



PRINCIPAL BUILDING AGREEMENT

Project	Skuifraam Shelter
Employer	TCTA
Contractor	unknown
Contract Date	
File Code	

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The Joint Building Contracts Committee® - NPC
Principal Building Agreement
Edition 6.2 – May 2018

JBCC®

The Joint Building Contracts Committee® NPC (JBCC®) is representative of building owners and developers, professional consultants and general and specialist contractors who contribute their knowledge and experience to the compilation of the JBCC® documents. The JBCC® documents portray the consensus view of the constituent members and are published in the interests of standardisation and good practice with an equitable distribution of contractual risk

For more information about the JBCC®, frequently asked questions, where documents may be purchased as well as training courses visit www.jbcc.co.za. The JBCC® does not sell directly to users but may be contacted at info@jbcc.co.za

Principal Building Agreement structure

The agreement clauses follow the project execution sequence. The documents aim to set out clear, balanced and enforceable procedures, rights and obligations which, when competently managed and administered, protect the employer, contractor and subcontractors alike. The following additional documents form part of the suite of contract agreements

- The JBCC® Principal Building Agreement - Contract Data that incorporates specific employer and contractor requirements;
- The JBCC® General Preliminaries that generally covers all aspects of preliminaries for most types of projects;
- The JBCC® Nominated/Selected Subcontract Agreement that replicates the JBCC® Principal Building Agreement with common clauses retaining the same numbering; and
- A comprehensive set of certificate forms and support documents for use in the administration of the agreement

Warning!

The JBCC® Principal Building Agreement Edition 6.2 has been coordinated with the JBCC® Nominated/Selected Subcontract Agreement Edition 6.2, the JBCC® General Preliminaries and the JBCC® certificate forms and support documents. Forms from previous editions are not compatible with the JBCC® Principal Building Agreement Edition 6.2

Persons entering into or preparing contracts using the JBCC® suite of contract agreements and support documents are warned of the dangers inherent in modifying any part of it

Experience has shown that changes drafted by others, including members of the building professions, often have unintended results that may be prejudicial to either, or both, parties

Disclaimer

While the JBCC® aims to ensure that its publications represent best practice, it does not accept or assume any liability or responsibility for any events or consequences which derive from the use of the JBCC® documents

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Actions by the parties / principal agent within a given time

Clause	Time period	Party	Purpose
2.4	1WD-7 CD	parties or principal agent	notices deemed to be received
6.4	5 WD	contractor > principal agent	non-performance of an agent i.t.o. this agreement
6.5	10 WD	employer	appoint another agent/contractor may object
10.6	10 WD notice	contractor > employer	failure to insure - notice – insure + recover expense
11.1	15 WD	contractor	provide guarantee for construction
11.2.1	20 WD	contractor	replace securities
11.5.1-2	15/20 WD	employer	provide / replace guarantee for payment
11.6	10 WD notice	contractor > employer	no security, contractor notice to suspend works
11.8	10 WD	parties	return original/replacement security forms
12.2.2	15 WD	contractor	submit priced document
12.2.6	15 WD	contractor	submit programme
14.4.2	15 WD guarantee	contractor > subcontractor	provide guarantee for payment to nominated subcontractor
14.5	5 WD proof payment	employer (principal agent)	pay nominated subcontractor on default by contractor
14.6	5 WD notice	contractor + subcontractor	termination of subcontractor appointment on default
15.4.2	15 WD guarantee	contractor > subcontractor	provide guarantee for payment to selected subcontractor
15.5	5 WD proof payment	employer (principal agent)	pay selected subcontractor on default by contractor
17.3	5 WD	contractor	proceed with a contract instruction, where practical
19.2.2	5 WD	contractor > principal agent	works ready for inspection
19.4	5+5 WD	contractor > principal agent	no 'list' > notice > deemed practically complete
19.6	5+agreed WD	principal agent > contractor	employer occupies portion of the works, list for completion, fix defects
21.3.1	10 WD	contractor	inspect before expiry of defects liability period
21.3.2	5 WD	contractor > principal agent	invite PA to inspect list for completion
21.5	5 WD notice	contractor > principal agent	inspect > list for final completion > certificate
21.6	10 WD notice	principal agent > contractor	no list for final completion > notice > complete
21.7.3	5 WD notice	principal agent > contractor	inspect > list for final completion > certificate
21.9	5+5 WD	contractor > principal agent	no list for final completion / deemed final completion
23.4.2*	20 WD notice	contractor > principal agent	notice of a possible delay, no details yet
23.5	40 WD claim	contractor > principal agent	delay ceased, details of delay and expenses
23.7	20 WD award	principal agent > contractor	assess claim – accept/reduce/reject
25.2	date [CD]	principal agent > contr/empl	issue payment certificate and support forms
25.10	14 CD payment	employer pay contractor	make payment from date of payment certificate
25.11	21 CD	contractor pay employer	make payment i.t.o. schedule from principal agent
25.13	7 CD payment	contractor pay subcontractor	pay subcontractors i.t.o. schedule from principal agent
25.14	5 WD notice	contractor > employer	no/partial payment > suspend etc
25.15	7 CD payment	principal agent > contractor	final payment certificate after acceptance of final account
26.5*	20 WD notice	contractor > principal agent	notice of possible expense and loss
26.6	40 WD claim	contractor > principal agent	substantiated claim
26.7	20 WD award	principal agent > contractor	assess claim = accept/reduce/reject
26.10	60 WD issue FA	principal agent > contractor	issue final account
26.11	30 WD accept FA	contractor > principal agent	accept final account
26.12	10 WD notice	contractor + principal agent	agree final account or deemed acceptance
27.2.9	5 WD notice	notice to contractor	remedy default before next recovery statement
28.1	10 WD notice	contractor > employer	list of defaults to be remedied > suspend works
28.2	notice	contractor > employer	suspension of works where defaults not remedied
29.2	10 WD	employer > contractor	intention to terminate if defaults not remedied
29.3	notice	employer > contractor	default not remedied, termination forthwith
29.14	notice	contractor > employer	intention to terminate if guarantee for payment not provided/maintained
29.15	10 WD notice	contractor > employer	intention to terminate if defaults not remedied
29.16	forthwith	contractor > employer	default not remedied, termination forthwith
29.17.1	forthwith	contractor > subcontractor	termination where PBA terminated
29.17.2	10 WD notice	contractor	remove construction equipment, temporary works, etc
29.21	10 WD	either party	intention to terminate > impossible to complete
29.24.3	10 WD	contractor	remove construction equipment
29.25.2	20 WD	principal agent	prepare status report
29.25.4	60 WD	principal agent	complete final account
30.2	10 WD	either party	disagreement not resolved > dispute
30.3	10 WD	aggrieved party	refer to adjudication
30.6.4	10 WD	aggrieved party	dissatisfied with adjudication
30.6.5	10 WD	aggrieved party	no adjudication/not accept adjudication ruling > arbitration

Abbreviations: WD = working days CD = calendar days, *No notice, forfeits the opportunity to claim

PRINCIPAL BUILDING AGREEMENT

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ERRATA

Page 22 Cl 25.14: may give ~~five (5)~~ ten (10) **working days notice**

INTERPRETATION

1.0 DEFINITIONS and INTERPRETATION

1.1 Definitions

A word or phrase in bold type in this agreement shall have the meaning assigned to it in these definitions
A word or phrase not in bold type shall be interpreted in the context of its usage

AGENT: An entity [CD] appointed by the **employer** to deal with specific aspects of the **works**

AGREEMENT: The completed **JBCC®** Principal Building Agreement and **JBCC® contract data**, the **contract drawings**, the **priced document** and any other documents reduced to writing and signed by the authorised representatives of the **parties**

BILLS OF QUANTITIES: The document drawn up in accordance with the measuring system [CD]

BUDGETARY ALLOWANCE: An amount included in the **contract sum** for work intended for execution by the **contractor**, the extent of which is identified but not detailed

CALENDAR DAYS: Twenty-four (24) hour days commencing at midnight (00:00) which include Saturdays, Sundays, proclaimed public holidays and recorded **contractor's** annual holiday periods [CD]

CERTIFICATE OF FINAL COMPLETION: A certificate issued by the **principal agent** to the **contractor** with a copy to the **employer** stating the date on which **final completion** of the **works**, or of a **section** thereof, was achieved

CERTIFICATE OF PRACTICAL COMPLETION: A certificate issued by the **principal agent** to the **contractor** with a copy to the **employer** stating the date on which **practical completion** of the **works**, or of a **section** thereof, was achieved

COMPENSATORY INTEREST: Interest due to the **contractor** at the ruling rate of **interest** on amounts certified after thirty-one (31) **calendar days** of the date of **practical completion**, compounded monthly until the date of payment

CONSTRUCTION EQUIPMENT: Equipment and/or plant provided by or belonging to the **contractor** and/or **subcontractors** and used during the **construction period**

CONSTRUCTION INFORMATION: All information issued by the **principal agent** and/or **agents** including this **agreement**, specifications, drawings, schedules, **notices** and **contract instructions** required for the execution of the **works**

CONSTRUCTION PERIOD: The period commencing on the intended date [CD] of possession of the **site** by the **contractor** and ending on the date of **practical completion**

CONTRACT DATA: The document listing the project specific information

[CD]: The notation used where project specific information is recorded in the **contract data**

CONTRACT DRAWINGS: The drawings listed [CD]

CONTRACT INSTRUCTION: A written instruction issued by or under the authority of the **principal agent** to the **contractor** that may include drawings, photographs and other **construction information**

CONTRACT SUM: The accepted tender amount inclusive of **tax** [CD], not subject to adjustment

CONTRACT VALUE: A monetary value initially equal to the **contract sum**, subject to adjustment in terms of this **agreement**

CONTRACTOR: The **party** [CD] contracting with the **employer** for the execution of the **works**

DEFAULT INTEREST: Interest at six (6) percentage points per annum above the ruling rate of **interest** where payment has not been received within the stipulated period, compounded monthly from the due date for payment until the date of payment

DEFECT: Any aspect of materials and workmanship forming part of the **works** that does not conform to the **agreement** and/or **construction information**

DIRECT CONTRACTOR: An entity appointed under separate agreement by the **employer** to do work on **site** prior to **practical completion** [CD]

EMPLOYER: The **party** [CD] contracting with the **contractor**

FINAL ACCOUNT: The document prepared by the **principal agent** that reflects the final **contract value** of the **works** at **final completion** or termination

FINAL COMPLETION: The stage of completion as certified by the **principal agent** where the **works**, or a **section** thereof, has been completed and is free of **defects**

FINAL PAYMENT CERTIFICATE: The certificate issued by the **principal agent** after the issue of the **certificate of final completion** and after the **final account** has been agreed

FORCE MAJEURE: An exceptional event or circumstance that:

- Could not have been reasonably foreseen
- Is beyond the control of the **parties**, and
- Could not reasonably have been avoided or overcome

Such an event may include but is not limited to:

- Acts of war (declared or not), invasion and/or hostile acts of foreign enemies
- Insurrection, rebellion, revolution, military or usurped power and terrorism
- Civil commotion, disorder, riots, strike, lockout by persons other than the **contractor's** employees or his **subcontractors**
- Sonic shock waves caused by aircraft or other aerial devices and ionising or radioactive contamination
- Explosive materials, except where attributable to the **contractor's** use of such technology
- Natural catastrophes including earthquakes, floods, hurricanes or volcanic activity

FREE ISSUE: **Materials and goods** provided at no cost to the **contractor** by the **employer** for inclusion in the **works** [CD]

GUARANTEE FOR ADVANCE PAYMENT: A **security** in terms of the **JBCC®** Guarantee for Advance Payment form, obtained by the **contractor** from an institution approved by the **employer**

GUARANTEE FOR CONSTRUCTION: A **security** in terms of the **JBCC®** Guarantee for Construction form, obtained by the **contractor** from an institution approved by the **employer** [CD]

GUARANTEE FOR PAYMENT: A **security** in terms of the **JBCC®** Guarantee for Payment form, obtained by the **employer** from an institution approved by the **contractor** [CD]

INTEREST: The bank rate applicable from time to time to registered banks borrowing money from the Central or Reserve Bank of the country [CD]. The ruling bank rate on the first **calendar day** of each month shall be used in calculating the interest due for such month

JBCC®: The Joint Building Contracts Committee® NPC

LATENT DEFECT: A **defect** that an inspection of the **works** by the **principal agent** and/or **agents** would not reasonably have revealed

LAW: The law of the country [CD]

LIST FOR COMPLETION: A list that may include marked up drawings and photographs issued by the **principal agent** where **practical completion** has been certified, listing **defects** and/or outstanding work to be completed

LIST FOR FINAL COMPLETION: A **list for completion** that may include marked up drawings and photographs issued by the **principal agent** after the inspection of the **works** for **final completion**, where **final completion** has not been achieved, listing **defects** and/or outstanding work to be completed to achieve **final completion**

LIST FOR PRACTICAL COMPLETION: A comprehensive and conclusive list that may include marked up drawings and photographs issued by the **principal agent** after the inspection of the **works** for **practical completion**, where **practical completion** has not been achieved, listing the **defects** and/or outstanding work to be completed to achieve **practical completion**

MATERIALS AND GOODS: Unfixed materials, goods and/or items fabricated for inclusion in the **works** whether stored on or off the **site** or in transit

NOTICE: A written communication, excluding social media, issued by either **party**, the **principal agent** and/or **agents** to the other **party**, the **principal agent** and/or **agents** to, inter alia, record an event, request outstanding **construction information**, or where **suspension** or resumption of the **works** and/or termination of this **agreement** is contemplated

N/S SUBCONTRACT AGREEMENT: The completed **JBCC®** Nominated/Selected Subcontract Agreement (NSSA) and **JBCC®** NSSA contract data, the subcontract drawings, the subcontract priced document and any other documents reduced to writing and signed by the authorised representatives of the **contractor** and of the **subcontractor**

PARTY: The **employer** or the **contractor** and 'parties' shall refer to both of them

PAYMENT CERTIFICATE: A certificate issued at regular agreed intervals [CD] by the **principal agent** to the **parties** certifying the amount due and payable in terms of the **JBCC®** Payment Certificate format

PENALTY: The stipulated amount per **calendar day** [CD] payable by the **contractor** to the **employer** where the date or the revised date for **practical completion**, whichever is the later, has not been met

PRACTICAL COMPLETION: The stage of completion as certified by the **principal agent** where the **works**, or a **section** thereof, has been completed and is free of patent **defects** other than minor **defects** identified in the **list for completion** and can be used for the intended purpose [CD]

PRELIMINARIES: The **JBCC®** General Preliminaries and/or the items listed in the preliminaries section of the **priced document**

PRICED DOCUMENT: The document incorporating quantities and/or rates used in the compilation of the **contract sum** such as **bills of quantities**, **preliminaries** and schedules of rates

PRIME COST AMOUNT: An amount included in the **contract sum** for the delivered cost of **materials and goods** obtained from a supplier as instructed by the **principal agent**

PRINCIPAL AGENT: The entity [CD] appointed by the **employer** with full authority and obligation to act in terms of this **agreement**

PROGRAMME: A diagrammatic representation of the planned execution of units of work or activities by the **contractor** and **subcontractors** indicating the dates for commencement and completion prepared and maintained by the **contractor**

PROVISIONAL SUM: An amount included in the **contract sum** for the supply and installation of work by a **subcontractor**

RECOVERY STATEMENT: The statement prepared and issued in conjunction with each **payment certificate** by the **principal agent** in terms of the **JBCC®** Recovery Statement format

SECTION: An identified portion of the **works** for which **practical completion** is required by a date earlier than that required for the **works** as a whole [CD]

SECURITY: A monetary guarantee [CD] provided by the **employer** to the **contractor**, or vice versa, in terms of this **agreement** from which either **party** may recover expense and loss in the event of default

SITE: The land or place where the **works** is to be executed [CD]

STATUS REPORT: A report compiled by the **principal agent** and/or **agents** in the event of termination of the **agreement**, or where the **works** has been suspended due to a **force majeure** event, or in the event of termination of a **n/s subcontract agreement** by the **contractor**, to record the state of completion or otherwise of the **works** or the n/s subcontract works. Such **status report** may include marked up drawings and photographs

SUBCONTRACTOR: A nominated or a selected subcontractor appointed in terms of the **n/s subcontract agreement** by the **contractor** in accordance with a **contract instruction** for the supply and installation of work for which a **provisional sum** has been included in the **contract sum**

SUSPENSION: The temporary cessation of the **works** by the **contractor**

TAX: Value-added tax, general sales tax or similar consumption tax applicable by **law**

WORKING DAYS: **Calendar days** which exclude Saturdays, Sundays, proclaimed public holidays and recorded **contractor's** annual holiday periods [CD]

WORKS: The extent of work to be executed by the **contractor** described in the **agreement** and **contract instructions**, which includes **free issue** and **materials and goods**. Work or installations to be executed by **direct contractors** and others responsible to the **employer** are excluded [CD]

1.2 Interpretation

- 1.2.1 In this document, unless inconsistent with the context, the words “accept, allow, appoint, approve, authorise, certify, decide, demand, designate, grant, inform, instruct, issue, list, **notice**, notify, object, record, reduce, refuse, request, state” and their derivatives require such acts to be in writing
- 1.2.2 The masculine gender includes the feminine and neuter genders and vice versa, the singular includes the plural and vice versa and a person includes juristic or artificial persons
- 1.2.3 The headings of clauses are for information only and shall not be used in interpretation
- 1.2.4 Reference to a clause number written as clause [54.3.2] means that specific clause; or clause [54.3.2-4] means sub-clauses 2 to 4 inclusively; or clause [54.3.2 & 4] means sub-clauses 2 and 4 only
- 1.2.5 The word “deemed” shall be conclusive that something is fact, regardless of the objective truth

2.0 LAW, REGULATIONS AND NOTICES

- 2.1 The **contractor** shall comply with the **law** [CD], obtain permits, licences and approvals required and pay related charges for the execution of the **works** [17.1.4]. The **employer** shall comply with the **law** [CD], obtain permits, planning, building or similar permissions and pay charges for the **works** other than those which are the responsibility of the **contractor** [26.4.1]
- 2.2 All communication or **notices** between the **parties** shall be in the language of this **agreement** and in a format that can be read, copied and recorded
- 2.3 Legal processes arising out of or concerning this **agreement** may validly be delivered to and served on the **parties** at the physical address of the **parties** recorded in this **agreement**. Either **party** may, at any time, by **notice** to the other, change his physical address provided it is in the same country as the original address
- 2.4 **Notices** given in terms of this **agreement** shall be deemed to have been received where:
 - 2.4.1 Delivered by hand - on the day of delivery
 - 2.4.2 Sent by electronic mail, excluding social media - within one (1) **working day**
 - 2.4.3 Sent by registered post - within seven (7) **calendar days** after posting

3.0 OFFER AND ACCEPTANCE

- 3.1 The objective of this **agreement** is the execution of and payment for the **works** for which there has been an offer by the **contractor** and an acceptance by the **employer**
- 3.2 The currency applicable to this **agreement** is as recorded [CD]
- 3.3 This **agreement** shall come into force on the date of acceptance by the **employer** and continue to be of force and effect until the end of the **latent defects** liability period [22.0] notwithstanding termination [29.0] or the certification of **final completion** [21.0] and final payment [25.0]
- 3.4 Should any provision of this **agreement** be unenforceable the **parties** shall act in good faith to agree alternative provisions in terms of this **agreement**
- 3.5 Failure or omission by a **party** to enforce any provision of this **agreement** shall not constitute a waiver of such provision or affect such **party's** rights to require the performance of such provision in the future

4.0 CESSION AND ASSIGNMENT

- 4.1 Neither **party** shall cede rights or assign rights and obligations under this **agreement** without the prior written consent of the other **party**, which consent shall not be unreasonably withheld
- 4.2 The **contractor** shall not consent to a nominated **subcontractor** ceding rights or assigning rights and obligations under this **agreement** without obtaining the prior written consent of the **principal agent**
- 4.3 Notwithstanding the above, where a **party** cedes any right to any monies due or to become due under this **agreement** as security in favour of a financial institution, consent shall not be required provided **notice** of such cession is timeously given to the other **party**

5.0 DOCUMENTS

- 5.1 Documents referred to in this **agreement** shall mean the current edition thereof with all amendments thereto as at the date of submission of the **contractor's** tender
- 5.2 The **parties** shall sign the original **agreement** and shall each be issued with a copy thereof by the **principal agent**. The original signed **agreement** shall be held by the **principal agent** [CD]
- 5.3 Persons authorised to act on behalf of the **parties** and/or **agents** appointed by the **employer** shall be identified in the **construction information**. Such authorised persons may be changed by **notice** to the other **party**
- 5.4 The **priced document** shall not be used as a specification of **materials and goods** or methods
- 5.5 The content of this **agreement** shall not be published or disclosed or used for any purpose other than that specified in this **agreement** by one **party** without the prior written consent of the other **party**
- 5.6 The **principal agent** and/or **agents** shall timeously provide the number of copies [CD] of drawings, un-priced **bills of quantities** and other **construction information** at no cost to the **contractor**

6.0 EMPLOYER'S AGENTS

- 6.1 The **employer** warrants that the **principal agent** has full authority and obligation to act on behalf of and bind the **employer** in terms of this **agreement**. The **principal agent** has no authority to amend this **agreement**
- 6.2 The **employer** may appoint **agents** to deal with specific aspects of the **works** in terms of this **agreement** [CD]. The **principal agent** shall give **notice** to the **contractor** where such authority is delegated to **agents** to issue **contract instructions** and perform duties for specific aspects of the **works**. An **agent** appointed in terms of this clause shall not be entitled to subdelegate his authority without the prior written consent of the **employer** and **notice** to the **contractor**
- 6.3 The **principal agent** and/or **agents** shall declare any interest or involvement in the **works** other than a professional interest, where applicable [CD]
- 6.4 Where the **principal agent** fails to act in terms of this **agreement** and/or an **agent** fails to act in terms of delegated authority, the **contractor** shall give **notice** to the **principal agent**, with a copy to the **employer**, to rectify such default within five (5) **working days**. Where such default has not been rectified, the **contractor** may give **notice** to suspend the **works** [28.0]
- 6.5 Where the **principal agent** and/or an **agent** fails to act or is unable to act or ceases to be the **principal agent** or an **agent** in terms of this **agreement**, the **employer** shall appoint another **principal agent** and/or an **agent** within ten (10) **working days** of the date of such **notice** from the **contractor**. The **employer** shall not appoint a **principal agent** and/or an **agent** against whom the **contractor** makes reasonable objection within five (5) **working days** of receipt of **notice** of intention to make such an appointment
- 6.6 The **employer** shall not interfere with or prevent the **principal agent** and/or **agents** from exercising fair and reasonable judgement when performing their obligations in terms of this **agreement**

7.0 DESIGN RESPONSIBILITY

- 7.1 The **contractor** shall not be responsible for the design of the **works** other than the **contractor's** and **subcontractors'** temporary works. The **contractor** shall not be responsible for the coordination of design elements
- 7.2 Any design responsibility undertaken by a **subcontractor** shall not devolve on the **contractor**. All contractual or other rights the **contractor** has against such **subcontractor** arising from any design responsibility undertaken shall be ceded to the **employer** on the date of **final completion** or the date of termination of this **agreement** [9.2.3]
- 7.3 The **contractor** shall be responsible for the timely submission of design documentation by a selected **subcontractor** for acceptance and coordination by the **principal agent** and/or **agents** [23.2.8]

INSURANCES AND SECURITIES

8.0 WORKS RISK

- 8.1 The **contractor** shall take full responsibility for the **works** from the date on which possession of the **site** is given to the **contractor** and up to the date of issue of the **certificate of practical completion** or deemed achievement of **practical completion** for the **works** as a whole, or a **section** thereof. Thereafter responsibility for the **works** as a whole, or a **section** thereof, shall pass to the **employer**
- 8.2 The **contractor** shall make good physical loss and repair damage to the **works** caused by or arising from:
- 8.2.1 Any cause before the date of **practical completion** [19.0]
- 8.2.2 Any act or omission of the **contractor** in the course of any work carried out in pursuance of the **contractor's** obligations after the date of **practical completion**
- 8.3 The liability of the **contractor** in respect of any loss or damage shall include, but not be limited to:
- 8.3.1 The cost of making good such physical loss and repairing damage to the **works** including clearing away and removing all debris and any other costs to reinstate the **works**
- 8.3.2 The new replacement value of **free issue** [12.1.10]
- 8.3.3 The cost of additional professional services
- 8.4 Notwithstanding subclause 8.3, the limit of the **contractor's** liability shall not exceed the amount of the contract works insurance [10.1.1] [CD]
- 8.5 The **contractor** shall not be liable for the cost of making good physical loss and repairing damage to the **works** caused by or arising from:
- 8.5.1 The use or occupation of any part of the **works** by the **employer**, the **employer's** employees and/or **agents** and those for whose actions they are responsible
- 8.5.2 An act or omission of the **employer**, the **employer's** employees and/or an **agent** and those for whose actions they are responsible
- 8.5.3 An act or omission by a **direct contractor**
- 8.5.4 The use or occupation of any part of the **works** by a **direct contractor**
- 8.5.5 The design of the **works** for which the **contractor** is not responsible [7.1]
- 8.5.6 A **defect** in **free issue** or **materials and goods** specified by trade name where the **contractor** has no right of substitution. The **contractor** hereby cedes any right of action to the **employer** that may exist against the supplier and/or manufacturer of such **free issue** and/or **materials and goods**
- 8.5.7 **Force majeure**

- 8.6 Where the **contractor** is not liable for the cost of making good physical loss or repairing damage [8.5] such making good and/or expense and/or loss shall be measured and valued and included in the **contract value** by the **principal agent** [17.1.10]
- 8.7 The **contractor** shall immediately give **notice** to the **principal agent** on becoming aware of physical loss or damage to the **works**

9.0 INDEMNITIES

- 9.1 The **contractor** indemnifies and holds harmless the **employer**, the **employer's** employees and/or **agents** from all claims or proceedings for damages, expense and/or loss including **legal fees** and expenses in respect of or arising from:
- 9.1.1 Death or bodily injury or illness of any person or physical loss or damage to any property other than the **works** arising out of or due to the execution of the **works** or presence on and/or occupation of the **site** by the **contractor**. Should such an event occur, the **contractor** shall forthwith give **notice** to the **principal agent**
- 9.1.2 Non-compliance by the **contractor** with the **law**, regulation or bylaw of any local or other authority and the failure by the **contractor** to obtain any permit, licence or approval that the **contractor** is required to obtain in terms of this **agreement** [2.1]
- 9.1.3 Physical loss or damage to **construction equipment** or other property belonging to the **contractor** or the **contractor's subcontractors** but excluding **direct contractors'** equipment or property
- 9.2 The **employer** indemnifies and holds the **contractor** harmless from all claims or proceedings for damages, expense and/or loss, including **legal fees** and expenses, in respect of or arising from:
- 9.2.1 An act or omission of the **employer**, the **employer's** employees and/or **agents** and those for whose actions they are responsible
- 9.2.2 An act or omission of a **direct contractor** [16.0]
- 9.2.3 Design of the **works** [7.2] where the **contractor** is not responsible for such design
- 9.2.4 The use or occupation of any part of the **works** by the **employer**, tenants, **direct contractors** or others authorised by the **employer**
- 9.2.5 Proceeding with the **works** on instruction from the **employer** without the **employer** obtaining the required permission under the **law** in terms of this **agreement** [2.1]
- 9.2.6 Interference with any servitude or other right not recorded in **construction information** issued to the **contractor** that is the unavoidable result of the execution of the **works** including the removal of or weakening of or interference with the support of land and property adjacent to or within the **site** unless resulting from any negligent act or omission by the **contractor** or his **subcontractors**. Should such an event occur, the **contractor** shall forthwith give **notice** to the **principal agent**
- 9.2.7 Physical loss or damage to an existing structure and the contents thereof where this **agreement** is for alterations or additions to an existing structure. Should such an event occur, the **contractor** shall forthwith give **notice** to the **principal agent**
- 9.2.8 A defect in **free issue**
- 9.2.9 Physical loss or damage to the **works** where a **certificate of practical completion** has been issued [19.0] or **practical completion** has been deemed to have been achieved
- 9.2.10 Advance payments certified by the **principal agent** and paid by the **contractor** to **subcontractors** [27.1.8; 27.2.4]

10.0 INSURANCES

- 10.1 The **party** responsible shall effect and keep the respective insurances [CD] in force in the joint names of the **parties** from the date of possession of the **site** until the issue of the **certificate of practical completion** with an extension to cover the **contractor's** obligations after the date of **practical completion** [8.2.2]:
- 10.1.1 Contract works insurance [CD] for the **works** that shall make provision for **direct contractors** [CD], **free issue** [CD], **materials and goods**, professional fees, temporary works, clearing away and removing of all debris and any other costs to reinstate the **works** and where required, damage to **employer** owned surrounding property [CD] where not covered under the removal of lateral support insurance
- 10.1.2 Supplementary insurance [CD] for the **works** against loss or damage caused by civil commotion, riot, strike, labour disturbance and lockout to the extent not insured under the contract works insurance
- 10.1.3 Public liability insurance [CD] providing indemnity in respect of accidental death or injury to any person and accidental loss of or physical damage to tangible property, to remain in force until the date of **final completion**
- 10.1.4 Removal of lateral support insurance [CD] where the **employer** considers that the execution of the **works** could cause the removal of or weakening of or interference with the support of land or property adjacent to or within the **site** (also including **employer** owned surrounding property) and the consequences thereof. The **employer** shall appoint an **agent** to design and monitor appropriate support structures for use in excavations and/or in existing property that form part of the **works** and/or the **site**
- 10.1.5 Other insurances [CD]
- 10.2 Where **practical completion** in **sections** is required [20.0], or where the **works** is for alterations and additions, the **employer** shall effect and keep in force contract works insurance [10.1.1], supplementary insurance [10.1.2], public liability insurance [10.1.3] and where applicable, removal of lateral support insurance [10.1.4] and other insurances [10.1.5] in the joint names of the **parties** until the date of **final completion**
- 10.3 The **party** responsible for effecting insurances [10.1.1-5; 10.2] shall provide proof of the insurances effected to the other **party** before the commencement of the **construction period** and, where required, provide proof of extension or renewal of such insurances before their expiry. Upon request the **party** responsible for effecting insurances shall provide the other **party** with the entire policy wording of such insurances
- 10.4 The **contractor** shall be responsible for the deductible amounts [CD] other than where a claim against an insurance cover is due to default of the **employer**, the **employer's** employees and/or **agents** and those for whose actions they are responsible
- 10.5 The **employer** may, at his expense, require the cover of the contract works insurance [10.1.1] to be increased. The **party** responsible for effecting insurances shall provide written proof of such adjustment
- 10.6 Where the **employer** fails to effect the required insurances within ten (10) **working days** after **notice** to do so the **contractor** may, on expiry of the notice period, suspend the **works** until such insurances have been effected [28.1.4]
- 10.7 Where this **agreement** is terminated [29.0] and the **contractor** is not required to make good the physical loss or repair damage to the **works**, the right to the proceeds of an insurance claim shall vest solely in the **employer**. The **party** responsible for the insurances shall give **notice** to the insurer to clarify the status of the insurance cover and/or further insurance obligations applicable to the **works**, public liability insurance, supplementary insurance and removal of lateral support insurance
- 10.8 Any amounts not recovered from insurers shall be borne by the **employer** or **contractor** in accordance with their respective obligations under this **agreement**
- 10.9 The **party** responsible for effecting the insurances shall keep insurers informed of any relevant changes in respect of this **agreement**
- 10.10 The **parties** shall at their discretion effect insurances for aspects not insured such as **construction equipment** and work by **direct contractors** after **practical completion**

11.0 SECURITIES

- 11.1 The **contractor** shall provide to the **employer** a **guarantee for construction** within fifteen (15) **working days** of acceptance of the **contractor's** tender and choose:
- 11.1.1 A **guarantee for construction** – (variable) initially equal to ten per cent (10%) of the **contract sum** and keep such **security** valid and enforceable until the **final payment certificate** has been issued to the **contractor** [25.15]
- or ...
- 11.1.2 A **guarantee for construction** - (fixed) equal to five per cent (5%) of the **contract sum** and a payment reduction of five per cent (5%) of the value of each **payment certificate** up to a maximum of five per cent (5%) of the **contract sum** [25.3.3; 25.12]. The **contractor** shall keep such **security** valid and enforceable until the only or last **certificate of practical completion** has been issued
- 11.2 The **contractor** shall:
- 11.2.1 Maintain and/or replace a **guarantee for construction** - (variable or fixed) [11.1.1-2] at least twenty (20) **working days** before such **security** is due to expire
- 11.2.2 Provide a **guarantee for advance payment** where an advance payment is required. The **contractor** shall keep such **security** valid and enforceable until the advance payment is repaid [11.3]
- 11.3 The amount of the **guarantee for advance payment** shall be reduced by the amount repaid by the **contractor** as certified by the **principal agent** in **payment certificates**. If the advance payment is not repaid by the date a **certificate of practical completion** is issued or deemed achievement of **practical completion** or by the date of termination by the **employer** due to **contractor** default [29.9.3], the entire outstanding amount shall immediately become due and payable
- 11.4 Where the **contractor** fails to provide the specified **guarantee for construction** the **employer** may:
- 11.4.1 Hand over the **site** to the **contractor** and withhold an amount in interim **payment certificates** to the **contractor** until the total amount withheld is equal to ten per cent (10%) of the **contract sum**. The amount withheld shall be reduced at **practical completion** [19.0] to two and one half per cent (2.5%) of the **contract sum** and to zero per cent (0%) in the **final payment certificate** [25.9; 25.15]
- or ...
- 11.4.2 Terminate this **agreement** [29.1.1; 29.2]
- 11.5 The **employer** shall:
- 11.5.1 Provide to the **contractor** a **guarantee for payment** where required in the accepted tender [CD] within fifteen (15) **working days** of acceptance of the **contractor's** tender
- 11.5.2 Keep such **guarantee for payment** valid and enforceable in terms of the **security** form and/or provide a replacement **guarantee for payment** at least twenty (20) **working days** before such **security** is due to expire
- 11.6 Where the **employer** fails to provide the **guarantee for payment** [CD], or such **security** has expired, the **contractor** may, after giving ten (10) **working days notice**, where such default has not been remedied, forthwith suspend the **works** until such **security** has been provided [12.1.1; 28.1.1] or by further **notice** terminate this **agreement** [29.14.2; 29.15]
- 11.7 Where the **contract value** exceeds the **contract sum** by more than ten per cent (10%) the **guarantee for payment** shall be adjusted at the **employer's** expense. The **employer** shall provide written proof of such adjustment
- 11.8 The original or the replacement **security** form(s) shall be returned to the other **party** within ten (10) **working days** after the expiry date
- 11.9 Where a **party** makes an unjustified call on a **security**, the amount paid and **default interest** shall be paid to the other **party** [27.1.2; 27.1.5]
- 11.10 The **contractor** shall waive his **lien** or right of continuing possession of the **works** on receipt of a **guarantee for payment** from the **employer**