

AlcoNCP (PTY) LIMITED GENERAL TERMS AND CONDITIONS FOR CONSTRUCTION SERVICES

1. DEFINITIONS AND PRECEDENCE

1.1 Definition of Terms

In interpreting this Contract the following words shall have the meanings herein assigned to them unless there is something in the subject matter or context inconsistent with such construction.

- 1.1.1 "AlcoNCP" shall mean AlcoNCP (Pty) Limited of 121 Sea Cow Lake Road, Springfield Park, Durban, and its successors in title and assigns.
- 1.1.2 "Contractor" shall mean the other party named in the Contract and shall include Contractor's employees, Sub-contractors as well as both Contractor's and Sub-contractor's successors in title and assigns.
- 1.1.3 The "Engineer" shall mean the Manager for the time being of AlcoNCP, or some other person employed by AlcoNCP and appointed by the said Manager, or by AlcoNCP, and notified to Contractor.
- 1.1.4 "Material" shall mean and include all articles, consumables and things of all kinds to be supplied by Contractor in terms of the Contract for incorporation into the Works.
- 1.1.5 "Equipment" shall mean and include all structures, machinery, apparatus, piping, articles and things of all kinds upon, or about which Contractor is required to perform the Services detailed in the Contract.
- 1.1.6 "Services" shall mean and include all activities to be performed by Contractor in terms of any Instruction on or about the Equipment.
- 1.1.7 The "Works" shall mean and include all Material to be supplied and all Services to be provided by Contractor under the relevant Instruction.
- 1.1.8 The "Site" shall mean AlcoNCP's Ethanol Plant where the Instructions shall be undertaken by Contractor.
- 1.1.9 The "Contract" shall mean the agreement between AlcoNCP and Contractor for the execution of Contractor's obligations in respect of all Instructions.

- 1.1.10 The "Contract Date" shall mean the date agreed between the Engineer and Contractor for the commencement of Contractor's obligations in respect of all Instructions.
- 1.1.11 "Instruction" shall mean any written order, request or directive issued or given by the Engineer to Contractor with respect to work to be undertaken by Contractor and all such Instructions and any standards, specifications or codes of practice referred to in any such Instruction shall be deemed to form part of the Contract.
- 1.1.12 The "Instruction Price" shall mean the sum named in or ascertainable in terms of the relevant Instruction as read with the Contract as the price to be paid in respect thereof, subject to such additions to or deductions from such sum as may be made under the provisions contained in the Contract but excluding value added tax.
- 1.1.13 "Sub-contract" shall mean any agreement, made with the prior written consent of the Engineer, between Contractor and a Sub-contractor, or between two Sub-contractors, in terms of which any part of the Works is sub-let, and "Sub-contractor" shall be interpreted accordingly.
- 1.1.14 "Documentation" shall mean and include all drawings and other pertinent documents which are to be supplied to the Engineer by Contractor in terms of the Contract and any Instruction, together with all modifications to such documents.
- 1.1.15 "Completion of the Works" shall mean that Contractor has provided all Material and Services and has done all things as provided for in the relevant Instruction, other than carrying out its obligations in terms of clause 29.0 hereof, and "Complete the Works" and "Works Completed" shall be interpreted accordingly.
- 1.1.16 "Take-over" shall mean acceptance of the Works from Contractor by AlcoNCP after Completion of the Works relevant to any Instruction has been achieved by Contractor in terms of such Instruction and "Taken-over" and "Taking-over" shall be interpreted accordingly.
- 1.1.17 "Construction Equipment" shall mean and include things of all kinds brought onto the Site by Contractor for the execution of the Works but not for incorporation therein.
- 1.1.18 "Variation" shall mean any alteration in relation to the Contract and/or any Instruction agreed in writing between Contractor and AlcoNCP, and "Vary" shall be interpreted accordingly.

1.2 Precedence

The various sections forming the Contract shall be comparatively interpreted in accordance with the following order of precedence.

1.2.1 Any Special Conditions of Contract contained in Section B of the Contract.

1.2.2 Instructions issued.

1.2.3 The rates contained in Section C of the Contract

1.2.4 These General Conditions of Contract.

Should any ambiguity, contradiction or error occur between such sections of the Contract, Contractor shall advise the Engineer in writing and request a ruling thereon. Any work performed by Contractor prior to clarification by the Engineer shall be at Contractor's risk.

2. CONTRACTOR TO INFORM ITSELF FULLY

- a. Contractor shall be deemed to have examined the Site and to have included in the relevant Instruction Price for all things necessary to enable it to carry out its obligations in terms of the Contract and/or any Instruction to the reasonable satisfaction of the Engineer, including any special provisions necessary to gain safe access to the Site or any portion thereof for all Material and Construction Equipment.

3. DOCUMENTATION

- a. Contractor shall supply to the Engineer any Documentation which is stipulated in the Contract and/or any Instruction as being required by AlcoNCP. Such Documentation shall be supplied to the Engineer by Contractor at the time or times and in the form and manner detailed in the Instruction, or, if not so detailed, then in accordance with the requirements of the Engineer. Where it is stipulated in any Instruction that any such Documentation is subject to the Engineer's approval, then Contractor shall not proceed with the work to which such Documentation relates until such approval has been received in writing from the Engineer. All Documentation shall be in the English language and S.I. system of measurement. All Documentation shall become and remain the property of AlcoNCP. Any review by the Engineer of any Documentation shall not relieve Contractor from any of its obligations in terms of the Contract and/or any Instruction and Contractor shall remain responsible for any discrepancies, errors, or omissions in any of the Documentation and the effect thereof on the Works.

4. CESSION, ASSIGNMENT AND SUB-LETTING OF THE CONTRACT

- a. Contractor shall not, without the consent in writing of AlcoNCP, cede or assign the Contract or any part thereof, or enter into any Sub-contract other than for the supply or execution of minor items or for any part of the Works in respect of which a Sub-contractor is named in the Contract. Any such consent shall not release Contractor from its obligations under the Contract. Contractor shall forward to the Engineer four unpriced copies of any Sub-contract immediately on the award thereof. AlcoNCP Contract number shall be quoted on all such copies.

5. PATENT RIGHTS

- a. Contractor hereby indemnifies AlcoNCP against all actions, claims, demands, costs, charges and expenses arising from and against all loss or damage suffered or incurred by reason of any infringement or alleged infringement of letters patent, registered designs, trade marks or copyright protected in the Republic of South Africa or by reason of any infringement or alleged infringement of any other rights of third parties, resulting from the use by Contractor in the execution of the Contract of any Construction Equipment, and/or of any Material or procedure in the Works. The rights and obligations contained herein shall survive the Contract and shall continue in full force and effect for a period of ten years from the date of Take-over or of termination of the Contract.

6. SECRECY AND USAGE

- a. AlcoNCP and Contractor shall keep and hold secret and confidential all information, whether written or oral, received or otherwise obtained by either party in connection with the Works or the business of the other, and shall not use or disclose the said information other than for the purposes of the Contract, provided that AlcoNCP shall be entitled to use the Documentation for the subsequent maintenance, repair, development, modification or improvement of the Works. These provisions shall not apply to information which is already known to the recipient or which the recipient obtains with free right of disposal thereof, or which is or becomes public knowledge. The rights and obligations contained herein shall survive the Contract and shall continue in full force and effect for a period of ten years from the date of Take-over of the final Instruction or of termination of the Contract.

7. MANNER OF EXECUTION

- a. Contractor shall execute the Works in the manner set out in the Contract or the relevant Instruction, or, where not so set out, to the reasonable satisfaction of the Engineer and, wherever possible, in conformity with the Occupational Health and Safety Act 1993 (as amended) and the regulations framed thereunder.

8. CONSTRUCTION EQUIPMENT AND FACILITIES

8.1 Construction Equipment and Facilities to be Supplied by Contractor

Contractor shall supply all Construction Equipment and facilities (except as provided in clause 8.2 hereof) necessary for it to fulfil its obligations in terms of any Instruction, including all necessary Site workshops, stores, offices, latrines, washing facilities, tools, tackle, vehicles and telephones. Such Construction Equipment and facilities shall be erected and operated in a safe and satisfactory manner and to the Engineer's approval.

8.2 Facilities to be Supplied by ALCONCP

ALCONCP will provide supplies of electricity and water at a voltage specified in the Contract and at a suitable pressure respectively, and Contractor shall have the free use of such supplies for the purposes of the Contract. Contractor shall make the connections to the points of supply, as applicable.

9. VARIATIONS

- b. The Engineer may, from time to time during the execution of the Contract, by notice in
- c. writing direct Contractor to Vary the Works, and Contractor shall carry out such Variations and be bound by the same conditions, so far as applicable, as though the said Variations were stated in the Contract, provided that, if any such direction affects or is likely to affect the Contract Price and/or Contractor's obligations in terms of the Contract, then such direction shall not be binding on Contractor unless and until Contractor and the Engineer shall have agreed upon a suitable amendment to the Contract. Contractor shall not alter, amend or modify any part of the Works, even at its own expense, without the prior approval of AlcoNCP.

10. CONTRACTOR'S DEFAULT

Should Contractor fail or neglect to carry out its obligations in terms of the Contract and/or any Instruction, or refuse or neglect to comply with any reasonable orders given to it in writing by the Engineer in connection with the Contract and/or any Instruction, or make a material breach of any of the provisions of the Contract

and/or any Instruction, the Engineer may give notice in writing to Contractor to make good the failure, neglect, refusal or breach complained of. Should Contractor fail to comply with the notice or to justify its actions within a reasonable time, ALCONCP shall have the right to terminate the Contract forthwith by giving written notice to Contractor, and upon such termination the provisions of clause 12.0 hereof shall become effective.

11. JUDICIAL MANAGEMENT/INSOLVENCY

Should Contractor become insolvent or commit an act of insolvency or pass a resolution for winding up, (not being a members' voluntary winding up for the purpose of reconstruction or amalgamation), or be subject to a winding-up or provisional or final liquidation order of Court, or be placed under provisional or final judicial management, then AlconCP may, at its option, terminate the Contract forthwith by notice in writing to Contractor or to the liquidator or judicial manager or to any person in whom the Contract may become vested, whereupon the provisions of clause 12.0 hereof shall become effective.

12. TERMINATION

12.1 Effect of Termination under clauses 10.0 or 11.0

In the event of termination of the Contract by virtue of the provisions of clauses 10.0 or 11.0 hereof, Contractor shall be liable for any amount by which the costs and expenses incurred by AlconCP in completing any Instruction exceeds the amount which AlconCP would have paid to Contractor to complete such Instruction. Any such excess amount shall be set off against all sums of money due and payable by AlconCP to Contractor for all expenditure and liabilities properly incurred by Contractor prior to termination.

12.2 Termination by ALCONCP

AlconCP shall have the right at any time to terminate the Contract, on 14 (fourteen) written days notice to Contractor, but if such termination shall not be caused by one of the grounds specified in clauses 10.0, 11.0 or 38.0 hereof, AlconCP shall pay to Contractor all such amounts as may be due to

Contractor in terms of any Instruction with respect to work completed by Contractor up to such date of termination. Contractor shall not be entitled to any further or other payment.

12.3 Arbitration

If any dispute shall arise between AlconCP and Contractor in connection with or as a result of termination in terms of clauses 12.1 or 12.2 hereof, such dispute shall be referred to arbitration in terms of clause 33.0 hereof.

12.4 Continuity Of Work

Contractor acknowledges and agrees that the nature of the work to be undertaken by Contractor in terms of the Contract is of an ad hoc, maintenance-type, and accordingly its Services shall be utilised by AlcoNCP as and when required by AlcoNCP and at its discretion.

13. INSPECTION, TESTING AND REJECTION

The Engineer shall be entitled, at AlcoNCP's cost, to inspect, examine and test on Contractor's or other premises Materials to be supplied in terms of the Contract and/or any Instruction, and if any Material is being manufactured on other premises, Contractor shall obtain for the Engineer permission to inspect, examine and test as if such Material was being manufactured on Contractor's premises. Such inspection, examination or testing, if made, shall be in addition to any inspection, examination or testing to be carried out by Contractor in terms of the Contract, and shall not release Contractor from any obligation under the Contract nor be interpreted to imply that such Material is free of any patent or latent defects. If after inspecting, examining or testing Material, the Engineer decides that such Material is defective or not in accordance with the Contract, he may reject such Material by giving to Contractor notice in writing of such rejection, stating therein the grounds upon which the said decision is based.

14. ACCESS TO AND POSSESSION OF THE SITE

AlcoNCP shall afford Contractor access to and possession of the Site in reasonable time. Contractor shall afford to AlcoNCP and to other contractors working on the Site every reasonable facility for the execution of work concurrently with its own. No persons other than Contractor and its employees shall be allowed on the Site, except with the written permission of the Engineer, but facilities to inspect the Works at all times shall be afforded to the Engineer.

15. OWNERSHIP OF MATERIAL

Material shall become the property of AlcoNCP when same is delivered to Site provided that ownership in any surplus Material shall revert to Contractor upon Contractor removing such Material from Site with the prior written approval of the Engineer.

16. SETTING OUT

Contractor shall, wherever applicable, be responsible for ensuring that the positions, levels and dimensions of the Works are correct according to any

Instruction and/or the Documentation, notwithstanding any assistance it may have received from the Engineer in determining same.

17. ENGINEER'S SUPERVISION

All Instructions shall be given by the Engineer, provided that the Engineer may delegate any of the powers, discretions, functions and authorities vested in him.

18. CONTRACTOR'S REPRESENTATIVES AND WORKMEN

- a. Contractor shall employ a competent representative on Site to superintend the carrying out of Contractor's obligations in terms of any Instruction. The Engineer may, by notice in writing to Contractor, object to any person employed by Contractor in the execution of the work relative to the Contract who shall be unsuitable, and Contractor shall immediately cease to utilise such person in connection with the Contract and shall, if applicable, immediately remove such person from the Site. It shall not be incumbent on the Engineer to give reasons why such person should be removed from the Site.

19. LIABILITY FOR ACCIDENTS AND DAMAGE

- 19.1 All losses of and damage to the Works prior to Take-over shall be made good by Contractor to the satisfaction of the Engineer, and at Contractor's cost to the extent that such cost is not recoverable in terms of clause 21.0 hereof or unless Contractor is indemnified against such loss or damage in terms of clause 23.0 hereof, or otherwise at AlcoNCP cost.

After Take-over and whilst Contractor is on Site for the purpose of making good any defects in terms of clause 29.0 hereof, it shall be responsible on the same basis for the costs of any loss of or damage to the Works but only where such loss or damage arises out of the performance by or on behalf of Contractor in carrying out its obligations in terms of the said clause 29.0. Notwithstanding the a foregoing and notwithstanding the provisions of clause 15.0 hereof, the risk of loss of or damage to Material prior to incorporation thereof into the Works, shall remain with Contractor until Take-over, or, in respect of surplus Material, until same is removed from Site.

- 19.2 For the purposes of this clause only, the word "Contractor" shall be deemed to refer to Contractor only and shall not include Sub-contractors. Contractor hereby indemnifies AlcoNCP against any injury, death, disease, or illness to any person and any damage to or loss of any property (other than the Equipment and all property forming part of the Works and which has not been Taken-over) and against all actions, suits, claims, demands,

costs, charges and expenses arising in connection therewith, which shall be occasioned by any negligence on the part of Contractor, its agents, employees and Sub-contractors and their agents and employees in the execution of the Contract and/or any Instruction or by any defect in the Works. The provisions of this clause 19.2 shall survive the Contract.

- 19.3 Notwithstanding the provisions of clause 19.2 hereof, should any loss of or damage to the Equipment occur which is occasioned by Contractor's negligence, then Contractor's liability in respect of such loss or damage shall be determined in accordance with any relevant provisions contained in the Contract, or, failing any such provisions, then such liability shall be limited to any amount for which Contractor is required, in terms of the Contract, to insure the Equipment in accordance with the provisions of clause 19.4 hereof, or, where Contractor is not so required to insure the Equipment, then Contractor shall not be liable for any such loss or damage except as provided in terms of clauses 21.2 and 21.3 hereof.
- 19.4 The insurance which Contractor may be required to effect in terms of clause 19.3 hereof shall be effected with an insurer and in terms approved by the Engineer, and in the joint names of AlcoNCP and Contractor, or alternatively in the name of Contractor only but then containing an endorsement signifying a waiver of recourse against AlcoNCP in respect of the full amount of any claim. The costs of the said insurance and, if applicable, the said endorsement, are deemed included in the Contract Price. Contractor shall, prior to commencing work on Site, supply to the Engineer for approval a certified copy of the said policy and, if applicable, the said endorsement, and the receipt/s for payment of the current premium/s.

20. THIRD PARTY INSURANCE

Contractor shall, without limiting its liability under clause 19.2 hereof, insure, so far as may be possible for the duration of the Contract, against any liability on the part of Contractor in terms of the said clause 19.2. The said insurance shall be effected with an insurer and in terms approved by the Engineer and for such sum or sums as Contractor deems appropriate, but in any event for not less than R5 000 000,00 (Five Million Rand) in respect of any one accident. Contractor shall effect the aforesaid insurance either in the joint names of AlcoNCP (or by reference to Contractor's employers, principals, etc.) and Contractor, or alternatively in the name of Contractor only, provided then, in the latter case, that such insurance policy shall contain an endorsement thereto signifying a waiver of recourse against AlcoNCP and its designated representatives in respect of any one claim up to a maximum of R5 000 000,00 (Five Million Rand). The costs of the said insurance and, if applicable, the said endorsement, are deemed included in the relevant Instruction Price. Contractor shall, within 14 (fourteen) days of the Engineer's request therefor, supply to the Engineer for approval a certified copy of the said policy, and, if applicable, the said endorsement, and the receipt/s for payment of the current premium/s.

21. INSURANCE OF THE WORKS

21.1 Insurance by ALCONCP

AlcoNCP will arrange and maintain construction insurance cover for the Works in the joint names of AlcoNCP , Contractor and Sub-contractors. The said insurance will cover the Works (but excluding unutilised Material) against loss or damage during the period of construction of the Works until Take-over, and during the defects period detailed in clause 29.0 hereof for loss of or damage to the Works (but excluding any unutilised Material) arising:

- (a) from cause occurring prior to Take-over and evidencing itself during the said defects period; or
- (b) out of the performance by or on behalf of Contractor in carrying out its obligations in terms of the said clause 29.0

AlcoNCP hereby indemnifies Contractor against that portion of any claim which is in excess of any limits of liability imposed in terms of the said insurance.

In the event of the occurrence of loss or damage referred to herein, the liability of Contractor in respect of the excesses and exclusions applicable to the said insurance shall be as defined in clauses 21.2 to 21.5 hereof.

21.2 Excesses

The following excesses shall apply to each and every claim under the insurance cover arranged in terms of clause 21.1 hereof. Should any loss of or damage to the Works occur which is covered in terms of clause 21.1 hereof and which is occasioned by Contractor's negligence, then Contractor shall be liable for payment of the relevant excess as detailed hereunder, including any portion thereof which is applicable to loss of or damage to the Equipment:

21.2.1 for loss or damage arising from subsidence, storm, wind, water (except sprinkler leakage), hail or snow, the excess shall be R100 000 (one hundred thousand rand);

21.2.2 for any other loss or damage, howsoever caused, the excess shall be R100 000 (one hundred thousand rand).

21.3 Exclusions

In respect of loss of or damage to the Works occurring prior to Take-over or as defined in paragraphs (a) or (b) of clause 21.1 hereof, Contractor shall remain liable for any such loss or damage which is detailed in clauses 21.4 and 21.5 hereof as being excluded in terms of the insurance cover detailed in clause 21.1 hereof.

21.4 Defective Material or Services

With regard to loss of or damage to the Works arising from any defective Material or Services, Contractor shall be responsible, in accordance with the provisions of clause 21.3 hereof, for the costs incurred in rectifying such loss or damage, but only insofar as such costs relate to the section of the Works which is immediately affected by such defective Material or Services, and not for the cost of making good any other loss of or damage to the Works resulting from such defective Material or Services.

21.5 Sundry Loss and Damage

Contractor shall be responsible, in accordance with the provisions of clause

21.3 hereof, for any of the following:

- 21.5.1 in respect of the Works, the cost of rectification or making good of wear and tear, wasting, wearing away or wearing out, gradual deterioration, rust, oxidation, gradual corrosion or erosion, or the direct consequences of any of them, where same is abnormal and/or which is caused by any defective Material or Services, but not if any of the foregoing are inherent in the construction of the Works and Contractor has advised the Engineer accordingly in writing on or before the Contract Date;
- 21.5.2 loss of or damage to any Construction Equipment;
- 21.5.3 loss of or damage to money or other negotiable instruments or securities belonging to Contractor or its employees or agents, or any personal effects belonging to Contractor's employees;
- 21.5.4 unexplained shortage of any Equipment which is in Contractor's care, custody and control, including shortage arising from inventory or stock-taking, but except where such shortage is caused by theft, or attempted theft, involving entry to or exit from any building or structure by forcible and violent means;
- 21.5.5 any penalties payable by Contractor.

21.6 Contractor's Responsibilities

21.6.1 Contractor shall:

21.6.1.1 verbally advise the Engineer of all damage to the Works within 1 (one) hour of the occurrence/discovery thereof, or, should this not be possible, then as soon as reasonably possible thereafter; such verbal advice shall be confirmed in writing to the Engineer;

21.6.1.2 assist insurance personnel in any investigation they may wish to carry out on behalf of AlcoNCP and render every possible assistance to the Engineer in the compilation, submission and finalisation of any insurance claims.

21.6.2 Should failure by Contractor to comply with the provisions of clause 21.6.1 hereof result in a claim being repudiated by AlcoNCP insurers, all costs of making good any loss of or damage to the Works arising in respect of such claim shall be for the account of Contractor.

22. STATUTORY AND OTHER LIABILITIES

22.1 AlcoNCP accepts no responsibility for the following matters, nor for any premium payable in respect thereof:

a) statutory liability on the part of Contractor in respect of Compensation for Occupational Injuries and Diseases and Unemployment Insurance;

b) outbreak of disease, or death of or injury to the employees and/or agents

c) and/or representatives of Contractor or any liability which Contractor may have to its employees and/or agents and/or representatives in respect of such outbreak of disease or death or injury;

d) loss of or damage to any personal effects or money or other negotiable instruments belonging to Contractor and/or its employees and/or representatives and/or agents;

e) loss of or damage to any Construction Equipment.

22.1 Contractor shall, in all matters arising in the performance of the Contract and/or any Instruction, ensure compliance with all legislation that shall be or become applicable to the Works, including all appointments in terms of the Occupational Health and Safety Act and AlcoNCP's 37.2 Agreement on Safety, Health and Environmental Issues. Contractor is to ensure adherence to the labour requirements as per regulations set out by the Department of Labour.

22.2 Contractors must ensure compliance with the ETI (Ethical Trade Initiative) base codes as founded on the conventions of the International Labour Organization (ILO) which is an internationally recognized code of labour practice.

23. CONTRACTOR'S LIABILITY

Contractor shall not be liable to AlcoNCP for:

- 23.1 any consequential loss suffered by AlcoNCP (such as but not limited to loss of production, profits or contracts) except as provided for in the Contract;
- 23.2 except as provided in the Contract or except as brought about by Contractor, any claim made against AlcoNCP;
- 23.3 any damage, loss or injury caused by or arising from the negligence of AlcoNCP or others (not being the Sub-contractors or servants of Contractor) unless any such negligence is occasioned by negligence on the part of Contractor;
- 23.4 any damage, loss or injury caused by or arising from information supplied by AlcoNCP;
- 23.5 the "war risks" and "nuclear" exclusions as contained in the policy of insurance referred to in clause 21.1.2 hereof.

24. PROGRAMME

Each Instruction issued in terms hereof shall contain a commencement and completion date and Contractor shall comply with such programme.

25. EXTENSION OF TIME FOR COMPLETION OF THE WORKS

If by reason of any cause beyond the reasonable control of Contractor, Contractor shall have been delayed or impeded in the Completion of any Instruction, whether such delay or impediment occurs before or after the time or extended time fixed for such Completion, provided that Contractor shall without delay have given to the Engineer notice in writing of its claim for an extension of time, the Engineer shall, on receipt of such notice, grant Contractor from time to time in writing either prospectively or retrospectively such extension of the time fixed by the Instruction for the Completion of the Works as may be reasonable, provided that prior to such extension of time being granted, Contractor and AlcoNCP shall examine and attempt all possible ways to make up any lost time.

26. NOT USED

27. COMPLETION OF THE WORKS

As soon as Completion of the Works has been achieved in accordance with the relevant Instruction, ALCONCP shall Take-over the Works in terms of clause 28.0 hereof.

28. TAKING-OVER

Such Taking-over shall not operate as an admission that the Works have been Completed in every respect, and the items detailed in any exception list generated by the Engineer shall be completed by Contractor with all possible speed. Taking-over shall be subject to Contractor having fulfilled its obligations under clause 3.0 hereof and having left the Site in a clean and tidy condition, with all rubbish, Construction Equipment and surplus Material cleared away from ALCONCP premises.

29. DEFECTS PERIOD

- 29.1 The defects period with respect to the relevant Instruction shall commence when the Works are Taken-over in terms of clause 28.0 hereof, and shall, subject to the provisions of clause 29.2 hereof, terminate 12 (twelve) months thereafter. Contractor shall be responsible for making good with all possible speed and at no cost to AlcoNCP any defect that may become apparent or develop in the Works during the defects period under proper use of the Works, and attributable to Contractor.
- 29.2 If Contractor repairs any portion of the Works in terms of clause 29.1 hereof, or in terms of this clause, the provisions of the whole of this clause 29.0 shall apply to such portion until the expiration of a period of 12 (twelve) months from the date of such repair.
- 29.3 If any defect contemplated in clauses 29.1 or 29.2 hereof be not remedied by Contractor within a reasonable time, the Engineer may proceed to remedy the defect at Contractor's risk and expense but without prejudice to any other rights which AlcoNCP may have against Contractor in respect of the failure of Contractor to carry out its obligations.

30. TERMS OF PAYMENT

Each Instruction Price will be paid by AlcoNCP to Contractor in accordance with the relevant provisions set out in the Contract or, where applicable, in the relevant Instruction. Should there be any delay on the part of Contractor in completing its obligations in terms of any Instruction, or should there be any defect in the Works, then AlcoNCP may withhold all or part of any payment to cover such delay or defect until Contractor has completed its obligations in terms of the Contract or rectified such defect. Contractor shall submit an invoice and any necessary substantiating documents to the Engineer in respect of each and every amount

which becomes due and payable to Contractor in terms of the Contract. Payment of each such amount will be made to Contractor by AlcoNCP within 30 (thirty) days of the date of receipt by the Engineer of an acceptable and correct invoice therefor.

31. ARBITRATION

Any question, dispute or difference arising between AlcoNCP and Contractor in connection with the Contract, and of which notice has been given, where required, by Contractor, shall be referred to the arbitration of a person to be agreed upon and in terms of the South African Arbitration Act (Act No. 42 of 1965) or any statutory modification or re-enactment thereof. Any such proceedings shall take place at an agreed venue in Durban, Republic of South Africa. Performance of the Contract shall continue during arbitration proceedings unless the Engineer shall order the suspension thereof or of any part thereof. No payments due or payable by ALCONCP shall be withheld on account of a pending reference to arbitration. The award of the arbitrator shall be final and binding on the parties.

32. CONSTRUCTION OF CONTRACT

The Contract shall in all respects be construed and operate as a South African Contract and in conformity with the law of the Republic of South Africa. The clause headings hereto shall not be used in interpreting the Contract.

33. PUBLICITY

No advertisement shall be displayed on the Site or elsewhere by Contractor in connection with the Works without the prior written consent of the Engineer. The taking of photographs of Equipment or the Works or any portion thereof and the introduction to or possession of cameras on the Site is expressly forbidden. No photographs, sketches, drawings, information, etc., regarding Equipment or the Works may be published in magazines or elsewhere without the prior written approval of the Engineer.

34. TAXES AND PERMITS

AlcoNCP shall not be responsible for any income or other taxes levied by the Government of the Republic of South Africa, other than value added tax, on Contractor and/or its employees and/or representatives and/or agents in respect of Contractor's obligations in terms of the Contract. AlcoNCP will obtain from the relevant authorities the necessary permission to erect and operate the Works. Contractor shall obtain from the relevant authorities and administer all other permits and licences which are necessary to enable Contractor to fulfil its obligations in terms of the Contract and/or any Instruction.

35. CONTRACT PRICE ADJUSTMENT

ALCONCP shall take no account of any increases in costs incurred by Contractor in performing its obligations in terms of any Instruction.

36. FORCE MAJEURE

If either party to the Contract is prevented from or delayed in performing any of its obligations under the Contract or any Instruction by force majeure, then it may notify the other party in writing of the circumstances constituting the force majeure and of the obligation performance of which is thereby delayed or prevented, and the party giving the notice shall thereupon be excused the performance or punctual performance, as the case may be, of such obligation/s from the date of such notification for so long as the circumstances of prevention or delay may continue, provided that, if either party shall be excused the performance or punctual performance of any obligation for a continuous period of 4 (four) months, then either party may at any time thereafter and provided such performance or punctual performance is still excused, by written notice to the other terminate the Contract. In the event of such termination, the provisions of clause 12.0 hereof shall not be applicable, but should any dispute arise in connection with or as a result of such termination, such dispute shall be referred to arbitration in terms of clause 33.0 hereof.

37. NOTICES, CORRESPONDENCE, INVOICES, STATEMENTS AND DELIVERIES

All notices required in terms of the Contract shall, unless amended by notice in writing from the relevant party, be addressed to Contractor at the address set out in the Contract and to ALCONCP at the following address:

AlcoNCP (Pty) Limited
P.O. BOX 2204
DURBAN
4000

All correspondence, invoices and monthly statements of account shall bear AlcoNCP Contract number and the number of the relevant Instruction and be in the English language. Delivery instructions for Material and Construction Equipment shall be in accordance with the relevant provisions contained in the Contract.

38. GUARANTEE OF THE WORKS

Without limiting or restraining the nature and scope of clause 29.0 hereof and without derogating from any guarantees contained in law, Contractor guarantees that the Works will be free from fault and defects and that they will serve the purpose for which they are devised, with all of which Contractor declares itself fully acquainted. Contractor confirms that all of the rates contained in Section C hereof and/or furnished in connection with any Instruction and any lump sum price agreed with respect to any Instruction, shall include for full compliance by Contractor with any and all standard AlcoNCP's Engineering Standards and Specifications, with all of which Contractor declares itself fully acquainted.

39. CLAIMS FOR EXTRA PAYMENT

AlcoNCP will not consider any claims for extra expense to which Contractor may consider itself entitled arising out of the Contract and/or any Instruction unless Contractor has notified AlcoNCP as soon as reasonably practicable of its intention to make such a claim and in any case within 7 (seven) days of the start of the circumstances on which the claim is based. Contractor shall submit to AlcoNCP at the end of each month full particulars of all such outstanding claims.

40. CONTRACTOR'S NON-COMPLIANCE WITH CONTRACT CONDITIONS

Should Contractor fail to comply with any of the conditions contained in this Contract or any Instruction, notwithstanding any other right which AlcoNCP might have either in terms of the Contract, or at law, AlcoNCP shall have the right to suspend all payments due to Contractor until such condition/s is/are fully complied with.

41. NO WAIVER OF RIGHTS

Any relaxation or indulgence afforded by either party to the other relative to any of the terms and conditions of the Contract shall not in any way prejudice such party's rights in terms thereof nor be construed as a waiver of same.

42. WHOLE CONTRACT

The Contract including all Instructions issued thereunder, constitute the entire agreement between the parties and both this clause and the Contract and such Instructions may be amended only by written agreement signed by both parties.