is limited to the Guarantee Sum.

This Performance Guarantee will expire on [Expiry date], or upon payment of the Guarantee Sum, whichever event occurs first, and no further claims will be considered.

FOR AND ON BEHALF OF THE GUARANTORS

at on this day of 20
.....

AS WITNESSES:

1. 2.

ADDRESS:

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

FORM OF SUBCONTRACT TENDER

(Annexures A and B, the Appendix and the Schedule form part of the Tender)

Contract No. :

Short Description of Subcontract Works :
.....

To :

Gentlemen,

1. Having examined and, where applicable, completed the General Conditions of Subcontract, the Special Conditions of Subcontract in Annexure A, the Appendix, the Schedule hereto, the Schedule of Quantities and the Schedule of Rates and Prices (if any) for the execution of the above-mentioned Subcontract Works, I/we offer to construct, complete and remedy any defects in the Subcontract Works in conformity with such aforementioned documents, save as amended by the alterations set out in Annexure B hereto

for the sum of R.....(In words) and/or the rates and prices stated in the Bill of Quantities and/or the Schedule of Rates and Prices (if any) or such other sum as may be ascertained in terms of the Subcontract.

- 2. In the event of there being any errors of extension or addition in the priced Bill of Quantities of the Subcontract Works, I/we agree to their being corrected, the rates being taken as correct.
- 3. Unless a closing date for the submission of this Subcontract Tender has been determined by you, the closing date shall be 12 noon on the day which is two days before the closing date of the main tender.
- 4. I/We agree to abide by this Subcontract Tender during the period stated in the Appendix hereto, from the date fixed for receiving the same and it shall remain binding upon me/us and may be accepted at any time before the expiration of that period.
- 5. After the submission of my/our Subcontract Tender, I/we shall only negotiate or discuss any variation, amplification, alternative or other aspect relating to the same, provided I/we have been informed that I/we are the only tenderer with whom you are negotiating or discussing any such variation, amplification, alternative or other aspect.
- 6. Unless otherwise agreed, my/our Subcontract Tender shall not be accepted in part only.
- 7. I/We undertake, if my/our Subcontract Tender is accepted, to commence the Subcontract Works within the period or by the date stated in the Appendix hereto and to complete and deliver the whole of the Subcontract Works comprised in the Subcontract within the time for completion stated in the Appendix hereto.
- 8. If my/our Subcontract Tender is accepted I/we will, when required and within the time stipulated, provide a Subcontract Performance Guarantee acceptable to you of an Insurance Company or Bank to be jointly and severally bound with me/us in a sum not exceeding 10% (ten per centum) of the above named sum for the due performance of the Subcontract under the terms of a Subcontract Performance Guarantee in the form attached hereto. The Guarantor(s) I/we propose is/are:

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

FORM OF SUBCONTRACT TENDER

(Annexures A and B, the Appendix and the Schedule form part of the Tender)

9 Unless and until a formal Subcontract Agreement is prepared and executed, this Subcontract Tender, together with your written acceptance thereof shall constitute a binding contract between us.

10. I/We understand that you are not bound to accept the lowest or any tender you may receive.

I/We am/are, Gentlemen,

Yours faithfully,

Signature:

Print Name:

Position:

For and on behalf of:

Address.....

.....

Date:

FORM OF SUBCONTRACT AGREEMENT

This Subcontract is made and entered into between.....
.....

of.....

(hereinafter called the Contractor) of the one part; and.....

of.....

(hereinafter called the Subcontractor) of the other part,

SUPPLEMENTAL to an Agreement (hereinafter called the Main Contract) made or deemed to have been made between

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

WHEREAS the Contractor desires to have executed certain Subcontract Works, namely

which Subcontract Works form part of the Works comprised in and to be executed under the Main Contract and has accepted a Tender by the Subcontractor for the construction, completion and remedy of defects of such Subcontract Works;

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. In this Subcontract words and expressions shall have the same meaning as are respectively assigned to them in the General Conditions of the Subcontract and the General Conditions of Main Contract hereinafter referred to.

2. The following documents shall be deemed to form this Subcontract and shall be read and construed in the following order of precedence:

- a) The Programme of Subcontract Works as and when agreed in accordance with Sub-Clause 8.2 of the General Conditions of Subcontract.
- b) This Form of Subcontract Agreement.
- c) The Letter of Acceptance.
- d) The Form of Subcontract Tender together with the documents forming part thereof as listed hereunder.
 - i) The Alterations by Subcontractor (Annexure B) ii) The Special Conditions of Subcontract (Annexure A)
 - iii) The General Conditions of Subcontract iv) The Appendix in Respect of the Subcontract
 - v) The Schedule of Provisions of Main Contract to Apply to the Subcontract
 - vi) The priced Bill of Quantities of the Subcontract Works vii) The Schedule of Rates and Prices (if any) of the Subcontract Works viii) The Form of Subcontract Performance Guarantee
- e) The Conditions of the Main Contract together with all documents forming part thereof.

FORM OF SUBCONTRACT AGREEMENT

3. In consideration of the payments to be made by the Contractor to the Subcontractor as herein-after mentioned the Subcontractor undertakes to the Contractor to construct, complete and remedy any defects in the Subcontract Works in conformity in all respects with the provisions of the Subcontract.

4. The Contractor hereby undertakes to pay to the Subcontractor in consideration of the construction, completion and remedy of defects of the Subcontract Works the Subcontract Price at the time and in the manner prescribed by the Subcontract.

5. The parties hereto choose domicilium citandi et executandi for all purposes of this Subcontract at the respective addresses stated hereunder.

IN WITNESS WHEREOF the parties hereto have set their hands and seals (if any) in the presence of the subscribing witnesses: Signed in the presence of the subscribing Witnesses:

Signed for and on behalf of the **CONTRACTOR** at
on this day of 20.....

Address:
.....

Signature:	AS WITNESSES:
Print Name:	1
Position:	2

Signed for and on behalf of the **SUBCONTRACTOR** at
on this day of 20.....

Address:
.....

Signature:	AS WITNESSES:
Print Name:	1
Position:	2

FORM OF SUBCONTRACT COMPLETION/FINAL CERTIFICATE

(for use in connection with the General Conditions of Subcontract 2011)

To:(Name of Subcontractor)

Contract No.:

Brief Description of Subcontract Works:

.....

.....
CERTIFICATE OF COMPLETION OF THE SUBCONTRACT WORKS

This is to certify that the whole or any part of the Subcontract Works as specified hereunder has been completed for all practical purposes in conformity with the provisions of the Subcontract and (where specified) has satisfactorily passed any final tests:

.....
.....
(Description of the completed Subcontract Works)

The sum of R (in words:.....) being one half of the retention money, is accordingly due and payable to the Subcontractor in terms of the provisions of the Subcontract.

OR

CERTIFICATE OF COMPLETION OF MAINTENANCE OF THE SUBCONTRACT WORKS

This is to certify that the whole or any part of the Subcontract Works as specified hereunder has been maintained to my satisfaction in conformity with the provisions of the Subcontract during the defects liability period which has now expired:

.....
.....
(Description of the completed Subcontract Works)

The sum of R (in words:.....) being the balance of the retention money, is accordingly due and payable to the Subcontractor in terms of the provisions of the Subcontract.

OR

FINAL CERTIFICATE

This is to certify that the whole of the Subcontract Works has been completed and (where specified) maintained to my satisfaction in conformity with the provisions of the Subcontract.

(Delete whichever is inapplicable)

Signed for and on behalf of the **CONTRACTOR** at
on this day of 20

.....
Signature

.....
Print Name

.....
Position

PRO-FORMA RETENTION MONEY GUARANTEE

ISSUED TO: (hereinafter referred to as "the Contractor")

ON BEHALF OF: (hereinafter referred to as "the Subcontractor") in connection with

CONTRACT NO: (hereinafter referred to as "the Subcontract")

WHEREAS the Contractor and the Subcontractor have agreed that the Subcontractor may provide a guarantee in lieu of the whole or portion of the retention monies provided for under the Subcontract;

NOW THEREFORE we, the undersigned, undertake, in accordance with the following provisions, to pay to the Contractor such amounts as the Main Contractor may, from time to time, demand from us.

- 1. Each demand by the Contractor shall be in writing signed by the Contractor and delivered to us at or such other address in as we shall in writing notify the Contractor and shall be accompanied by a certificate complying with Clause 2.
- 2. The certificate referred to in Clause 1 shall certify:
 - (a) that the Subcontractor is in breach of his obligations under the Subcontract, and
 - (b) that the amount demanded, which amount the certificate shall specify,
 - (i) does not exceed the amount of retention monies which, but for this guarantee, would have been retained by the Contractor in terms of the Subcontract at the date of the certificate, less the aggregate of the amounts of retention money actually retained by the Contractor and the amounts previously paid by us to the Contractor in terms thereof, and
 - (ii) does not exceed a genuine estimate of the cost to the Contractor of having the breach referred to in paragraph (a) remedied less the aggregate of any amounts withheld by the Contractor from payments due to the Subcontractor in terms of the Subcontract by reason of the breach referred to, and any amount of retention money actually held by the Contractor save to the extent that the same had been deducted from any previous demand in terms hereof.
- 3. We shall within days after our receipt of a demand complying with the provisions of Clauses 1 and 2 make payment to the Contractor of the amount demanded at or at such other address in as the Subcontractor shall in writing notify to us.
- 4. Subject to compliance with the provisions hereof, our liability to make the payments herein referred to shall be unconditional and shall not be affected or diminished by any disputes, claims or counterclaims between the Main Contractor and the Subcontractor.
- 5. Our aggregate liability under this guarantee is limited to R
- 6. This guarantee shall expire on the date on which the last of the retention monies, which but for this guarantee would have been retained by the Contractor, becomes payable to the Subcontractor.
- 7. This guarantee is not transferable and must be produced for endorsement if any part payment is made and must be returned to us against final payment of our aggregate liability or on the date of the expiry of the guarantee in terms of Clause 6, whichever is the earlier.

Signed in the presence of the subscribing witnesses:

At for and on behalf of
on this day of 20

Signature.....

Print Name

Position.....

Address:

.....

As witnesses:

1.

2.