

## **National Home Builders Registration Council**

# **RECOMMENDED MODEL AGREEMENTS BETWEEN HOUSING CONSUMERS AND HOME BUILDERS FOR THE CONSTRUCTION OF A HOME**

**(14 October 2002)**

### **1 Requirements of the Housing Consumers Protection Measures Act for agreements between Consumers and Home Builders**

Section 13 of the Housing Consumers Protection Measures Act (Act 95 of 1999) requires a Home Builder to enter into a written agreement with a Housing Consumer that, as a minimum:

- is signed by the parties;
- sets out the material terms including the financial obligations of the housing consumer;
- contains the specifications pertaining to materials to be used in the construction of the home; and
- contains plans that reflect the dimensions and measurements of the home, as approved by the local authority.

The Act deems such an agreement to include warranties enforceable by the housing consumer against the home builder in any court of law as set out in the Standard Home Warranty.

The Standard Home Warranty establishes the limitations, qualifications and exclusions to the warranty, amounts payable from the fund, the undertakings of the Home Builder, Housing Consumers and the Council in relation to the Warranty and essential data pertaining to the home. This document must be issued prior to construction. (A home builder normally Enrolls a home only when the construction price has been agreed upon and the contract is in place. The Standard Home Warranty can only be issued after the home enrolment certificate has been issued.)

### **2 Type of agreements**

The agreement between a Home Builder and a Housing Consumer can be either for the construction or the sale of a home. In this document, only the agreement for the construction of a home is considered.

The drafting of unique agreements for the construction of a single home is expensive and is unwarranted. It is preferable to rather use a standard form of contract. Such forms of contract are produced by industry based organisations and set out the rights, liabilities and obligations of the parties in general terms. Certain parameters and pieces of information that are contract specific need to be filled in these forms. These forms are not specifically drafted for use in the context of the Act. As a result the terms used are inconsistent with those contained in the Act. Typically these forms of contract use the terms Employer and Contractor to designate the parties to the contract.

In terms of this document, the Housing Consumer is the Employer and the Home Builder is the Contractor.

### **3 The content of construction contracts**

Contracts for construction works comprise a number of component documents dealing with different topics grouped together in a logical sequence. SABS 0403: Code of Practice for the Formatting and Compilation of Procurement Documents provides a standard framework within which construction contracts can be formulated. The full list of documents and an outline of their contents as described in SABS 0403 is as follows:

<b>Part 1: Agreements and contract data</b>		
C1.1	Offer and Acceptance	Formalises the legal process of offer and acceptance
C1.2	Contract Data	States the applicable conditions of contract and associated contract specific data that collectively describe the risks, liabilities and obligations of the contracting parties and the procedures for the administration of the contract.
C1.3	Forms of Securities	Provides the securities required by the employer
C1.4	Forms for Adjudicators Appointment	States the terms and conditions upon which the adjudicator is to be appointed, if appointed when the contract is signed.
<b>Part 2: Pricing data</b>		
C2.1	Pricing Instructions	Provides the criteria and assumptions which it will be assumed (in the contract) that the tenderer has taken into account when developing his prices, or target in the case of target and cost reimbursable contracts.
C2.2	Activity Schedule / Bill of Quantities	Records the contractor's prices for providing supplies / services / engineering and construction works which are described elsewhere in a specification within the Scope of Work section of the contract.
<b>Part 3: Scope of Work</b>		
C3	Scope of Work	Specifies and describes the supplies, services, or engineering and construction works which are to be provided and any other requirements and constraints relating to the manner in which the contract work is to be performed
<b>Part 4: Site information (engineering and construction works contracts only)</b>		
C4	Site Information	Describes the site as at the time of tender to enable the tenderer to price his tender and to decide upon his method of working and programming.

It should be noted that in contracts between Housing Consumers and Home Builders:

- 1) Securities are not necessarily required.
- 2) Adjudication (a form of dispute resolution) is only provided in some standard forms of contracts, and where adjudication is provided, adjudicators are only appointed when a dispute arises.
- 3) The Home Builder is required in terms of the NHBRC procedures to appoint a competent person to investigate the geotechnical site conditions and to classify the site in accordance with the provisions of the Home Building Manual.
- 4) The parties may choose to contract under common law, in which case there is no need to establish conditions of contract.
- 5) The Home Builder may contract to construct the home on a lump sum basis.

Accordingly, the requirements of the Act may be satisfied if only the following component documents are completed (see Appendix A):

- Offer and acceptance
- Scope of work

It is, however, not recommended to contract in terms of common law. The following industry standard forms of contract provide a sound basis upon which to contract and should be referenced in the Contract Data:

- NEC Engineering and Construction Short Contract (1st Edition, 1999);
- FIDIC Short Form of Contract General Conditions (1st Edition 1999); or
- BIFSA House Building and Small Contracts Agreement (where no agent is employed)(January 2002)

Where contractors price works on the basis of activity schedules, the section for Pricing Data should be included.

### 3 Proforma contract documents

The following proforma contract documents (see Appendix B) are provided to assist Housing Consumers and Home Builders to conclude an agreement and thereby satisfy the requirements of the Act:

#	Title of proforma document	Comments
	Cover page	Insert this page in the front of the contract.
C1.1	Offer and acceptance	This document must be included in all contracts
C1.2	Contract Data	<b>One</b> of the following documents be used: C1.2 Contract Data (BIFSA Agreement) C1.2 Contract Data (FIDIC short) C1.2 Contract Data (NEC short)
C2.1 C2.2	Pricing Instructions* Activity schedule*	These documents should be included where a Home Builder breaks the lump sum price into a number of activities. This document is not required where the Home Builder offers to construct the house for a lump sum.
C3	Scope of work	This document must be included in all contracts
C4	Site Information	This document may be included in all contracts

\* on projects where bills of quantities are used it will be necessary to replace the pricing instructions with a document that makes reference to the standard system of measurement that is to be used eg:

- Standard System of Measuring Building Work for Small or Simple Buildings issued by the Association of South African Quantity Surveyors in consultation with the Building Industries Federation South Africa;
- Standard System of Measuring Building Work published by the Association of South African Quantity Surveyors in Consultation with the Building Industries Federation South Africa
- etc

It should be noted that the terminology used in the proforma documents is as follows:

- Contractor is the term used for the Home Builder; and
- Employer is the term used for the Housing Consumer.

#### 4 Compiling a contract

Select the documents from the attached proformas (see Appendices A and B) that are required and complete them as instructed. Compile the contract in the order that is set out in the above tabulations.

#### 5 Selecting the appropriate form of contract

The Home Builder or Housing consumer should select one of the following forms of contract:

##### 5.1 The Engineering and Construction Short Contract (New Engineering Contract)(NEC) (First edition)

The Engineering and Construction Short Contract (ECSC) is suitable for use with contracts which:

- do not require sophisticated management techniques;
- comprise straightforward work; and
- impose only low risks on both the Employer and the Contractor.

The parties to the contract are the employer and the contractor. The ECSC permits the employer to delegate any of the employer's actions and to cancel any such actions.

The contractor has full responsibility for providing the works in accordance with the scope of works. Compensation events ie events which may have an impact on the cost or completion date are well described and include:

- the loss of plant and materials or damage to the works which is not the fault or responsibility of the contractor or could not have been prevented by any reasonable action of the contractor;
- adverse weather in excess of a number of days determined in accordance with a simple formula; and
- physical conditions which an experienced contractor would have judged at the date of the Contractor's offer to have such small chance of occurring that it would not have been reasonable to have been allowed for.

No securities or performance guarantees are called for. Retention of monies due to the contractor until the works are completed is, however, provided for.

The contract makes provision for design by the contractor, should this be required.

Guidance notes and flow charts are available for the ECSC.

## **5.2 The FIDIC Short Form of Contract (First edition)**

The FIDIC (French initials for International Federation of Consulting Engineers) Short Form of Contract is recommended for engineering and building work that is relatively straightforward, fairly simple or of short duration where there is no need for specialist sub-contracts.

The parties to the contract are the employer and the contractor. The Short Form requires the employer to nominate an authorised spokesman.

Employer liabilities provided for in the contract include:

- any operation of the forces of nature affecting the site and / or works, which was foreseeable or against which an experienced contractor could not reasonably have been expected to take precautions;
- physical obstructions or physical conditions other than climatic conditions encountered on the site during the performance of the works, which obstructions or conditions were not reasonably foreseeable by an experienced contractor and which the contractor immediately notified to the employer; and
- damage which is an unavoidable result of the contractor's obligations to execute the works and to remedy defects.

Performance securities and retention of monies due to the contractor until the works are completed are provided for.

The contract makes provision for design by the contractor, should this be required.

Notes for Guidance are included at the back of the Short Form of Contract.

## **5.3 BIFSA House Building and Small Contracts Agreement (where no agent is employed)**

The BIFSA House Building Contract has been drafted specifically to suit the needs of the South African housing market.

The contract is based on the assumption that the contractor is not responsible for the design of the house, the preparation of plans and specifications or the obtaining of approvals from the local authority. The contract does, however, make provision for the contractor to engage an engineer to make the necessary engineering inputs.

The contract requires that:

- the employer furnish the contractor a banker's guarantee or other acceptable security for not less than the contract sum; and
- the contractor furnish a performance guarantee in an amount of 10% of the contract sum.

The contract does make provision for the retention of monies due to the contractor.

## **6 Some practical considerations regarding the foundations**

Frequently the price of the house is agreed with the contractor before a geotechnical investigation has been undertaken to classify the house and determine the foundation requirements. Where this is the case, the contractor should price for normal foundations and agree a change in contract price when the foundation requirements are known.

## **Appendix A: Basic contract where parties contract in terms of common law**

The attached documents satisfy the requirements of the Act and permit the parties to contract in terms of common law. This approach is, however, not recommended.

**Offer**

By signing this Offer, the contractor identified in the signature block below, offers to construct a house in accordance with the provisions of the attached Scope of Work by \_\_\_\_\_ (insert date) for a sum of \_\_\_\_\_ Rand, (in words); R\_\_\_\_\_ (in figures) exclusive of VAT.

**Comment [PAB1]:** Select the one which applies and delete the other two.

**For the contractor:**

Signature(s)

Name(s) \_\_\_\_\_

Capacity \_\_\_\_\_

*(Insert name and address of organisation)*

Name & signature of witness \_\_\_\_\_ Date \_\_\_\_\_

**Acceptance**

By signing this part of this Acceptance, the Employer accepts the Contractor's Offer. In consideration thereof, the Employer shall pay the Contractor the amount due for the due fulfilment of the contract. Acceptance of the Contractor's Offer shall form an Agreement and a binding contract between the Employer and the Contractor.

This Agreement comes into effect on the date when the Contractor receives one completed original of this document.

**For the Employer**

Signature(s)

Name(s) \_\_\_\_\_

Capacity \_\_\_\_\_

*(Insert name and address of organisation)*

Name & signature of witness \_\_\_\_\_ Date \_\_\_\_\_

# SCOPE OF WORK

## 1. Description of the works

Give a detailed description of what the contractor is required to do and of any work that the Contractor is to design.

### Example:

- 1.1. The Contractor is required to construct a new house as described on the drawings and in the specifications and in accordance with the requirements of the National Home Builders Registration Council.
- 1.2. The scope of work includes:
  - Conducting all geotechnical site investigations necessary to enrol the home with the National Home Builders Registration Council
  - Preparing the house plans
  - The location of boundary pegs
  - Obtaining approval from the local authority for the building plans
  - Issuing the employer with a Standard Home Warranty.
  - Engaging all necessary competent persons to satisfy the requirements of the National Home Builders Registration Council Requirements.
  - Clearing the site
  - Construction of the foundations and superstructure of the house.
  - Construction of the driveway, outbuildings and boundary walls.
  - Construction of the swimming pool.
  - Painting
  - Install all floor finishes except for the floor to the kitchen
  - Etc
- 1.3. The contractor is responsible for appointing all competent persons required to perform functions required to satisfy the technical requirements of the National Home Builders Registration Council.
- 1.3. The Contractor is responsible for the design of the foundations and the reinforced concrete floor slabs and beam.
- 1.4. The Contractor is responsible for all plumbing and electrical work including obtaining all necessary certificates of compliance.

**Note:** The employer can choose to engage professionals to prepare drawings and specifications and to perform the engineering work associated with the work or to assign these responsibilities to the contractor.

## 2. Drawings

List the drawings applicable to the contract.

### Example:

The drawings applicable to this contract are:

Drawing number	Revision	Title
2003/06/01	2	Plan 1:50, Site Plan 1:250
2003/06/02	2	Sections A-A, B-B, C-C and D-D 1:50
2003/06/03	3	Roof Plan 1:50
2003/06/04	1	Finishing schedules
2001/06/05	1	Electrical Layout

## 3. Specifications

List the specifications applicable to the contract

### Example:

The specifications that apply to this contract are:

<b>Title</b>	<b>Date or revision</b>	<b>Available</b>
SABS 0400: <i>The application of the National Building Regulations</i>	1990	South African Bureau of Standards
<i>Home Building Manual Part 3</i>	1999	National Home Builders Registration Council
Model Preambles for Trades <ul style="list-style-type: none"> <li>• E: Precast concrete</li> <li>• I: Carpentry and joinery</li> <li>• J: Ceilings, partitions and access flooring</li> <li>• K: Floor coverings, wall lining, etc</li> <li>• L: Ironmongery</li> <li>• N Metalwork</li> <li>• P: Tiling</li> <li>• Q: Plumbing and drainage</li> <li>• R: Glazing</li> <li>• S: Paintwork</li> <li>• T: Paperhanging</li> </ul>	1999	The Association of South African Quantity Surveyors
<i>Architects Project Specification</i>	Rev 0 31/07/03	Attached as Annex A
<i>Engineers specifications</i>	-	From competent person appointed by the contractor.

#### 4. Constraints on how the Contractor provides the Works

State any constraints on how the sequence and timing of work and on the methods and conduct of work.

The following item must, however, be included:

- 4.1 The Contractor shall not commence construction before the National Home Builders Registration Council has issued a home enrolment certificate for the house and the housing consumer has been issued with a duly completed Standard Home Warranty.

##### Examples of other requirements:

- 4.2 The Contractor takes all reasonable precautions to protect the trees and plants designated by the Employer
- 4.3 Where materials are specifically identified by manufacturer's name, brand or trade name, such references are used to indicate the type and quality of material to be used only, and alternative materials of similar quality and specification may be used in certain circumstances. The Contractor's proposal to use any such alternative must be submitted to the Employer's representative for acceptance before the materials are brought onto site or used.

#### 5 Requirements for the programme

State whether a programme is required, and if it is, state what form it is to be put in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

##### Example:

- 5.1 A programme in the form of a bar chart is to be submitted to the architect (employer's nominee) for acceptance before commencement of work on site. The information to be shown on the programme includes at least
- the starting date,
  - the Completion Date,
  - the Contractor's planned Completion,
  - key dates for co-ordination with principal suppliers and subcontractors, and
  - the order and timing of the activities which the Contractor plans to do in order to Provide the Works.
- 5.2 Revised programmes are submitted for the Architect's acceptance every second Friday until Completion. Revised programmes show
- the actual progress achieved and its effect on the timing of the remaining work, and
  - how the Contractor plans to deal with any delays and to correct Defects.

#### 6 Services and other items provided by the Employer

Describe what the Employer will provide such as services (including water and electricity) and free issue Plant and Materials and Equipment.

##### Example:

- 6.1 The Employer provides the following services and "free issue" Plant and Materials



<b>Item</b>	<b>Date by which it will be supplied</b>
<b>Services</b>	
<i>Water at usual domestic pressure</i>	<i>As required</i>
<i>Electricity 3 phase 220v</i>	<i>After connection is made</i>
<b>Plant &amp; Materials</b>	
<i>Tiles for kitchen and bathroom</i>	<i>In accordance with programme</i>

## **Appendix B: Basic contract using industry standard forms of contract**

The attached documents satisfy the requirements of the Act and permit the parties to contract in terms of one of three industry standard forms of contract. This approach is recommended.

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## CONTRACT FOR THE CONSTRUCTION OF A HOME

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**Erf number:** .....

**Township:** .....

**Employer:** .....

**Contractor:** .....

NHBRC registration number: .....

## PART 1: AGREEMENTS & CONTRACT DATA

### C1.1 FORM OF OFFER AND ACCEPTANCE

#### Offer

By signing this part of this Form of Offer and Acceptance the contractor identified in the signature block below, offers to perform all of the obligations and liabilities of the Contractor under the Contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the Contract Data.

**Comment [PAB2]:** Select the one which applies and delete the other two.

The total of the Prices is \_\_\_\_\_

\_\_\_\_\_ Rand, (in words); R\_\_\_\_\_ (in figures)  
exclusive of VAT.

#### For the contractor:

Signature(s)

Name(s)

Capacity

\_\_\_\_\_  
*(Insert name and address of organisation)*

Name &  
signature of  
witness

Date

#### Acceptance

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

The terms of the Contract, are contained in:

- Part 1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
- Part 2 Pricing Data
- Part 3 Scope of Work.
- Part 4 Site Information

**Comment [PAB3]:** This Part may not apply to services or supply contracts and should be deleted.

and drawings and documents or parts thereof, which may be incorporated by reference into Parts 1 to 4 above.

The Contractor shall within one week after receiving a completed original of this Agreement, contact the Employer to arrange the delivery of any bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the Contract Data at, or just after, the date this

Agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this Agreement.

This Agreement comes into effect on the date when the Contractor receives one completed original of this document. Unless the Contractor within five days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this Form of Offer and Acceptance, this Agreement shall constitute a binding contract between the Parties.

**For the Employer**

Signature(s)

Name(s)

Capacity

*(Insert name and address of organisation)*

Name &  
signature of  
witness

Date

## C1.2 CONTRACT DATA

(for use with the BIFSA House Building and Small Contracts Agreement where no agent is employed (January 2002))

### The Conditions of Contract are

*Clauses 1 to 13 of the House Building and Small Contracts Agreement (January 2002) prepared by the Building Industries Federation South Africa (BIFSA) available separately from BIFSA (Tel 011-205 9000)*

### Schedule of variables

#### Notes

- 1 This schedule contains all the variables referred to in the agreement.
- 2 Spaces requiring information must be filled in, shown as not applicable or deleted and not left blank.

Item and data
<b>Contractor</b> ..... Postal address ..... ..... Code ..... Tel..... Fax ..... E-mail ..... Physical Address (domicilium)..... ..... Contractor's VAT Registration number ..... Contractor's Company/ Close Corporation Registration No or Personal ID No .....
<b>Employer</b> ..... Postal address ..... ..... Code ..... Tel..... Fax ..... E-mail ..... Physical Address (domicilium)..... ..... Employer's Company/ Close Corporation Registration No or Personal ID No .....
<b>Contract Sum</b> , inclusive of VAT    R ..... Amount in words ..... .....
<b>Site Address</b> ..... .....

<b>Description of the works</b> ..... ..... ..... .....
<b>Possession</b> of the site shall be given on .....
Intended Date of <b>Practical Completion</b> .....
Amount of <b>public liability insurance</b> required in terms of clause 5.8 ..... .....
<b>Penalty</b> per calendar day for non-compliance ..... .....
Intervals for <b>Progress Payments</b> ..... ..... ..... .....
<b>Details of Contractor's Bank:</b> Bank: ..... Branch: ..... Code: ..... Account no: ..... Bank Account Name: ..... Type of account .....
Name of <b>Arbitrator</b> ..... Address: ..... .....
The additions, deletions and alterations to the BIFSA Agreement are:  Replace in 1.0 Definitions and interpretation the current wording with the following: <b>Contractor</b> means the party contracting with the Employer for the execution of the Works and named in the Contract Data. <b>Contract Sum</b> means the total of prices in the Pricing Data. <b>Defect</b> means a fault or insufficiency of materials or workmanship not being in accordance with the Scope of Work or this Agreement which has been notified by the Employer to the Contractor, provided hairline cracks due to shrinkage or expansion and expected damage associated with ground movements as defined in the National Home Builders Registration Council's Home Building Manual which appear after Practical Completion shall not constitute a defect. <b>Tender</b> means the Offer section in the document called Form of Offer and Acceptance  Delete clause 3.1

## C1.2 CONTRACT DATA

(for use with the NEC Engineering & Construction Short Contract 1<sup>st</sup> Edition (ECSC1))

This Contract Data consist of two parts. Part One contains information provided by the *Employer*. Part Two contains information provided by the *Contractor*.

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

The *Employer* and the *Contractor* should read both the NEC Engineering and Construction Short Contract 1<sup>st</sup> Edition 1999 (ECSC1) and the Engineering and Construction Short Contract Guidance Notes and Flow Charts (ECSC1-GN) in order to understand the implications of this Data. These documents may be obtained from the South African Institution of Civil Engineering (Tel 011- 805-5947/48/53)

When terms in the Conditions of Contract are shown in italics it means the term is identified in this Contract Data. Hence the data will not mean anything unless read in conjunction with the Conditions of Contract. The same data is often applicable to a number of clauses, which is why cross-references have not been provided.

<p>The <i>Employer</i> is .....</p> <p>Name .....</p> <p>Address .....</p> <p>.....</p> <p>Telephone .....</p> <p>Fax .....</p> <p>E-mail address .....</p>
<p>The <i>works</i> are the construction and completion of a house.</p>
<p>The <i>site</i> is .....</p> <p><i>(Insert erf number and township to describe the site)</i></p>
<p>The <i>starting date</i> is .....</p> <p><i>(Insert the date work on the contract starts)</i></p>
<p>The <i>completion date</i> is .....</p> <p><i>(Insert the date by which the works are to be completed.)</i></p>
<p>The <i>period for reply</i> is two weeks</p>
<p>The <i>defects date</i> is thirteen weeks after Completion</p>
<p>The <i>defects correction period</i> is two weeks</p>
<p>The <i>delay damages</i> are R.....per day</p> <p><i>(Insert an amount in Rands that is representative of the prejudice suffered by the Employer)</i></p>
<p>The <i>assessment day</i> is the ..... of each month</p> <p><i>(Insert a particular day in the month, eg 28th)</i></p>
<p>The <i>retention</i> is ..... %</p> <p><i>(Insert 5 or 10%)</i></p>



The <i>Adjudicator</i> is	
Name	.....
Address	.....
Telephone	.....
Fax	.....
E-mail address	.....
The interest rate on late payments is ..... % per complete week of delay. Note: Inserted an interest rate if the 0.5% per complete week of delay is less than the current commercial interest rate	
The <i>Contractor</i> is not liable to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property in excess of ..... for any one event.  (The amount should be within whatever amount the <i>Employer</i> has insured his property for or the <i>Contractor</i> is able to provide for this event.)	
The <i>Employer</i> provides this insurance: none	
The minimum amount of cover for the third insurance stated in the Insurance Table is as the <i>Contractor</i> deems appropriate.	
The <i>tribunal</i> is arbitration in South Africa	
If the <i>tribunal</i> is arbitration, the arbitration procedure is the Summary Procedure Rules for the Conduct of Arbitrators as published by the Association of Arbitrators (Southern Africa).	
The <i>conditions of contract</i> are the first edition (July 1999) of the NEC Engineering and Construction Short Contract and the following additional conditions:	
1	The Works Information is in the Scope of Work.
2	The Price List is in the Pricing Data.
3	The Site Information is in the Site Information.
4	The <i>Contractor's</i> Offer and the <i>Employer's</i> Acceptance is in the Form of Offer and Acceptance.

**Part two - Data provided by the Contractor**

This Contract Data consist of two parts. Part One contains information provided by the *Employer*. Part Two contains information provided by the *Contractor*.

The <i>Contractor</i> is	
Name	.....
Address	.....
Telephone	.....
Fax	.....
E-mail address	.....

The percentage for overheads and profit added to the *Contractor's* Cost for people is ..... %

The percentage for overheads and profit added to other *Contractor's* Cost is ..... %

(See Clause 11.2(13) for the definition of 'Cost' and Clause 63.2 for how it is applied. All compensation events are valued at 'Cost' plus these percentage mark-ups.  
The second percentage is added to Cost of Plant and Materials, subcontracted work and *Contractor's* Equipment.  
See pages 15 to 18 of the ECSC Guidance Notes for an explanation of what compensation events are, how they are notified, assessed and implemented.)

The tendered total of the Prices is:

R..... excluding VAT

*(Enter the total of the Prices from the Price List in 'Part 2 Pricing Data' of the Contract)*

## C1.2 CONTRACT DATA

(for use with the FIDIC Short Form of Contract 1st edition)

### The Conditions of Contract are

*Short Form of Contract First Edition 1999*, (the Green Book) available separately from the South African Institution of Civil Engineering (Tel 011- 805-5947/48/53) or the South African Association of Consulting Engineers (Tel 011-463- 2022)

### Appendix

When completed by both Parties, this Appendix forms part of the agreement contained in the Form of Offer and Acceptance.

#### Notes

- 1 *With the exception of the items for which the Employer's requirements have been inserted, the Contractor shall complete the following information before submitting his offer.*
- 2 *Read the relevant clause in the General Conditions (in the Green Book) when completing the data required below.*

Sub- Clause	Item and data
1.1.1	Documents forming the Contract listed in the order of priority  (a) Offer and acceptance (b) Contract Data (c) Pricing Data (d) Scope of Work (e) Site Information
1.1.9	Time for Completion is ..... days
1.4	Law of the Contract is the law of South Africa
1.5	Language is English
2.1	Provision of Site is on the Commencement Date
3.1	Authorised person is ..... Tel .....; Fax .....; e mail .....
3.2	Name and address of the Employer's representative. Name: ..... Address ..... ..... Tel ..... Fax ..... E mail .....
4.4	Performance Security is for an amount of R..... (Insert an amount or insert 0 if not required.)
5.1	Requirements for Contractor's design (if any) are stated in the scope of work.

7.2	Programme is to be submitted within 14 days if the Commencement Date and in the form stated in Scope of Work.		
7.4	Amount payable due to failure to complete is R..... per day up to a maximum of .....% of sum stated in the Agreement <i>(Insert an amount in Rands and a percentage that is representative of the prejudice suffered by the Employer (usually 10%))</i>		
9.1 & 11.5	The Period for notifying defects is 90 days calculated from the date stated in the notice under Sub-Clause 8.2		
10.2(e)	If instructed by the Employer the daywork rates to be used for the purpose of valuing Variations are: (Tenderer to complete)		
	Item	Rate	
11.1	The Works shall be valued on the following basis, with a Tax Invoice being submitted with each statement: Lump sum Price with interim payments based on valuation of the Works completed.		
11.2	Percentage of value of Materials and Plant Materials       80% Plant            90%		
11.3	Percentage of retention is 5 %		
11.7	Currency of payment is the South African Rand		
11.8	Rate of interest 2 % per annum above the prime lending rate of commercial banks		
14.1	Insurances		
	Type of cover	Amount of Cover	Exclusions
	The Works, Materials, Plant and fees	The sum stated in the Form of Offer and Acceptance plus 15 %	Nil
	Contractor's Equipment	Full replacement cost	Nil
	Third Party injury to persons and damage to property	as the <i>Contractor</i> deems appropriate.	Nil
	Workers	As provided for in South African law	Nil
Other Cover	As the <i>Contractor</i> deems appropriate.	Nil	

15.3	<p data-bbox="251 296 365 321">Arbitration</p> <p data-bbox="251 352 1185 407">The Rules are the Summary Procedure Rules for the Conduct of Arbitrators as published by the Association of Arbitrators (Southern Africa).</p> <p data-bbox="251 428 1170 455">The appointing authority is President of the South African Association of Consulting Engineers</p> <p data-bbox="251 476 634 504">The place of Arbitration is South Africa</p>
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## PART 2: PRICING DATA

### 2.1 Pricing Instructions

(amend as necessary)

The contractor must plan the work in this contract as a set of activities. These should be the same activities as he shows on his programme.

The activities are described as indicated below and a lump sum price for each activity is entered in the Price column. The columns for Unit, Rate, and Quantity are not used for this contract.

The contractor is to take note that payment is made for each activity only when it is complete.

Changes (if any) to the Prices are made in accordance with the Conditions of Contract.

The Contractor is to include in the Prices in the Activity Schedule the costs and profit associated with the following items as no separate payment will be made for such items:

- Soil testing and test pits
- Engineering fees and costs
- Excavation of all boulders

The contractor is to price for normal strip footings / slab on the ground foundations in accordance with the provisions of the Home Building Manual.

The contractor is not required to price:

- for blasting and the removal and importation of material associated with blasting work.
- Transfer duties and costs
- Local authority charges
- Bond registration costs and fees.
- The design of foundations where the site class necessitates foundations other than normal strip footings / slab on the ground foundations in accordance with the provisions of the Home Building Manual.

### 2.2 Activity schedule

(delete, amend or add activities as required)

**All prices are inclusive of VAT**

Activity #	Description of each activity	Price		Total price (1)+(2)
		Material on site (1)	Built/ fixed / constructed (2)	
1	Locate boundary pegs	R	R	R
2	Classify site in accordance with NHBRC requirements	R	R	R
3	Clear site	R	R	R
4	Excavate foundations	R	R	R
5	Cast foundations	R	R	R
6	Foundation walling	R	R	R
7	Backfill and filling beneath surface beds	R	R	R
8	Surface beds	R	R	R
8	Door jambs	R	R	R
9	Walling to sill height	R	R	R
10	Windows	R	R	R

11	Masonry to top of windows	R	R	R
12	Masonry complete/ masonry to slab height	R	R	R
13	Floor slab*	R	R	R
14	Stairs*	R	R	R
15	Door jambs (upper floor)*	R	R	R
16	Walling to sill height*	R	R	R
17	Windows*	R	R	R
18	Masonry to top of windows*	R	R	R
19	Masonry complete *	R	R	R
20	Trusses and roofing timbers	R	R	R
21	Roof covering	R	R	R
22	Sills	R	R	R
23	Plastering	R	R	R
24	Ceilings	R	R	R
25	Gutters and downpipes	R	R	R
26	Hot and cold water	R	R	R
27	Geyser	R	R	R
28	Sanitary fittings	R	R	R
29	Sanitary plumbing	R	R	R
30	Drainage installation	R	R	R
31	Electrical conduit	R	R	R
32	Wiring	R	R	R
33	Electrical boards/ main connections	R	R	R
34	Light fittings	R	R	R
35	Stove	R	R	R
36	Glazing	R	R	R
37	Wall tiling	R	R	R
38	Pelmets and skirting	R	R	R
39	Doors	R	R	R
40	Painting	R	R	R
41	Cupboards	R	R	R
42	Kitchen units	R	R	R
43	Floor covering	R	R	R
44	Fencing / free standing walls	R	R	R
45	Paving	R	R	R
46	Cleaning of site	R	R	R
<b>The total of the Prices (Rands) excluding VAT</b>				<b>R</b>

## PART 3: SCOPE OF WORK

### 5. Description of the works

Give a detailed description of what the contractor is required to do and of any work that the Contractor is to design.

**Example:**

- 5.1. The Contractor is required to construct a new house as described on the drawings and in the specifications and in accordance with the requirements of the National Home Builders Registration Council.
- 5.2. The scope of work includes:
- Conducting all geotechnical site investigations necessary to enrol the home with the National Home Builders Registration Council
  - Preparing the house plans
  - The location of boundary pegs
  - Obtaining approval from the local authority for the building plans
  - Issuing the employer with a Standard Home Warranty.
  - Engaging all necessary competent persons to satisfy the requirements of the National Home Builders Registration Council Requirements.
  - Clearing the site
  - Construction of the foundations and superstructure of the house.
  - Construction of the driveway, outbuildings and boundary walls.
  - Construction of the swimming pool.
  - Painting
  - Install all floor finishes except for the floor to the kitchen
  - Etc
- 1.4 The contractor is responsible for appointing all competent persons required to perform functions required to satisfy the technical requirements of the National Home Builders Registration Council.
- 5.3. The Contractor is responsible for the design of the foundations and the reinforced concrete floor slabs and beam.
- 5.4. The Contractor is responsible for all plumbing and electrical work including obtaining all necessary certificates of compliance.

**Note:** The employer can choose to engage professionals to prepare drawings and specifications and to perform the engineering work associated with the work or to assign these responsibilities to the contractor.

### 6. Drawings

List the drawings applicable to the contract.

**Example:**

The drawings applicable to this contract are:

Drawing number	Revision	Title
2003/06/01	2	Plan 1:50, Site Plan 1:250
2003/06/02	2	Sections A-A, B-B, C-C and D-D 1:50
2003/06/03	3	Roof Plan 1:50
2003/06/04	1	Finishing schedules
2001/06/05	1	Electrical Layout

### 7. Specifications

List the specifications applicable to the contract

**Example:**

The specifications that apply to this contract are:



<b>Title</b>	<b>Date or revision</b>	<b>Available</b>
SABS 0400: <i>The application of the National Building Regulations</i>	1990	South African Bureau of Standards
<i>Home Building Manual Part 3</i>	1999	National Home Builders Registration Council
Model Preambles for Trades <ul style="list-style-type: none"> <li>• E: Precast concrete</li> <li>• I: Carpentry and joinery</li> <li>• J: Ceilings, partitions and access flooring</li> <li>• K: Floor coverings, wall lining, etc</li> <li>• L: Ironmongery</li> <li>• N Metalwork</li> <li>• P: Tiling</li> <li>• Q: Plumbing and drainage</li> <li>• R: Glazing</li> <li>• S: Paintwork</li> <li>• T: Paperhanging</li> </ul>	1999	The Association of South African Quantity Surveyors
<i>Architects Project Specification</i>	Rev 0 31/07/03	Attached as Annex A
<i>Engineers specifications</i>	-	From competent person appointed by the contractor.

## 8. Constraints on how the Contractor provides the Works

State any constraints on how the sequence and timing of work and on the methods and conduct of work.

The following item must, however, be included:

- 4.1 The Contractor shall not commence construction before the National Home Builders Registration Council has issued a home enrolment certificate for the house and the housing consumer has been issued with a duly completed Standard Home Warranty.

### Examples of other requirements:

- 5.2 The Contractor takes all reasonable precautions to protect the trees and plants designated by the Employer
- 5.3 Where materials are specifically identified by manufacturer's name, brand or trade name, such references are used to indicate the type and quality of material to be used only, and alternative materials of similar quality and specification may be used in certain circumstances. The Contractor's proposal to use any such alternative must be submitted to the Employer's representative for acceptance before the materials are brought onto site or used.

## 6 Requirements for the programme

State whether a programme is required, and if it is, state what form it is to be put in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

### Example:

- 6.2 A programme in the form of a bar chart is to be submitted to the architect (employer's nominee) for acceptance before commencement of work on site. The information to be shown on the programme includes at least
- the starting date,
  - the Completion Date,
  - the Contractor's planned Completion,
  - key dates for co-ordination with principal suppliers and subcontractors, and
  - the order and timing of the activities which the Contractor plans to do in order to Provide the Works.
- 6.3 Revised programmes are submitted for the Architect's acceptance every second Friday until Completion. Revised programmes show
- the actual progress achieved and its effect on the timing of the remaining work, and
  - how the Contractor plans to deal with any delays and to correct Defects.

## 7 Services and other things provided by the Employer

Describe what the Employer will provide such as services (including water and electricity) and free issue Plant and Materials and Equipment.

### Example:

- 7.1 The Employer provides the following services and "free issue" Plant and Materials

<b>Item</b>	<b>Date by which it will be supplied</b>
<b>Services</b>	
<i>Water at usual domestic pressure</i>	<i>As required</i>
<i>Electricity 3 phase 220v</i>	<i>After connection is made</i>
<b>Plant &amp; Materials</b>	
<i>Tiles for kitchen and bathroom</i>	<i>In accordance with programme</i>

## **PART 4 : SITE INFORMATION**

*Provide information about the site such as the ground conditions and any other information that is likely to affect the Contractor's work such as limitations on access and the position of adjacent structures.*

**Example:**

*The geotechnical report containing the site class designation prepared by ABC Geotechnical Services is Attached as Annex A*

**Note:** *If there is no site information, simply state "There is no site information"*