



PCM

Projects | People | Investments

GENERAL CONDITIONS OF CONTRACT PURCHASING OF SERVICES

OUR REFERENCE: PCM-GCC-PS – Rev2

29 JANUARY 2021

GENERAL CONDITIONS OF CONTRACT PURCHASING OF SERVICES

Between

PCM ReCon Pty (Ltd)

("The Company")
2018 / 260060 / 07

and

("The Consultant")

(Company registration number)

(Company VAT number)

Contract Reference Number: **PCM-C-SP-**

1. Commencement

This contract will begin on _____ and continue until terminated or _____ on or before, if the scope of work is concluded/ accepted/ cancelled by PCM.

2. Place of work

PCM or PCM's Client Offices

3. Job description

Job Title: PCM's Service Provider (Also referred to as Consultant)

Duties/ scope of work:

The Consultants duties and scope of work is listed below, but is not limited to:

Reference documents:

4. Contract Value

The detail Contract Value will be _____ for the services rendered by _____ to PCM for the specific scope of work, reference to the contract number **PCM-C-SP-_____**, and approved by PCM.

Each approval will be in writing with an award letter.

Other (eg. R/ hour, fixed fee):

- 4.1 The company shall review the consultants service fee once a year.
- 4.2 The rates and percentages above will be fixed for the contract period.

5. Interim deliverables and associated cost

Description	Deliverable	Start date	End date	Cost

6. Value added tax (Delete if not applicable)

All prices are exclusive of VAT. However, invoices submitted for payment shall state the VAT separately.

7. Price basis and price escalation (Variation) (Delete if not applicable)

Prices are fixed for the contract period, of which process will be reviewed once a year. The prices will not increase more than the inflation rate for the current year, unless agreed between the parties.

8. General notes

- 8.1 The contract number **PCM-C-SP-_____** **-(including the award letter revision)** shall be quoted on all correspondence
- 8.2 Payment shall only be effective by means of electronic wire transfer
- 8.3 Payments will be made 30 days after invoice, between the 25th of the next month and the last day of the month
- 8.4 Payments shall only be made to completed milestones, no monthly incremental payments shall be entertained, unless agreed before contract placements with PCM
- 8.5 Invoices for payment shall be submitted before the 25th of the month to:

PCM Consulting

Company Registration: 2018 / 260060 / 07

Company Vat number: 4300272848

Project Reference: PCM-GCC-PS-_____

221 Garstfontein Road,

Menlyn, Pretoria

0002

Attention: PCM Management

Email: invoices@pcmconsult.co.za ; jprinsloo@pcmconsult.co.za

8.6 Invoices shall be presented complete in every respect and shall include the following:

- 8.6.1 Invoice number
- 8.6.2 The registration number of the consultant/ consultant and PCM
- 8.6.3 The consultants/ consultant company name as per the contract
- 8.6.4 The contract number
- 8.6.5 VAT registration number of the consultant and PCM
- 8.6.6 Total amount claimed to date
- 8.6.7 Value of previous claims
- 8.6.8 Net amount payable
- 8.6.9 Such VAT as may be applicable
- 8.6.10 Invoice review and approval document signed off by the Consultant and PCM

8.7 The following documents shall accompany invoices:

- 8.7.1 Copy of bank guarantee to be attached to 1st (first) invoice
- 8.7.2 All bank details to be attached to the 1st (first) invoice
- 8.7.3 Updated cash flow schedule

Payment in respect of this Contract will only be effected after receipt by PCM of the signed Contract.

9. Performance Guarantee (Delete if not applicable)

The security called for in this contract, General Conditions of Contract, shall be for the amount stipulated in clause 4, i.e. 10% (Ten percent) of the contract price and shall be in the form of a bank guarantee. The guarantee is due for submission to PCM within two weeks from award of the Contract - Or as agreed to between the parties.

10. Compensation for occupational injuries and diseases certificate of good standing

The consultant shall, before commencement with work on site, furnish to PCM a statement obtaining from the Commissioner, Compensation for Occupational Injuries and Diseases, certifying that the Consultant has furnished all information and has made all payments required from it in terms of the Occupational Injuries and Diseases Act, Act No 130 of 1993.

The contract osha in respect of this workmen keep a record of all the particulars prescribed under the said compensation for occupational injuries and diseases act, act no 130 of 1993 and shall at all reasonable time produce such records on demand to any person authorized to carry out such inspections.

11. Consultants head representative on site (Delete if not applicable)

Effective 1st November 2004 it is obligatory that the consultant shall, in terms of the Project and Construction Management Professions Act, Act 48 of 2000 appoint a Professional Construction Project Manager and/ or a Professional Construction Manager registered with the SA Council for Project & Construction Management Professions.

The consultant is herewith requested to furnish PCM with a detailed statement, clearly setting out the qualifications and previous experience, together with proof of the consultant's construction project manager and/or construction manager's registration with the said Council.

For further information on this regard refer to SACPCMP:

www.sacpcmp.co.za

12. Safety, health, environment and quality

The consultant shall comply to all the necessary Safety, Health, Environment and Quality Standards and Regulations (SHEQ) applicable for the industry as set out in the Mines Health and Safety Act (MHSA), Occupational Health and Safety Act (OSHA), South Africa National Standards (SANS) and International Standards Organization Codes (ISO)

13. Hours of work

- 13.1 Normal working hours will be from ...07:30..... a.m. to16:00..... p.m. on Mondays to Fridays.
- 13.2 Overtime will only be worked if agreed upon between the parties from time to time upfront.
- 13.3 The consultant will be paid for overtime at the rate of one and a half times his/her total wage as set out in clause 4, or as agreed to between the parties.

14. Meal Intervals

The Consultant agrees to a lunch break of one hour/30 minutes (delete the one that is that not applicable). Lunchtime will be taken from ...12:00..... to ...12:30/13:00..... daily.

15. Sunday work

Any work on Sundays will be by agreement between the parties from time to time upfront.

- 15.1 If the consultant works on a Sunday he/she shall be paid according to the rate/hour as set out in this contract, or as agreed to between the parties.

16. Public Holidays

The consultant will be entitled to all official public holidays without pay.

If the consultant works on a public holiday he/she shall be paid according to the rate/hour as set out in this contract, prior arrangements.

17. Annual Leave

The consultant will plan and arrange the annual leave with no impact to the PCM operations and projects.

18. Sick leave

- 11.1 The consultant will not be paid for sick leave

19. Other conditions of contract or benefits

Benefits as and when agreed between the parties for specific scope of work

20. Services

The consultant shall always act in the best interest of the company, exercise discretion and manage other people or third parties on the projects, when required or part of the scope of work.

21. General

Any changes to this agreement will only be valid if they are in writing and have been agreed and signed by both parties.

22. List of documents forming part of this agreement

General conditions of contract	– Section A.....
Scope of work	– Section B.....

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

SECTION A – GENERAL CONDITIONS OF CONTRACT

Definitions and Interpretations

1 Definition of Terms

In this **Contract**, unless inconsistent with or otherwise expressly indicated by the Context

- (a) "**PCM**" means **PCM Consulting**, a private company registered in the Republic of South Africa with registration number 2018 / 260060 / 07, and/or any of its subsidiaries or affiliated companies, acting through their duly authorised representatives.
- (b) "**Approval**" means **PCM's** consent in **Writing** and "**Approved**" shall have a corresponding meaning
- (c) "**Commencement Date**" means the date on which **PCM** notifies the **Consultant** in **Writing**, of the award of the **Contract**.
- (d) "**Consultant**" means the person with whom **PCM** contracted to execute the **Contract**.
- (e) "**Contract**" means the terms and conditions agreed to between the **Parties** in **Writing**.
- (f) "**Contract Price**" means the price stipulated in the **Contract**, subject to such additions thereto or deductions therefrom as may be made from time to time under the provisions of the **Contract**.
- (g) "**Contract Program**" means the sequential commencement and completion dates of activities in the execution of the **Services** reflecting the order of procedure and method that the **Consultant** shall follow in carrying out the **Services** in order to meet the **Date for Completion**.
- (h) "**Contract Documentation**" means any drawing, diagram, calculation, designs, bills of quantities, specifications, data sheets, schedules and other pertinent documents relating to the **Project** issued by or through the **Consultant** to any other party.
- (i) "**Date for Completion**" means the date stipulated in the **Contract** for successful completion of the **Services**.
- (j) "**Drawings**" means and includes plans, sections and elevations, as well as working and detailed drawings, diagrams and schedules relative to the **Contract**, together with all modifications to these and "as-built" drawings.
- (k) "**Documentation**" means any drawing, calculation, designs, specification, and other pertinent documents supplied to **PCM** by the **Consultant** in terms of the **Contract**

together with any modifications to such documents as may from time to time be approved in **Writing** by **PCM**.

- (l) “**Parties**” means **PCM** and the **Consultant** and “**third party**” means any other person or entity, as the context requires.
- (m) “**Site**” means the area demarcated by **PCM** for the purpose of performance of the **Services** by the **Consultant** in terms of the **Contract**.
- (n) “**Services**” means any project related professional services e.g. design, engineering activities, technology, know-how, drafting, quantity surveying, quality control, project management activities etc, to be carried out by the **Consultant** in accordance with the **Contract**.
- (o) “**Specification**” means the commercial and technical requirements that define the **Services**.
- (p) “**Sub Consultant**” means any person appointed by the **Consultant** in terms of the **Contract** and a **Nominated Sub Consultant** means any person nominated by **PCM** to execute any part of the **Services** under the supervision and control of the **Consultant**.
- (q) “**Technical Information**” means all information supplied in the **Specification**, together with all drawings, diagrams, designs, specifications and other pertinent documents as may from time to time be furnished or referred to in **Writing**.
- (r) “**Writing**” means any manuscript, typewritten or printed statement and shall include letters, facsimile including electronic communication.

2 Headings and Interpretation

In this **Contract**, unless inconsistent with or otherwise expressly indicated by the context

- (a) The clause headings are for reference purposes only and shall not influence its interpretation.
- (b) References to the masculine gender shall, where applicable, include the feminine gender and *vice versa*.
- (c) Words importing the singular, where applicable, also include the plural, and *vice versa*.
- (d) References to natural persons include created legal entities (whether incorporated or unincorporated) and *vice versa*.
- (e) Where figures are referred to in numerals and in words, and there is any conflict, the words shall prevail.

- (f) If any provision in a definition is a substantive provision conferring rights or imposing obligations on any **Party**, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the **Contract**.
- (g) All Data Sheets and Annexures hereto shall be deemed to be incorporated herein and shall form an integral part hereof.
- (h) Expressions defined in the **Contract** shall bear the same meanings in data sheets, schedules or annexures to the **Contract**, which do not contain their own definitions.
- (i) Reference to days, months or years shall be construed as Gregorian calendar days, months or years.
- (j) Where a number of days are prescribed, it shall be calendar days and shall be reckoned exclusively of the 1st (first) and inclusively of the last day.

3 Discrepancies in Contract Documents

Should there appear to be any discordance or want of agreement in the description, dimensions or quantities between any of the documents comprised in the **Contract**, the matter shall be referred by the **Consultant** to **PCM** for a decision before proceeding with the works in respect of which the said discordance or want of agreement appears to exist.

4 Notices

- (a) Any notice, instruction, request, statement or other communication required or permitted to be given hereunder shall be in **Writing** and may be given by delivery to either **Party** or by mailing the same by prepaid registered post, addressed to the other **Party**.
- (b) Any notice or communication required or permitted in terms of the **Contract** will be valid and effective only if it is in **Writing**.
- (c) Any **Party** may by notice to the other **Party** change its facsimile number, email address or the address chosen as its *domicilium citandi et executandi*, to another facsimile number, e-mail address or address which is not constituted exclusively by a post office box address. The change will become effective on the 5th (fifth) day from the deemed receipt of the notice by the addressee.
- (d) Any notice to a **Party** sent by prepaid registered mail (by airmail if appropriate) in a correctly addressed envelope to it at its *domicilium citandi et executandi* will be deemed to have been received on the 5th (fifth) day after posting unless the contrary is proved.
- (e) Any notice to a **Party** delivered by hand during ordinary business hours at its *domicilium citandi et executandi* will be deemed to have been received on the day of delivery unless the contrary is proved.

- (f) Any notice to a **Party** sent by facsimile or e-mail to its chosen *domicilium citandi et executandi*, will be deemed to have received, unless the contrary is proved, immediately upon the issuance, by the transmitting facsimile machine or transmitting computer, of a report confirming the correct transmission of all the pages of the document containing the notice.
- (g) Notwithstanding anything to the contrary herein contained a notice or communication actually received by a **Party** will be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

5 Delegation and Cession

Neither this **Contract** or any right, remedy, obligation or liability arising hereunder or by reason hereof shall be ceded or delegated by the **Consultant** without **Approval**.

6 Applicable Law and Legislation

- (a) The **Contract** shall be governed and construed according to the laws of the Republic of South Africa.
- (b) The **Consultant** shall in respect of all matters arising in the fulfilment of the **Contract** comply at its own expense with all laws, regulations and by-laws and requirements of local or other authorities that are applicable to the **Services** and upon **Written** request from **PCM** furnish proof of such compliance.
- (c) The **Consultant** shall indemnify **PCM** against all actions, claims, demands, losses, liabilities, costs, damages and expenses arising from or in connection with (i) Non-compliance in terms of South African legislation, by the **Consultant**. (ii) A directive or order from any lawful authority to take measures in order to evaluate the impacts or risks associated with an incident or to prevent, mitigate or remedy any actual or potential environmental impact that has arisen or may arise in connection with the performance of the **Services**.

7 Arbitration

- (a) In the event of any disagreement arising out of this **Contract** or the interpretation thereof while in force or after its termination and **PCM** and the **Consultant** have failed to reach agreement on any difference or question, such disagreement shall be determined by arbitration in terms of the provisions of the Arbitration Act, Act No 42 of 1965.
- (b) Notwithstanding any such disagreement the **Consultant** shall proceed with the **Services** unless **PCM** shall order the suspension or termination thereof in **Writing**.

8 Claims

- (a) In cases where under this **Contract** there are circumstances that the **Consultant** considers entitle it to make a claim for additional compensation not provided for in the **Contract**, the **Consultant** shall, within 24 (twenty-four) hours of becoming aware of the event giving rise to the claim, give notice to **PCM** of its intention to submit a claim stating the reasons therefore. Failure to do so will be deemed to be a waiver of the **Consultant's** claim for additional compensation.
- (b) Within 30 (thirty) days after occurrence of the incident giving rise to such claim, the **Consultant** shall submit its detailed claim together with substantiated documentary evidence and amounts in support of such claim to **PCM** for consideration. Failure to do so will be deemed to be a waiver of the **Consultant's** claim for additional compensation.

9 Publications and Confidentiality

- (a) For the purposes of this **Contract** Confidential Information shall include but not be limited to
- (i) All information marked (in any legible form) confidential, restricted or proprietary by **PCM**.
 - (ii) **PCM's** know-how, data, drawings, sketches or diagrams, reports, systems, technical specifications, techniques, manufacturing processes, reports and monitoring results, inventions, patents, tenders and contracts.
 - (iii) Any other commercially sensitive information, such as names of suppliers, customers, manufacturing processes and business strategies.
- (b) The **Consultant** shall hold in confidence all Confidential Information received from **PCM** and not divulge the Confidential Information to any person including consultants, save for the consultants or **Sub Consultants** directly involved with the execution of this **Contract**.
- (c) The **Consultant** will ensure that any **Sub Consultant**, consultants or other **third parties** who may require to be exposed to the Confidential Information will have signed a confidentiality agreement which contains no less favourable terms than those set out in this clause.
- (d) With respect to all Confidential Information provided by **PCM**, the **Consultant** will use the same care to prevent disclosure to third parties of such Confidential Information as it employs to avoid disclosure, publication or dissemination of its own information of a similar nature.
- (e) The **Consultant** will not publicly disclose the terms of this **Contract** without the prior written consent of **PCM**.
- (f) Notwithstanding the foregoing, this clause will not apply to any Confidential Information, which the **Consultant**, can demonstrate was

- (i) At the time of disclosure to it, in the public domain; or
 - (ii) After disclosure to it, published or otherwise, becomes part of the public domain through no fault of the **Consultant**; or
 - (iii) In the possession of the **Consultant** at the time of disclosure of it ;or
 - (iv) Received after disclosure to it from a **third party** who had a lawful right to disclose such information to it; or
 - (v) Independently developed by the **Consultant** without reference to the Confidential Information of **PCM**.
- (g) At the request of **PCM**, at any time, the **Consultant** shall promptly deliver to **PCM** all written, printed, electronically stored and copied Confidential Information of whatever nature disclosed to it without retaining any copies thereof and shall either so deliver or destroy any written material based on the Confidential Information.
- (h) The **Consultant** agrees to use the Confidential Information for the sole purpose of this **Contract** only, unless agreed to otherwise in **Writing**.
- (i) No photographs whatsoever shall be taken on **Site** or of the **Services** nor shall the **Consultant** be permitted or allowed to publish any information regarding the **Services** without obtaining **PCM's** prior approval.
- (j) Should there be a dispute between the **Parties** as to whether the **Consultant** complied with the provisions of this clause or not, the onus shall be on the **Consultant** to show that it took all reasonable steps to comply with this clause and the **Consultant** shall take all reasonable steps to assist **PCM** in establishing the source from which such Confidential Information was made known. (k) The provisions of this clause shall survive the cancellation or termination of this **Contract** for any reason whatsoever and remain binding on the **Consultant** in perpetuity.

SAFETY, HEALTH AND ENVIRONMENTAL

10 Occupational Health and Safety Requirements

- (a) The **Consultant** shall at all times comply with the Occupational Health and Safety Act, Act No 85 of 1993, the Mine Health and Safety Act, Act No 29 of 1996, the Compensation for Occupational Injuries and Diseases Act, Act No 130 of 1993 and shall at all times during the continuance of the **Contract** comply with all Safety, Health and Environment (SHE) instructions, prescriptions and standards required and directed by **PCM**.
- (b) **PCM** shall have the right to enforce the SHE directions, instructions, prescriptions and standards to ensure that the **Consultant** adheres to the said legislation.
- (c) The **Consultant** shall *inter alia* in terms of legislation be required to enter into a Mandatory Agreement with the Works Manager in respect of the Occupational Health and Safety

Act, Act 85 of 1993 or a Written Agreement in respect of the Mine Health and Safety Act, Act No 85 of 1993 and comply with all the arrangements and procedures set out in the Annexures attached to the General Conditions of Contract, as well as with all **PCM's** prescribed health and safety regulations, standards and procedures at the specific work areas where the **Services** are to be executed.

- (d) The **Consultant** shall accordingly ensure that the requirements of the Acts are complied with by itself and/ or its nominated Chief Executive Officer.
- (e) The **Consultant** shall at the Commencement Date furnish proof that it is registered with the Compensation Commissioner by submitting its registration number as well as a certificate of good standing issued by the Compensation Commissioner to PCM and will submit proof thereof every 3 (three) months thereafter.
- (f) The **Consultant** shall report each and every incident/ accident to **PCM** within 24 (twenty-four) hours of its occurrence and shall furnish **PCM** with 2 (two) copies of all accident reports.

11 Medical Examination/ Induction Courses/ Access Permits

- (a) The **Consultant** shall at all times take all reasonable precautions to maintain the health and safety of its personnel and its a requirement that all of them **Consultant's** personnel shall provide **PCM** with written proof that, prior to coming on **Site**, a medical examination of the applicable **Consultant's** consultants has been done and that the required induction courses has been attended prior to coming on **Site**. At any accommodation for the **Consultant's** personnel, suitable arrangements shall be made for necessary social and hygiene requirements for the prevention of epidemics.
- (b) It will be the responsibility of the **Consultant** and at its expense, to ensure that its consultants shall prior to coming on **Site**, attend a pre-employment induction course and submit the necessary certificates of attendance to **PCM**. The **Consultant's** consultants shall also attend a Workplace Safety Induction and present the proof there of to **PCM**. This induction does not absolve the **Consultant** from its duties as contemplated by Section 8 of the Occupational Health and Safety Act, Act no 85 of 1993 or Regulation 2.10.2 of the Mine Health and Safety Act, Act no 29 of 1996.s
- (c) The **Consultant** shall report details of any incident/ accident as soon as practicable after its occurrence to the Works Manager. The **Consultant** shall maintain records and make reports concerning health, safety and welfare of persons, and damage to property, as may be reasonably required.
- (d) The **Consultant** shall apply and complete application for access permits to **PCM's** Sites for each individual consultant of the **Consultant**. A copy of the consultant's identification book and its medical examination report shall be attached to the application.

- (e) **PCM** will issue the access permit for the duration of the **Contract**. The access permit will remain **PCM's** property and it is the **Consultant's** responsibility to return all access permits to **PCM** on completion of the **Contract**.

12 Protection of the Environment

- (a) The **Consultant** shall, in the execution of the **Services** take cognizance of and shall also comply with all relevant South African legislation, regulations and guidelines (national, provincial and local government) pertaining to the Environment and shall take all reasonable steps to protect the Environment (both on and off the **Site**), to prevent and/or ameliorate as the case may be injury to people and damage to property resulting from pollution, noise and/or other aspects of its operations, to minimise the pollution and to rehabilitate the affected environment as the case may be.
- (b) The **Consultant** shall indemnify **PCM** and its directors, managers, agents and consultants against all actions, claims, demands, losses, liabilities, costs, damages and expenses arising from or in connection with (i) The pollution of the environment as a result of the performance or purported performance by the **Consultant** of the **Services**. (ii) A directive or order from any lawful authority to take measures in order to evaluate the impacts or risks associated with an incident or to prevent, mitigate or remedy any actual or potential environmental impact that has arisen or may arise in connection with the performance of the **Services**.

CONSULTANT'S OBLIGATIONS

13 Security

- (a) Unless otherwise required by **PCM**, the **Consultant** shall within 14 (fourteen) days of being called upon to do so, provide **PCM** with a security issued by an acceptable South African commercial bank, in such form and with such stipulations as **PCM** may approve, to the extent of 10% (ten percent) of the total **Contract Price** by way of undertaking as follows
- (i) The undertaking shall be for the due and faithful fulfilment of the **Contract**. Such undertaking shall be in supplement to and not in substitution of **PCM's** rights under the **Contract** and shall be binding notwithstanding any variations, alterations, directions or extensions of the **Date for Completion** to be made, given, conceded or agreed under the **Contract**.
- (ii) The undertaking shall be unconditional and payable on first demand. The bank's obligation to pay shall be construed as principal and not as accessory.
- (iii) The undertaking will initially be valid for a period extending 12 (twelve) months after **Date for Completion**. The undertaking shall be kept valid by suitable extensions should there be a delay in the **Date of Completion**.

- (b) The security lodged with **PCM** shall be kept in safe custody until all of the **Consultant's** obligations under this **Contract** have been completed in accordance with the terms and stipulations of the **Contract**.

14 Subcontracts

- (a) For work executed by a **Nominated Sub Consultant** and paid for by the **Consultant**, **PCM** shall reimburse the **Consultant** at cost plus a fee of 7% (seven).
- (b) The **Consultant** shall within 14 (fourteen) days after the **Commencement Date** of the **Contract** submit the names of any proposed **Sub Consultant** to **PCM** for **Approval**. The **Consultant** shall not, without the prior written consent of **PCM**, enter into any subcontract with any person for the execution of the **Services** or any part thereof to be used for the **Services** other than those of which the names are listed in the **Contract** for a specific part of the **Services**.
- (c) **PCM** shall have the power to withhold **Approval** of appointment of any proposed **Sub Consultant** or to rescind **Approval** of any **Sub Consultant** with whom **PCM** may subsequently have reason to be dissatisfied, without any liability on **PCM's** part. In such case the connection of such **Sub Consultant** with the **Services** shall cease and the **Sub Consultant** shall be bound to withdraw at once from the **Services**. The **Consultant** indemnifies **PCM** against claims, losses, and actions in this regard.
- (d) Paragraphs (a) and (b) shall not apply to **Sub Consultants** for regular supplies to the **Consultant** of stock material or minor components.
- (e) **PCM's** consent to the employment of any **Sub Consultant** shall not relieve the **Consultant** of its obligations under the **Contract** or in any way affect the **Consultant's** direct responsibility to **PCM**, nor shall it render **PCM** in any way responsible to such **Sub Consultant**.
- (f) In the event of default or failure of the **Consultant**, and of **PCM** taking the **Services** or any part thereof out of the **Consultant's** hands as hereinafter provided **PCM** shall be entitled to conclude a contract with such **Sub Consultant**. This shall be a condition of and shall be embodied in any subcontract and shall be binding on any **Sub Consultant**, and any subcontract shall validly and in **Writing** so provide, and **PCM** shall be entitled to require exhibition thereof before consenting thereto.
- (g) Should **PCM** so require, 2 (two) copies of any order, except those for minor components issued by the **Consultant** to its **Sub Consultant** or by the **Sub Consultant** to its suppliers, shall be submitted to **PCM** as soon as possible after issue. No prices are required to be shown on such order but in other respects the copies shall be true copies of the original orders to the **Sub Consultant** and the suppliers.

- (h) Unless expressly agreed otherwise, **PCM** shall under no circumstances effect any payment to a **Sub Consultant**.
- (i) The **Consultant** shall be solely responsible for the co-ordination of its **Sub Consultants'** activities.
- (j) **PCM** will only deal with **Sub Consultants** through the **Consultant** and/ or in the presence of the **Consultant's** representative and the **Consultant** shall advise its **Sub Consultants** accordingly.

15 Conflict of Interest

Unless otherwise agreed in **Writing** by **PCM** the **Consultant** and/ or its personnel shall have no other interest in nor receive remuneration from a **third party** in connection with the project except as provided for in the **Contract**. The **Consultant** shall not engage in any activity that may conflict with the interests of **PCM** under the **Contract**.

16 Consultant's Liability and Insurance

- (a) The **Consultant** hereby indemnifies **PCM** and its associated companies, its customers, agents, representatives and consultants from and against any and all liabilities, losses, claims and demands, including legal fees and expenses of whatsoever nature or character by reason of any liability imposed or claimed to be imposed upon **PCM** by **third parties** respect of
 - (i) Damages arising from bodily injuries, sickness, disease infection or death;
 - (ii) Damage to property;
 - (iii) Damage to the **Consultant's Equipment**; and
 - (iv) Any other losses to the extent that such bodily injuries, property damage, losses or other damages arise out of or relate to criminal conduct, wilful misconduct or negligence of the **Consultant** or its consultants in the performance of its obligations in terms of the **Contract**.
- (b) The **Consultant** shall be held responsible for any and all claims for loss, damage, injury or liability arising out of any defect in inter alia design or specification provided to **PCM** in the carrying out of the **Services** and shall protect and save harmless **PCM** against all losses, expenses, demands, errors or omissions, including faulty design and/or detailing of the **Consultant**, its agents or consultants engaged in the provision of any **Contract Documentation**. The **Consultant** shall remain liable for its own design errors and be responsible for loss or damage arising out of deficiencies.
- (c) As insurance against the liabilities detailed in subclause (c) hereof, the **Consultant** shall effect and maintain a Professional Indemnity Liability Insurance Policy for a period of not

less than 3 (three) years from the **Date of Completion** of the **Contract** for a value commensurate with the nature of the **Project** for which the **Services** are being provided but in any case for a minimum indemnity limit of twice the contract value and two million rand (R 2 000 000) per any one occurrence.

- (d) Notwithstanding the terms of the Prescription Act, Act no 68 of 1969 (as amended) or any other statute of limitation neither **PCM** nor the **Consultant** shall be held liable for any loss or damage resulting from any occurrence unless a claim is formally made in terms of the **Contract** or, where no such period is stated within a period of 3 (three) years from the date of completion of the **Contract**.
- (e) Neither **PCM** nor the **Consultant** shall be liable or responsible to each other for any indirect, consequential, incidental or contingent damages, including but not limited to such loss of profit or loss of production arising out of a breach of this **Contract** or negligence on its/ their part.

ENGINEERING AND GENERAL SERVICES

17 Services to be carried out by the Consultant

- (a) The **Consultant** shall execute the **Services** in accordance with good engineering and industry practice carried out by qualified designers/ engineers/ professionals/ consultants to comply with the scope of work as stated in the **Contract**. The execution of the **Services** shall be in accordance with the **Specification, Industry Standards, National Standards** and the other provisions of the **Contract**.
- (b) The **Consultant** shall submit the names and particulars of each of its proposed personnel to **PCM** and warrants that its personnel have the experience and the capability for executing the **Services**.
- (c) **PCM** shall have the right to object to any consultant or person employed by the **Consultant** in the execution of the **Services**, who in the opinion of **PCM**, misconducts himself or is incompetent or negligent. The **Consultant** shall immediately address **PCM's** complaint and resolve it to **PCM's** satisfaction within 7 (seven) days of receipt of **PCM's** notice in **Writing** to do so. Furthermore, the **Consultant** shall provide **PCM** with a satisfactory response to any such written notice, within 24 hours of receipt thereof, which notice shall detail the remedial measures that the **Consultant** will take to address the complaint.

- (d) **PCM** shall have the right to inspect the preparation of the **Consultant's Documentation** and **Drawings**. Should the **Consultant** fail to comply with **PCM's** requirements as stated in the **Contract**, it shall be rectified, resubmitted and reviewed (and, if specified, approved) at the **Consultant's** cost.
- (d) The **Consultant** undertakes that the **Services** shall comply with the environmental laws, laws applicable to the **Project**, and other standards specified in **PCM's** requirements in the **Contract** applicable to the **Project** or defined by applicable legislation.
- (e) If at any time during the performance of the **Contract** the **Consultant** is of the opinion that a change in the execution of the **Services** (i) Is necessary to correct any defect which has occurred or would otherwise occur; or (ii) Would be beneficial to **PCM** then the **Consultant** shall submit for **PCM's Approval** a written proposal of such change stating the reasons for the **Consultant's** said opinion.
- (f) The **Consultant** shall perform the **Services** in conjunction with any other consultant or specialists who are providing services to the **Project** and may make recommendations to **PCM** in respect of such appointments for certain parts of the **Project**. The **Consultant** shall only be responsible for its own performance and/ or others who have specifically been appointed by the **Consultant** to assist it with the **Services**.
- (g) Where the **Services** include the exercise of powers to manage, monitor, assess, certify, decide or exercise discretion in terms of a contract between **PCM** and a **third party Consultant**, then the **Consultant** shall
- (i) Act in accordance with that contract but as an independent professional acting with reasonable skill, care and diligence;
- (ii) Monitor the work executed by the **third party Consultant** to the extent defined in the scope of **Services** to assess as applicable, the **third party Consultant's** progress, whether the **Consultant's** design is being correctly interpreted, whether the construction techniques are appropriate and whether the **Services** executed by the **third party Consultant** is being completed in accordance with the specifications and program. The responsibility for executing and completing such **Services** remains with the **third party Consultant**;
- (iii) Provide **PCM** with an independent assessment, to the extent of the **third party Consultant's** appointment, that such **Services** have been completed according to the requirements of the project. The **Consultant** cannot ensure the performance of the **third party's Consultant** nor guarantee it against any failure by the third party Consultant to perform its work in accordance with the **Contract**. The provision of **Services** during the execution of such **Services** creates no contractual relationships between the **Consultant** and the **third party Consultant** and the **Consultant** shall have no liability to the **third party Consultant** in any way arising out of such **Services**.

18 Services to be carried out by PCM

- (a) If the **Contract** provides that **PCM** shall execute any work or provide any materials, facilities, or services that are necessary to facilitate execution and completion of the **Services** by the **Consultant** then such work, materials, facilities or services shall be
- (i) Executed or provided in accordance with the **Contract**;
 - (ii) Compatible with the proper execution and completion of the **Services** by the **Consultant**;
and
 - (iii) Executed and provided at times specified in the **Contract**, or where not so stipulated, then on dates to be mutually agreed between **PCM** and the **Consultant**.
- (b) **PCM** shall provide the **Consultant** with all **Technical Information** in terms of the **Contract** and in accordance with an agreed program to enable the **Consultant** to execute and complete the **Services** at the times specified in the **Contract**, or where not so stipulated, then on dates to be mutually agreed between **PCM** and the **Consultant**. All **Technical Information** shall be and remain the property of **PCM** and shall be returned on demand. The provisions of clause 9 hereof shall apply to the **Technical Information**.
- (c) **PCM** may at its own cost engage other consultants and/ or specialists as may be necessary for the proper completion of the **Contract**. The **Consultant** shall co-operate with such consultants/ specialists but shall not be responsible for them or their performance.

DOCUMENTATION

19 Documentation for Approval

- (a) During the execution of the **Services** and at the times stated in the **Contract Program** the **Consultant** shall submit any **Documentation** in the form and quantity specified in the **Contract** to **PCM** for **Approval**.
- (i) 10 (ten) days after the date of receipt of any such **Documentation**, **PCM** shall signify its **Approval** thereof or the modifications required thereto. The **Consultant** shall without any delay incorporate the modifications in the relevant documentation and re-submit the relevant documentation to **PCM** for approval.
 - (ii) The **Approval** of **Documentation** by **PCM** shall not relieve the **Consultant** of its responsibility for design, design competence, detail and dimension and shall in no way exonerate it from its liability in accordance with the terms of the **Contract**.
 - (iii) All dimensions shown on **Drawings** supplied by the **Consultant** shall be considered correct although measurements by scale may differ there from.
 - (iv) All **Drawings** and calculations in respect of design and detailing shall bear the signature of a Professional Engineer on behalf of the **Consultant**.
- (b) **Method of Presentation of Documentation** The **Consultant**, in the form and manner detailed in the **Contract** shall present the **Documentation** referred to in this clause, to

PCM. All **Documentation** shall be in the English language and the S.I. System of Measurement shall be used.

- (c) **Schedule of Documentation** - The **Consultant** shall maintain an up to date schedule of all **Documentation** showing the status, as required by the **Specification** of all such **Documentation** that are to be submitted to **PCM**.
- (d) **Inspection of Documentation** **PCM** shall have the right at all reasonable times to inspect the **Documentation** at the premises of the **Consultant**.
- (e) **Ownership of Documents and Copyright**
- (i) The copyright and ownership of all **Technical Information** and **Documentation** collected and/ or prepared by the **Consultant** and paid for by **PCM** shall vest in **PCM** and become and remain the property of **PCM** in all respects within the definition of the particular assignment for which it were prepared and no additional fees shall become payable for their re-use thereon. The provisions of clause 9 hereof shall apply to all **Documentation**.
- (ii) In accordance with the relative clauses of the Copyright Act, Act no 12 of 1997 all documents and information provided by **PCM** to the **Consultant** in order to enable or assist the **Consultant** to carry out its duties, shall remain the exclusive property of **PCM** and copyright shall remain in **PCM** and shall not be used by the **Consultant** for any other purpose without the prior consent in **Writing** by **PCM**.
- (iii) In the event that copyright so ceded to **PCM** then the **Consultant** shall not be liable in any way for the use of any of the information other than as originally intended for the **Project** and **PCM** hereby indemnifies the **Consultant** against any claim which may be made against it by any **third party** arising from the use of such **Documentation** for other purposes.
- (f) **Documentation to become PCM's property**
- (i) **PCM** shall have the right to use all **Documentation** supplied by the **Consultant** in terms of the **Contract** for whatever purpose **PCM** may deem it necessary such as modernisation and renewals, maintenance of plant including repairs, replacements and to obtain competitive tenders for its Works.
- (ii) **PCM** shall furthermore be entitled to issue **Drawings** supplied by the **Consultant** to **third parties** where an interface is required between existing and/or new plant.

20 Intellectual Property Rights

- (a) The **Consultant** indemnifies and shall keep **PCM** indemnified against all losses and costs, including legal costs as between attorney and client, and all other expenses whatsoever that **PCM** may incur as a result of any action, proceeding or claim made against **PCM** arising from the acquisition or use of a design constituting an infringement of patent rights, design registration, registered trade marks or other exclusive rights in respect thereof.

- (b) This indemnity shall extend to all losses, costs and expenses as aforesaid incurred by **PCM** in the event that such design, or any part thereof, become the subject of an interdict or other process of law depriving **PCM** of the benefit, use or possession thereof.
- (c) This indemnity shall not apply to any infringement which is due to the **Consultant** having followed in its entirety a design stipulated by **PCM** and which is not at the time of completion of the **Contract** known by the **Consultant** to be an infringement of patent or other exclusive rights, nor shall this indemnity apply to the use of such design in a foreign country not specified in the **Contract** or disclosed to the **Consultant**.
- (d) It is a condition of this indemnity that **PCM** shall give the **Consultant** prompt notice of any action, proceeding, claim or threat instituted or made against either or both of them. Promptly after the giving of such notice, the parties shall consult together about the subject of the notice and **PCM**, as applicable, may at its option decide to
- (i) Permit the **Consultant** at the **Consultant's** own expense to conduct any litigation that may ensue and all negotiations for a settlement of such litigation or claim with the proviso that the **Consultant** shall keep **PCM**, as applicable, informed of all steps that are taken and of the outcome; or
- (ii) Conduct any litigation that may ensue and all negotiations for a settlement in consultation with the **Consultant** with the proviso that the **Consultant** shall not be liable for costs incurred outside the normal course of litigation and of which the **Consultant** does not approve.
- (e) The **Consultant** hereby authorises **PCM** to reproduce all **Documentation** made available by it to **PCM** in connection with the **Contract**, unless such is classified as Confidential Information and to publish such reproductions. The indemnity given in terms of this clause applies to any action, proceeding or claim for copyright infringement by third parties in connection with such reproductions of their publication. In so far as the **Consultant** has any copyright protection in the items that are reproduced, the **Consultant** hereby grants a licence to **PCM** to reproduce and publish.
- (f) The **Consultant** shall keep **PCM** informed of any threats or claims made against it in respect of infringement of patent or other exclusive rights by virtue of provision of the **Services**.

SITES

21 Inspection of Site

The **Consultant** will be deemed to have visited the site of the **Project** to which the proposed **Services** shall apply and that it has satisfied it with the site conditions and circumstances affecting the **Services**.

COMMENCEMENT, DELAYS, DEFAULT AND SUSPENSION

22 Program

- (a) **PCM** and the **Consultant** shall prior to **Contract** award, based upon the milestone dates and other requirements specified by **PCM**, agree a “high level” **Contract Program** to meet the **Date for Completion**. Within 1 (one) week after **Contract** award the **Consultant** shall submit the **Contract Program** detailed to an agreed level for **PCM’s Approval**. Time shall be the essence of the **Contract**.
- (b) The **Consultant** shall in all instances work in accordance with the **Contract Program** and may not deviate therefrom without **PCM’s** consent in **Writing**. The **Contract Program** shall be used for
- (i) verification of actual progress of contract execution and
 - (ii) the application of all contractual remedies.
- (c) The **Consultant** shall at such intervals as may be required furnish **PCM** in **Writing** with information on actual progress, with a minimum of a monthly report.
- (d) If, at any time, **PCM** gives notice to the **Consultant** that actual progress is inconsistent with the **Contract Program**, the **Consultant** shall submit a revised program and proposed remedial actions to be taken to meet the **Date for Completion**. **PCM** will within 7 (seven) days after receipt thereof approve or comment thereon.
- (e) The **Contract Program** shall not be deemed amended or revised unless the confirmation thereto has been given in **Writing** and **PCM** has issued a revised **Contract Program** to this effect.
- (f) Notwithstanding the above, should **Contract** execution not be in accordance with the **Contract Program**, the **Consultant** shall also submit a program for the actual execution of the **Services** for verification purposes. This program shall however not replace the **Contract Program**.

23 Default

- (a) If the **Consultant** commits a breach of any provision of this **Contract** with regard to the **Services**, all of which are deemed to be material, then **PCM** may call in **Writing** on the **Consultant** to remedy the breach pursuant to subclause (b) hereunder.
- (b) Should the **Consultant** fail to remedy the breach and/ or fail to take positive steps acceptable to **PCM** to remedy the breach complained of within 7 (seven) days from the date of notification calling for the remedy of the complaint, **PCM** shall without prejudice to

any of its rights under common law and particularly its rights under the **Contract** be at liberty to

- (i) Employ other workmen and forthwith perform such **Services** as may be required to remedy the breach and/ or;
 - (ii) Take possession and control of the **Services**, whether in whole or in part, with any other person or provide any other labour for the purpose of completing the **Services** or any part thereof and/ or;
 - (iii) Terminate the **Contract** with immediate effect on **Written** notice to the **Consultant**.
- (c) **PCM** shall have the free use of all the completed **Services** that may be on the **Site** for use at any time in connection with the **Services**, to the exclusion of any right of the **Consultant** over the same. **PCM** shall be entitled to retain and apply any balance which may be otherwise due on the **Contract** by it to the **Consultant**, or such part thereof as may be necessary for the payment of the cost of executing such **Services** as aforesaid.
- (d) **PCM** shall not be answerable for any loss of or damage to any **Documentation** so used either by way of the same being lost, stolen, damaged or destroyed by fire, flood, tempest or the free use by **PCM**, its consultants, Consultants or agents or for any other loss or damage that may be sustained in consequence of **PCM's** action in taking the **Services**, or any part thereof out of the **Consultant's** hands.
- (e) If the cost of executing the **Services** as aforesaid exceeds the balance due to the **Consultant** and the **Consultant** fails to make good the deficit, then **PCM** shall have the right to enforce its rights in terms of the **Contract**.
- (f) **PCM** shall in the event of any litigation to enforce its rights in terms of the **Contract** be entitled to recover from the **Consultant** all legal expenses on an attorney-client basis.

24 Insolvency of Consultant

If the **Consultant** become insolvent or proposes any assignment to its creditors for settlement of its debts, or makes or offers to make any assignment with any of its creditors for releasing it wholly or partly from its debts, or if execution is issued against it by virtue of any judgement, or if it commits any act of insolvency, or being a legal entity is placed under judicial management, or commences to be wound up not being merely a voluntary liquidation for the purpose of reconstruction (all of which are deemed to be events of breach) then, **PCM** may give notice in **Writing** to the **Consultant** to terminate the **Contract**. **PCM** shall thereupon be at liberty to proceed with the **Services** as provided for in the **Contract** as if the notice period of 7 (seven) days to be given thereunder had been given and the period to elapse thereunder before the **Services** can be taken out of the **Consultant's** hands had expired.

25 Extension of Time

- (a) Should the completion of the **Services** be delayed resulting from the inability of **PCM** to fulfil any of its material obligations under the **Contract** (other than under a force majeure situation) or from a delay directly attributable to a Consultant engaged by **PCM** for work related to the **Services** then the **Consultant** shall, within 48 hours (forty eight hours) of the occurrence of such supposed delay give notice thereof in **Writing** and of its claim for an extension of time and cost.
- (b) Such claims for variation in the **Contract Price** submitted by the **Consultant within 7 (Seven) days of the occurrence thereof** and shall detail the circumstances and facts covering the claim with substantiating information and details of the **Services** relevant to each claim, provisions of the **Contract** upon which the claim relies, length of the extension of time and basis of measuring it and the amount of money claimed with its basis of calculation.
- (c) The **Consultant** shall not be entitled to any such extension of the **Date for Completion** unless notice of its intention to apply for such extension is received within 48 hours (forty eight hours) after the occurrences of an event of supposed delay.

26 Force Majeure

- (a) Upon becoming aware of circumstances giving rise to a breach or likely breach of its obligations because of a force majeure event the **Party** so affected shall forthwith give notice to the other thereof, providing details of the circumstances and the period they are likely to cause the breach to last. Upon such notice having been given the performance of such **Party's** obligations shall be suspended during the period that the said circumstances persist and such **Party** shall be granted an extension of time for performance equal to the period of delay.
- (b) Should a **Party** be unable to fulfil a material part of its obligations under the **Contract** for a period in excess of 30 (thirty) days due to the force majeure event, as contemplated in subclause (a), then either **Party** shall, in its sole discretion have the right to cancel the **Contract**.
- (c) Neither **PCM** nor the **Consultant** shall have any claim of any nature whatsoever against the other for any delayed performance or failure to carry out any of its obligations under the **Contract** as a result of a force majeure event.

MODIFICATIONS, PENALTIES AND LIMITATION OF LIABILITY

27 Modification of Contract

- (a) **PCM** may from time to time, by notice in **Writing** require the **Consultant** to alter, amend, omit, add to, suspend, postpone or vary the order of execution of the **Services** or any part thereof as in its opinion may be necessary and may reasonably vary any portion of the **Services** without invalidating the **Contract**.
- (b) The **Consultant** shall carry out such modifications and be bound by the same conditions, as far as applicable, as though the said modifications occurred in the **Contract**.
- (c) If such modifications would, in the opinion of the **Consultant**, if carried out involve a claim for additional payment or extension of time or prevent it from fulfilling any of its obligations or guarantees under the **Contract**, it shall, before proceeding therewith, notify **PCM** of the quantified effect thereof in **Writing** within 7 (seven) days after receiving the notice.
- (d) Where required by **PCM**, the **Consultant** shall quote a price for any such modifications and, failing agreement between **PCM** and the **Consultant** as to the price, the value of such modifications shall be determined in accordance with the rates (if any) specified in the **Contract** as far as the same may be applicable.
- (e) In default of any applicable rates, the value of such modifications shall be deemed to be the reasonable cost of wages and materials in carrying out the same plus such addition as shall be reasonable under the circumstances to cover supervision and other expenses and a profit not exceeding 10% (ten per cent) on such cost of wages and materials as aforesaid.
- (f) **PCM** shall then decide forthwith whether or not the modification shall be carried out and, if **PCM** confirms its instructions in **Writing**, the **Consultant's** obligations and guarantees shall be modified to such an extent as may be agreed upon in **Writing** between **PCM** and the **Consultant**.
- (g) Resolutions of a purely technical nature not affecting the **Contract Price** and/ or contractual **Dates for Completion** and/ or other conditions contained in the **Contract** taken at meetings between the **Parties** and reflected in the minutes of meetings shall be binding on the **Parties**.
- (h) Resolutions taken at meetings between **PCM** and the **Consultant** that would affect the **Contract Price** and/ or **Date/s for Completion** and/or other conditions of the **Contract**, shall become binding on the **Parties** to the **Contract** only after the **Consultant** has notified **PCM** in **Writing** of the changes which would be involved and obtained **PCM's** official **Approval** thereto.
- (i) All risk and expense of proceeding with any modifications without a valid **Contract** modification shall be for the **Consultant's** account.

28 Penalties

- (a) Should the **Consultant** fail to meet the **Date for Completion** the **Consultant** shall compensate **PCM** by 3% (Three per cent) of the total **Contract Price** for each week from the **Date for Completion** to the actual date of completion up to an amount not exceeding 15% (fifteen per cent) of the total **Contract Price**. This penalty shall only apply in instances where the **Consultant** failed to meet the **Date for Completion** and to no other forms of default. However, **PCM** may elect in its sole discretion whether it wishes to invoke this penalty or claim damages for breach.
- (b) The compensation payable by the **Consultant** shall be reduced to such an extent as is deemed just and equitable having regard to the degree in which **PCM** or any other **third party** was at fault in relation to the loss or damage. The liability of the **Parties** is not jointly and each **Party** shall only be liable for that portion of the compensation that is attributable to its fault.
- (c) Notwithstanding the above **PCM** shall have the right to claim damages which may be suffered as a result of any breach of this **Contract** provided that under no circumstances shall consequential damages be claimed and such rights to consequential damages are hereby expressly waived.

29 Limitation of Liability

- (a) Neither **PCM** nor the **Consultant** shall be liable or responsible to each other for any indirect, consequential, incidental or contingent damages, including but not limited to such loss of profit or loss of production arising out of a breach of this **Contract** or negligence on its/ their part.
- (b) The maximum amount of compensation payable by the **Consultant** in respect of liability under the **Contract** shall be limited as stipulated in the Specific Provisions or, where no such an amount is stated, to an amount equal to twice the amount of fees payable to the **Consultant** under the **Contract**, excluding reimbursements and expenses.

30 Liability for Defects

- (a) If **PCM** should

-
- (i) Decide that any of the **Services** provided by the **Consultant** are defective or not in accordance with the **Contract** or do not fulfil the requirements of the **Contract** (all such matters being hereinafter called “defects”) ; and
- (ii) As soon as reasonably practicable has given notice to the **Consultant** in **Writing** of such decision giving particulars of the defects and the date by which **PCM** requires the defects to be remedied; then the **Consultant** shall, by not later than the date stipulated in the said notice, make good the defects so specified.
- (b) The cost of making good such defects shall be for the account of the **Consultant** where
- (i) Such defects are due to negligence or failure of the **Consultant** to exercise good faith or the standard of care which would normally be exercised by duly qualified persons engaged in the business of the **Consultant**; or
- (ii) Are of a kind specified in the **Contract** to be made good at the **Consultant’s** expense.
- (c) If the **Consultant** should neglect or refuse to make good any defect to be made good at its cost in terms of subclause (b) hereof within the period allowed by **PCM** then the **Consultant** shall reimburse **PCM** for all costs incurred in rectifying such defects.

FINANCIAL

31 Contract Price

The **Consultant** acknowledges that it has satisfied itself as to all the stipulations, conditions and circumstances affecting the **Contract Price** for the execution of the **Services** as shown and described in the **Contract** and as to the general circumstances of the site where the **Project** is to be executed. The **Consultant** further acknowledges that it has fixed its prices according to the aforesaid stipulations, conditions, circumstances and executing possibilities and that it is not entitled to any additional allowance beyond the **Contract Price**, except as otherwise expressly provided for in the **Contract**.

32 Deductions from Contract Price

All costs, damages, compensation or expenses which **PCM** may have a claim to or may have paid, for which the **Consultant** is liable under the **Contract**, may be deducted by **PCM** (and it is hereby irrevocably and in rem suam authorised to do so) from any monies due or becoming due by it to the **Consultant** under the **Contract**, and/or may be recovered by action of law or otherwise from the

Consultant

33 Payments not to affect Rights of PCM or Consultant

No sum paid by **PCM** nor any extension of time for completion of the **Services** granted by **PCM** shall affect or prejudice the rights of **PCM** against the **Consultant**, or relieve the **Consultant** of its obligations for the due fulfilment of the **Contract**, or be interpreted as **Approval** of the work executed. No payment shall create liability on **PCM** to pay for alterations, amendments or variations, or additional work not ordered in **Writing** by **PCM**, or discharge the liability of the **Consultant** for the payment of damages, whether due, ascertained or liquidated or not, or of any sum against the payment of which he is bound to indemnify **PCM**. Neither shall any such payment or the acceptance by the **Consultant** of any sum paid affect or prejudice the rights of the **Consultant** against **PCM**.

34 Terms of Payment

- (a) **PCM** shall pay the **Contract Price** to the **Consultant**, together with such additions thereto and subject to such deductions there from as are herein provided, in accordance with the provisions set out elsewhere in the **Contract** or, where no such provisions are set out, in accordance with the provisions contained in subclauses (b), (c) and (d) hereof.
- (b) The **Consultant** shall, by not later than the 25th day of the month, submit to **PCM** invoices in duplicate in respect of **Services** carried out during the previous month. Such invoices shall indicate the Contract number, total amount claimed to date, value of previous claims, retention (if any), net amount payable and such VAT as may be applicable.
- (c) Subject to the deduction of any costs, damages and/or expenses for which the **Consultant** may be liable to pay **PCM** in terms of the **Contract**, and provided acceptable and correct invoices are received by **PCM** payment will be effected within 30 (thirty) days after approval of invoices.
- (d) In the event that a defect in the **Services** becomes apparent at the time at which payment of any instalment of retention money becomes due, **PCM** may retain the whole of such instalment, or a sufficient portion thereof to cover the estimated cost of making good the said defect, provided that any sum retained by **PCM** in terms hereof shall be paid to the **Consultant** upon the said defect being made good by the **Consultant**.
- (e) All reimbursable expenses provided for in the **Contract** and properly incurred by the **Consultant** in connection with the **Services** shall be reimbursed on a monthly basis as an additional charge unless specifically incorporated in the fees and expenses listed in the **Contract**.
- (f) The **Consultant** is not entitled to any payment in respect of the **Contract** until payment, if any, is due to it in terms of the **Contract**.

MISCELLANEOUS LEGAL PROVISIONS

35 Whole Agreement

This **Contract** constitutes the whole agreement between **PCM** and the **Consultant** as to the subject matter hereof and no agreements, representations or warranties, other than those set out herein, are binding on the **Parties**.

36 Validity

If any provision of this **Contract** is found or held to be invalid or unenforceable, the validity of all the other provisions hereof will not be affected thereby and the **Parties** agree to meet and review the matter and, if any valid and enforceable means is reasonably available to achieve the same objective as the invalid or unenforceable provision, to adopt such means by way of variation of this **Contract**.

37 Waiver of Rights

No waiver on the part of any **Party** or any rights arising from a breach of any provision of this **Contract** will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

38 Severability

In the event that any of the terms of this **Contract** is found to be invalid, unlawful or unenforceable, such term(s) will be severable from the remaining terms, which will continue to be valid and enforceable.

39 Authority

Each person signing this **Agreement** for and on behalf of a **Party** hereto hereby warrants in his personal capacity that he is duly authorized by such a **Party** to do so.

SECTION B – SCOPE OF WORK

1. Breakdown of the scope of work set out in this contract

Reference to tender documents/quote Reference number:

It's noted that each quotation provided by _____ for approval will cover its own scope of work.

Each approved quotation will comply with these contract conditions of contract