

ENQUIRY/CONTRACT

FOR PLANT AND DESIGN-BUILD

("FIDIC YELLOW BOOK")

PROJECT : [.....]

TITLE : [.....]

**ENQUIRY/
CONTRACT NUMBER** : [.....]

EMPLOYER : [.....]

CONTRACTOR : [.....]

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SECTION 1

SECTION 1: CONTRACT AGREEMENT

This Agreement made the _____ day of _____ 20_____

Between Diamond Trading Company Botswana (Proprietary) Limited of Plot 63016, Airport Road, Block 8, Gaborone, Botswana (hereinafter called "the Employer") of the one part, and
..... of
..... (hereinafter called "the Contractor") of the other part.

Whereas the Employer desires that the Works known as
..... should be executed by the Contractor, and has accepted a Tender by the Contractor for the execution and completion of these Works and the remedying of any defects therein.

The **Employer and the Contractor** agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract hereinafter referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement:
 - a. The Letter of Acceptance dated
 - b. The Letter of Tender dated
 - c. The Addenda Nos.....
 - d. The Conditions of Contract
 - e. The Specification
 - f. The Drawings
 - g. The Schedules and
 - h. The JV Undertaking. *

*[if the Contractor constitutes an unincorporated JV, otherwise delete]
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned, the Contractor hereby covenants with the Employer to execute and complete the Works and remedy any defects therein, in conformity with the provisions of the Contract.
4. The Employer hereby covenants to pay the Contractor, in consideration of execution and completion of Works and remedying of defects therein, the Contract Price at the times and in the manner prescribed by the Contract.

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In Witness whereof the parties hereto have caused this Agreement to be executed the day and year first before written in accordance with their respective laws.

SIGNED by: _____	SIGNED by: _____
for and on behalf of the Employer in the presence of	for and on behalf of the Contractor in the presence of
Witness: _____	Witness: _____
Name: _____	Name: _____
Address: _____ _____	Address: _____ _____
Date: _____	Date: _____

SECTION 2

SECTION 2: CONDITIONS OF CONTRACT

PART I - GENERAL CONDITIONS OF CONTRACT

The Conditions of Contract comprise the “General Conditions”, which form part of the “Conditions of Contract for Plant and Design-Build” Second Edition 2017 published by the Federation Internationale des Ingenieurs-Conseils (FIDIC), the Contract Data (Particular Conditions – Part A) and the following “Special Provisions” (Particular Conditions – Part B), which includes amendments and additions to such General Conditions.

PART II - PARTICULAR CONDITIONS

1.1 Particular Conditions Part A – Contract Data

The Particular Conditions Part A - Contract Data is placed following the Letter of Tender elsewhere in this document.

1.2 Particular Conditions Part B – Special Provisions

The provisions to be found in the Special Provisions (Particular Conditions – Part B) take precedence over the equivalent provisions under the same Sub-Clause number(s) in the General Conditions, and the provisions of the Contract Data (Particular Conditions – Part A) take precedence over the Special Provisions (Particular Conditions – Part B):

Assignment	1.7	Delete “without the prior agreement of the other Party” in sub-sub-clause (b) and insert “with the prior agreement of the other Party”
Confidentiality	1.12	Add the following paragraph: “The Contractor will sign a confidentiality agreement set by the Employer, which agreement will take precedence over this Sub-Clause in the event of an ambiguity”.
Right of Access to the Site	2.1	Add the following paragraph at the end of the Sub-Clause: “The Contractor has taken due cognisance of the particular security arrangements of the Employer which is in the diamond trade and will plan the Works to perform as much as possible preparatory activities outside the high security areas to limit time, presence and movement in and out of such areas. The Contractor will notify the Engineer prior to arriving on Site of such plans to enable timeous arrangements for ancillary work areas.”
Assistance	2.2	In the first line, replace the words “shall promptly” with the word “will”.

Employer’s Personnel and Other Contractors	2.3	In the last paragraph, add the words “and a fair hearing” between “who is found, based on reasonable evidence” and “to have engaged”.
Employer’s Financial Arrangements	2.4	Delete this Sub-clause in its entirety.
The Engineer	3.1	Delete the phrase “If the Engineer is a legal entity” at the beginning of the third paragraph and insert the following: “If the Engineer is a legal entity, whether a third party appointment or whether the same entity as the Employer” Replace sub-paragraph (a) under the fourth paragraph with the following: “(a) a professionally recognised engineer, architect, quantity surveyor or project manager or any other competent person if appointed from the Employer’s permanent staff, having suitable qualifications, experience and competence to act as the Engineer under this Contract; and” In the last paragraph, insert the words “or if appointed from the Employer’s permanent staff, received by the Contractor.”
Replacement of the Engineer	3.6	Change “42 days” to “30 days”
Contractor’s Representative	4.3	Replace the phrase “in the main engineering discipline applicable” in the second paragraph with “in the main engineering or architectural discipline applicable” Insert the phrase “for longer than a day” between “absent from the Site” and “during the execution of the Works” in the sixth paragraph
Nominated Subcontractors	4.5	Delete this Sub-Clause and replace with: “There will be no nominated Subcontractors”.
Health and Safety Obligations	4.8	Insert the following under “The health and safety manual shall set out all the health and safety requirements:”: “(iv) in compliance with the Employer’s health and safety procedures”
Quality Management and Compliance Verifications Systems	4.9	Insert the following under “The QM System shall be in accordance with the details stated in the Specification (if any) and shall include the Contractor’s procedures:” : “(d) in compliance with the Employer’s quality management procedures”
Security of the Site	4.21	Add the following paragraph: “The Contractor will work closely with the Employer’s personnel and co-ordinate with the systems, procedures and requirements of the Employer, with due regard to different security zones and access arrangements that of the Employer’s facilities in general, noting that the Site may be a portion within a security area”.
Contractor’s Operations on Site	4.22	Add the following phrase to the end of the first paragraph: “... or surrounding areas”.

Rates of Wages and Conditions of Labour	6.2	Add the following paragraph: "The Contractor will adhere to project specific labour agreements and participate in a joint contractors forum for the project of which this contract is part as instructed by the Engineer".
Key Personnel	6.12	Add the following phrase to the end of the fifth paragraph: "... which will not be unreasonably withheld or denied".
Programme	8.3	<i>[... requirements to be adjusted commensurate with size, duration, and complexity of contracts... may require toning down in many instances ...]</i> E g: Delete "... and shall include:" and the sub-paragraphs (a) to (k) and insert "to a format, detail and reporting and adjustment rhythm commensurate with the scope, duration and complexity of the Works to the satisfaction of the Engineer" after "... in the Contract Data" at the end of the second paragraph.
Extension of Time for Completion	8.5	Delete the paragraph "The Contractor shall be entitled subject to Sub-Clause 20.2 the net effect of all such consideration shall not result in a net reduction in the Time for Completion" and replace with the following: "The Contractor shall be entitled subject to Sub-Clause 20.2 [Claims for Payment and/or EOT] to EOT if the total amount of the measured works in the Bill of Quantities increase by more than 15% (fifteen percent) and such increase is due to quantities increasing to the extent of causing a delay to completion for the purposes of Sub-Clause 10.1 [Taking Over the Works and Sections]. The agreement or determination of any such Claim, under Sub-Clause 20.2.5 [Agreement or determination of the Claim], may include a review by the Engineer of measure quantities of all items of work to consider the net effect of quantity variances with favourable and unfavourable effect on the critical path of the Programme. However, the net effect of all such consideration shall not result in a net reduction in the Time for Completion.
Delay Damages	8.8	[...legal advice required whether <i>Delay Damages</i> suitable term within Botswana legislation, or whether to revert to <i>Liquidated Damages...</i>]
Payment for Plant and Materials after Employer's Suspension	8.11	Alter the wording at the end of sub-paragraph (b) to the following: "... property in accordance with the Engineer's instructions; and" Add the following sub-paragraph: "(c) the Contractor provides a statement to the satisfaction of the Engineer with a reasonable explanation why such Plant and/or Materials could not be delivered to site"
Right to Vary	13.1	Add the following paragraph after the last paragraph: "The Engineer may issue revised drawings and the Contractor bound to perform the Works accordingly but it is not a Variation unless so notified by the Contractor and accepted by the Engineer that the variation caused by the revisions on the

		drawings is a Variation by Instruction in terms of Sub-clause 13.3.1.”
Payment Guarantee in lieu of Retention	14.16	<p>Add the following Sub-Clause:</p> <p>If a Retention Money Guarantee in lieu of retention to be withheld is permitted and the Contractor elects to furnish it, the guarantee shall, at the cost of the Contractor, be executed by a Bank or financial institution in a form approved by the Employer and shall be accepted in lieu of retention money. Such Retention Money Guarantee shall be released to the Contractor upon the issue of the Taking Over Certificate, whereupon the Contractor shall provide a new Retention Money Guarantee, equivalent to one half of the value of the first issued Guarantee, which Guarantee shall remain effective until the expiration of the Defects Liability Period.</p>
Withholding Tax	14.17	<p>This clause provides information on withholding tax with regard to contract works in Botswana, but subject to the provisions of the relevant Botswana legislation and the Income Tax Act of Botswana (as amended) in particular and regulations, rulings and other forms of stipulations resulting from the act, which all take precedence over this contract clause. The introduction of this clause does not derogate in any way from the Contractor’s obligations to adhere to and provide for all requirements of taxes and duties.</p> <p>The Employer shall deduct tax from payments as stipulated in the Income Tax Act of Botswana, as amended, and the Double Taxation Agreements in place between the Republic of Botswana and various other countries, as amended. The rates may vary in accordance with amendments to the Income Tax Act of Botswana and / or the Double Taxation Agreements in place between the Republic of Botswana and various other countries and such variation of rate shall be applied by the Employer and shall require no prior notice to the contractor.</p> <p>It is the responsibility of the Contractor to provide proof to the Employer that the Contractor operates a Permanent Establishment in the Republic of Botswana and the Employer shall, in its sole discretion, or written direction of the Commissioner of Taxes, decide whether a de facto Permanent Establishment is operated by the Contractor in the Republic of Botswana.</p> <p>It is the responsibility of the Contractor to provide proof to the Employer that the Contractor is a resident of the Republic of Botswana and the Employer shall, in its sole discretion, decide</p>

		<p>whether the Contractor is a de facto resident of the Republic of Botswana.</p> <p>In all instances where Tax is deducted by the Employer, the Employer will provide a certificate detailing the contract number, the Contractor and the amount of tax deducted in the prescribed form.</p> <p>The Double Taxation Agreements in effect between the Republic of Botswana and various other countries provide in varying degrees and to various extents for the recovery of tax imposed in the Republic of Botswana from the tax authorities in those countries. It is the sole responsibility of the Contractor at all times to:</p> <ul style="list-style-type: none"> a. Determine whether a Double Taxation Agreement exists between the Republic of Botswana and the country in which the Contractor is registered and / or resident and keep abreast of the terms of such Double Taxation Agreement and any amendments thereto; and b. Determine the manner in which income derived by the Contractor from the Republic of Botswana is taxed in the country in which the Contractor is registered and / or resident and keep abreast of any changes in such manner of taxation; and c. Determine the manner in which income derived by the Contractor from the Republic of Botswana is taxed in the Republic of Botswana and keep abreast of any changes in such manner of taxation. <p>The Contractor shall be responsible to provide the Employer with a directive from the Commissioner of Taxes as support for any deviation in the withholding tax rates set out above requested by the Contractor.</p>
Customs and Duties	14.18	<p>The Contractor warrants that he is acquainted with the Customs and Excise Duty Act of Botswana as well as the Southern African Customs Union (SACU) agreement, and the tariffs related to the content of this contract, and has sufficiently and completely allowed for such costs in his prices, as required at the date of tender.</p>
Exceptional Events	18.1	<p>Delete “or” at the end of sub-paragraph (e).</p> <p>Replace the fullstop with a semi-colon and add “or” at the end of sub-paragraph (f).</p>

		Add the following sub-paragraph after sub-paragraph (f): “(g) life-threatening disease outbreak or pandemic that affects the population in general and makes productive work impossible.”
General Requirements	19.1	Insert the following paragraph before the first paragraph: Without limiting the contractor’s obligations and responsibilities under Clause 19, the Employer has effected a contractor’s All Risk Insurance Policy in the joint names of the Employer, the Contractor and his Subcontractors, which provides insurance against physical loss of or damage to the Works and Temporary Works and all material used or intended for use in connection therewith whilst on or adjacent to the Site (including local transit incidental thereto).
Insurance to be provided by the Contractor	19.2	Insert the following paragraph before the first paragraph: The Contractor shall be solely responsible for and shall effect insurance on all Contractor’s Equipment owned, hired or operated by him to the full value thereof in the joint names of the Employer and the Contractor. Such insurance shall be effected with an Insurer and in terms approved by the Employer (which approval shall not be unreasonably withheld). <i>[... DTCB specific requirements may affect this clause]</i> <i>[... size, complexity and duration may affect the requirements ...]</i>
Insurance against Injury to Persons and Damage to Property	19.3	Add the following Sub-Clause: Without limiting the Contractor’s obligations and responsibilities under with regard to damage to persons or property, the Employer has, in the joint names of the Employer, the Contractor and his Subcontractors insured against liabilities for death of or injury to any person (other than as Contractor’s employees) or loss of or damage to any property (other than the Works) arising out of the performance of the Contract.
Claims	20.1	Add the following paragraph at the end of the Sub-Clause: In the case of claims for standing time, any events giving rise to a possible claim shall immediately be reported verbally to the Engineer by the Contractor and within 24 (twenty-four) hours confirmed in writing.

SECTION 3

SECTION 3: EMPLOYER'S REQUIREMENTS

1 GENERAL DESCRIPTION OF THE WORKS

The Works broadly consists of

The scope of this contract [state battery limits, special inclusions and particular exclusions]

2 LOCATIONS

- a. The facilities of Diamond Trading Company Botswana are at Plot 63016, Airport Road, Block 8, Gaborone, Botswana.
- b. The site is at the facilities/ inside the facilities/ [elsewhere]

3 WEATHER DATA

- a. Prevailing wind direction : North East
- b. Average temperatures : Varies from -5° to 45°
- c. Average rainfall : Less than 125mm per annum
- d. Height above sea level : 950m

4 ACCOMMODATION AND SUBSISTENCE

- a. The Contractor will make his own arrangements for accommodation and subsistence of personnel working on the contract Works.
- b.

5 WORKING HOURS AND PERSONNEL ROTATION

- a. The typical working hours on site are envisaged to be from in the morning untilpm in the afternoon;
- b. with a lunch break from until
- c. The total working day length is hours (including lunch break).

6 SECURITY REQUIREMENTS AND HUMAN RIGHTS

6.1 Secrecy

The Contractor shall not, without the prior written consent of the Employer and/or its agents, use, publish or disclose to any person, nor cause nor permit any of its employees, subcontractors employees or agents to use, publish or disclose any restricted information otherwise than for the performance of the contract. The Contractor shall ensure that its sub-contractors, servants or agents comply with the provisions of this clause.

The Employer and its agents and employees will not, without the prior written consent of the Contractor, publish any confidential information received from the Contractor, provided that the Contractor informed the Employer and its agents and employees in writing that the supplied information is confidential.

The Contractor shall not, without the prior written approval of the Contract Manager.

- a. Take or permit to be taken any photograph of the site or of the services or any portion thereof.
- b. Publish, cause or permit to publish any article, story, or other material having any reference whatsoever to the services.
- c. Display any advertisements in connection with the services on the site or elsewhere.

The Non-Disclosure Undertaking in Section 5 of the contract shall be signed as part of the contract.

The Contractor shall immediately return all restricted information, copies thereof and written material based on the restricted information, to the Employer at the request by the Employer.

The rights and obligations contained in these security requirements shall survive the completion, termination and/or cancellation of the contract, and shall remain binding on the Contractor and the Employer in perpetuity. Failure to comply with these will result in the appropriate legal action by either party.

6.2 Security Clearance of Contractor's Personnel

Only security cleared and approved Contractor's employees will be permitted to enter the Employer's security area. The Contractor shall therefore, make application in prescribed form for security clearance for his employees that shall provide services on site, to the Employer's Security Services Department not less than **14 calendar days**, prior to the entering the Employer's premises. The security and other safety regulations in force at the Employer shall be strictly adhered to by the Contractor's employees entering and leaving the Employer's security area.

Any person entering the security area shall pass through the prescribed Employer's security entrances.

In terms of legislation, all persons and such persons belongings may be subject to search by the Employer's Security Services Department. Motor vehicles are also subject to search.

Any person leaving the security area shall submit himself and his personal effects to an examination by the security officer on duty. When selected, nobody shall be permitted to pass anything to anyone else in the proximity. Such a search may include the dismantling or taking apart of an article. Any search of a person will be carried out with regard to decency.

Any person who contravenes or fails to comply with any of the security provisions of the Employer, who refuses to be searched, or obstructs any security officer conducting a search shall be guilty of an offence and liable on conviction to fine or imprisonment.

Unless visitors, representatives and, Contractor's employees and associates accept the provisions herein contained freely and voluntarily, they shall be prohibited from entering the security area of the Employer and from introducing Contractor's equipment to the security area. The Contractor shall not be entitled to any claims for standing time or extension of time in the event of such prohibition.

Any person deemed to pose a risk to the security of the Employer may be removed from the Employer's premises by a security official and be refused re-entry. The removal and replacement costs of such person shall be for the Contractor's account.

All cleared persons accepting the security provisions of the Employer will be issued with a DTCCB permit, as relevant, prior to entry into the Employer's security area(s), and shall produce such whenever required to do so by a member of the Security Services Department on the Employer's premises.

Contractor's equipment used inside the security area shall be made available for examination by the Employer's security officers prior to leaving the security area.

6.3 Revocation of Security Clearance

DTCCB's Manager Security may at any time and at his sole discretion revoke the security clearance of any of the Contractor's employees without providing a reason thereof and the Contractor shall forthwith remove that person from site. The Contractor shall within a period not exceeding 14 (fourteen) calendar days replace such employee and the cost for the removal and replacement of such employee shall be for the account of and payable by the Contractor, as the case may be.

6.4 Restriction Regarding Movement on Site

Whilst on the Employer's premises the Contractor's employees shall, unless it is necessary for the provision of the services, be restricted to site and shall not enter any other part of the Employer's premises without the permission of Manager Security.

6.5 Control of Contractor's Equipment Brought to Site

Prior to the Contractor being permitted to take the Contractor's equipment to site, it will be examined by the Contract Manager to ensure that it is suitable for the services to be carried out and that it is in good working order.

Contractor's equipment found to be defective and inadequate for the services will be rejected by the Contract Manager and shall be replaced by the Contractor at the Contractor's cost. The Employer, in the event of such rejection and replacement will entertain no extension of time claims, or any claims of whatsoever nature as a result of the said rejection.

6.6 Control of Contractor's Equipment Leaving Site

Contractor's equipment brought to site with the intention of removing the same on completion of the call-off order will be subject to examination by the Employer's Security Services Department. Where such Contractor's equipment cannot be examined to the satisfaction of the Employer's Security

Services Department it shall be left on the Employer's premises until such examination has been satisfactorily effected and completed.

6.7 Protection and Security

The Contractor undertakes and agrees to instruct the Contractor's employees to disclose to the Employer any information which comes to their attention and which could affect the protection and security of the Employer's assets. The Contractor further undertakes and agrees to take appropriate disciplinary action where the Contractor's employees fail to adhere to such instructions.

6.8 Anti-Money Laundering and Combating the Financing of Terrorism

The Employer is committed to compliance with all relevant legislation in the jurisdiction in which it operates, including legislation and guidelines related to the prevention of money laundering and the combating of the financing of terrorism. Accordingly, the Employer will cooperate with all the relevant authorities and bodies, and expects the Contractor to do the same.

It is an Employer policy to rely on the diligence and compliance of financial institutions together with the relevant financial intelligence legislation as regards the traceability of funds and the Employer expects the Contractor to apply the same caution. The Employer reserves the right in this regard to do whatever is necessary to perform due diligence, including verification of banking details, sources of funds, etc.

Should the Contractor have cause to suspect that the Employer might be or have been exposed to funds for which the source is doubtful, the circumstances must immediately be advised to the **Procurement Manager, Supply Chain**. The Employer further reserves the right to investigate and/or report any doubtful/suspicious transactions to whichever authorities that may need to be so advised.

6.9 International Human Rights, Principles and Codes of Conduct

All workers or individuals that are hired by the Employer to perform any work shall be evaluated for any credible prior involvement in human rights abuses and that involvement in human rights abuses will be reason for contract termination in terms of the provisions of this Agreement.

The Contractor warrants that it subscribes to the following International Declarations, Principles and Codes of Conduct:

- a. The United Nations Global Compact (The Principles of the Global Conduct);
- b. The Universal Declaration of Human Rights;
- c. The Voluntary Principles on Security and Human Rights;
- d. The United Nations Code of Conduct for Law Enforcement Officials;
- e. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

The Contractor further warrants that:

- a. All operations conducted by the Contractor on behalf of the Employer will be conducted within the confines of the laws and regulations of the country where the services are supplied;

- b. The manpower to be used by the Contractor have not been found guilty in a court of law of credibly implicated of any human rights abuses and it is acknowledged that any involvement in human rights abuses will be reason for contract termination;
- c. No employee working for the Contractor will undertake any activity to prevent loss to the Employer that infringes the human rights set forth in the Universal Declaration of Human Rights and International Humanitarian Law;
- d. All staff involved in operations conducted by the Contractor on behalf of any of the Authorised Users will be trained on how to prevent human rights abuses and how to protect human rights in their area of work as a condition of contract; and
- e. The Contractor policies, standard operating procedures and practice regulating the daily operations of personnel contracted to any of the Authorised Users are based on the above-mentioned principles and codes of conduct.

7 REQUIREMENTS OF THIS CONTRACT

- a. The Contractor will design, supply and construct the Works, which comprise of the following:
 - i.
 - ii.
 - iii.
 - iv.
 - v.

- b. The Contractor will develop and agree with the Engineer the following before commencing works, supplies and services:
 - i Risk assessments
 - ii Safe operating procedures

- c. Free-issue items:
The following equipment or materials will be free-issued to the Contractor for the sole purpose of the Works:
 - i
 - ii

- d. Services on Site
 - i Electrical power – consumption is free of charge (connections and reticulation to the works by the Contractor).
 - ii Water – consumption is free of charge (connections and reticulation to the works by the Contractor).
 - iii Compressed air will be provided by the Contractor.
 - iv

- e. *Daily Diaries* and any other logs must be signed off daily during site presence, standing time notified without delay in accordance with the agreed site procedures, and site procedures for information requests and variations followed.

- f. **Duration:** the Works are required to commence on and need to be completed by

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- g. The Contractor will be attentive to and work closely with the Employer to ensure compliance and co-ordinated efforts to deal with COVID-19.

ANNEXURES TO EMPLOYER’S REQUIREMENTS

The following annexures are part of the Employer’s Requirements:

Issued as separate documents:

ANNEXURE	TITLE	DOCUMENT NUMBER	EFFECTIVE DATE	VERSION
A	SHE Site Rules (De Beers)	TS-PR-SSD-01	Feb-20	4
B	Isolation of Energies Standard (Anglo American)	AA-TS-106-001	Jan-20	1
C	Safeguarding Standard (Anglo American)	AA-TS-109-001	May-19	1
D	Confined Space Standard (Anglo American)	AA-TS-110-001	Dec-19	1
E	Light Vehicles, MPVs and Buses Standard (Anglo American)	AA-TS-101-001	Aug-16	4
F	Hazardous Materials Management Standard (Anglo American)	AA-TS-502-001	Dec-16	1
G	Working at Heights Guideline Reference (Anglo American)	AA-TS-104-002	Aug-16	3
H				
I				
J				

REFERENCE DOCUMENTS

-
-

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ANNEXURE A:

SECTION 4

SECTION 4: FINANCIAL SCHEDULES

PREAMBLES TO PRICE SCHEDULE

1 GENERAL

[... short description of how the price schedules are compiled...]

[... reference documents/ specifications/ procedures (if any) that are applicable to the price schedules and must be read with the price schedules ...]

[... any other information that must contractually be stated to ensure clear and unambiguous understanding of the price schedules...]

2 QUANTIFICATION

[... rules and methods of remeasurement if parts or all of the price schedules are remeasurable...]

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PRICE SCHEDULE

[...insert price schedule here...]

LABOUR DAYWORKS AND STANDING TIME SCHEDULE

1 DAYWORKS

1.1 Rates for Dayworks

- a. Tenderers in pricing this schedule, shall read the conditions set out hereunder in conjunction with the General Conditions of Contract and the Particular Condition and in addition thereto Clause 8.7 of the *SANS 1200 A - General Specification*.
- b. The tenderer shall insert in the schedule below, all categories of labourers and tradesmen, together with their respective **net** wage rates, which he proposes to employ in the execution of the Contract.

Where the tenderer has not inserted rates for specific labourers or tradesmen that could reasonably have been foreseen at tender stage, the Engineer shall, in the event of such foreseeable labourers or tradesmen becoming necessary, set a rate that in his opinion is most appropriate for such labourers or artisan.

- c. When calculating dayworks, it shall be understood that:
 - i Only supervisory personnel who are working with their teams shall be paid for at daywork. The composition of each working team on dayworks shall be approved by the Engineer or Engineer's representative prior to the commencement of such daywork. Any supervisory personnel who does not work with the team, shall be deemed to be included.
 - ii No additional Preliminary and General costs (Fixed, Value-rated or Time-rated) shall be paid for work done at dayworks. Costs for superintendence (Site Agents, Engineers, Quantity Surveyors, Surveyors, Foremen and the like) shall be deemed to be covered for in the rates and prices of Preliminary and General. The tenderer shall allow in the percentage allowance for any superintendent which in his opinion is not provided for in the pricing of his Preliminary and General costs.
 - iii The tenderer shall indicate the percentage mark-up required on the current net cost of materials. The net cost of materials shall mean the cost of material actually embodied in the Permanent Works delivered to the point where it is to be used.

2 STANDING TIME

Standing time will only be considered for the categories of labourers and artisans indicated in the schedule below.

The rates tendered for standing time, shall be the **all inclusive** rates, and shall be deemed to cover all costs for overhead, supervision, profit, accommodation, travelling, subsistence and all other relevant and incidental costs.

No additional *Preliminary and General* costs will be paid, and no adjustments to the *Preliminary and General* cost will be made for any extensions of time granted or resultant from suspension of the Works, other than provided herein. No standing time will be considered or paid for suspensions resulting from default by the Contractor.

3 DAYWORK AND STANDING TIME SCHEDULE

DAYWORKS LABOUR RATES				
Description of labour category	Rate per hour			Standing time rate per hour (all inclusive)
	Normal Time	Overtime	Sundays	

The Contractor’s normal working day comprise _____ hours, and his working week comprises _____ hours.

Mark-up on Materials:

The % (percentage) mark-up on materials shall be _____%.

SCHEDULE OF CONTRACTORS EQUIPMENT DAYWORK AND STANDING TIME RATES

The Tenderer must list hereunder all items of major Contractor’s Equipment, in sound working order, which he undertakes to provide to execute the Contract.

The Contractor’s Equipment items listed, shall be deemed to be owned by the tenderer unless specifically endorsed in the schedule as “hired” or “hire purchase” plant.

1 DAYWORK RATES

Tenderers in pricing this schedule shall read the conditions set out hereunder in conjunction Clause 8.7 of the *SANS 1200 A - General Specification*.

- 1.1 When calculating dayworks, it shall be understood that:
 - a. The rates inserted by the Tenderer shall be the net rate for each item of Contractor’s Equipment listed.
 - b. Operators costs are included in the equipment rates and shall **not** be separately paid for under labour items.

2 STANDING TIME RATES

Standing time shall not be considered for Contractor’s Equipment that could have been foreseen at time of tender and not listed in the schedule hereunder.

The rates for standing time shall be the **all inclusive** rates, and shall be deemed to cover all costs or charges for overheads, profits, maintenance, consumable, but **excluding** operators cost which shall in the event of suspension of the work be paid for at the rates to be inserted in the labour dayworks rate schedule.

3 DAYWORK AND STANDING TIME SCHEDULE

Description of Contractor’s Equipment	Quantity	Age/ hours/ Con- dition	Net Daywork Rate per hour (Excluding Allowance)	Standing Time Rate per hour

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Description of Contractor's Equipment	Quantity	Age/ hours/ Con- dition	Net Daywork Rate per hour (Excluding Allowance)	Standing Time Rate per hour

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SECTION 5

SECTION 5: FORMS AND REFERENCE DOCUMENTS

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THE PLANT AND DESIGN-BUILD CONTRACT

FOR

.....

AT

.....

FOR

DIAMOND TRADING COMPANY BOTSWANA (PTY) LTD

LETTER OF TENDER AND CONTRACT DATA

NAME OF CONTRACT:

TO: The Procurement Manager
Diamond Trading Company Botswana

We have examined the Conditions of Contract, Employer’s Requirements, the Contract Data and Addenda Nos _____ for the above-named Contract and the words and expressions used herein shall have the meanings assigned to them in the Conditions of Contract. We offer to execute and complete the Works and remedy any defects therein, in conformity with this Tender which includes all these documents, for the sum of

[currency and amount in figures]

[currency and amount in figures]

or such other amount as may be determined in accordance with the Contract.

We agree to abide by this Tender until _____ [date] and it shall remain binding upon us and may be accepted at any time before that date.

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If this offer is accepted, we will provide the specified Performance Security, commence the Works as soon as is reasonably practicable after the Commencement Date, and complete the Works in accordance with the above-named documents within the Time for Completion.

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

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

Signature: _____

Capacity: _____

On behalf of: _____

Address: _____

Date: _____

WITNESSES:

Signature: _____

Signature: _____

Capitals: _____

Capitals: _____

Date: _____

Date: _____

1 PARTICULAR CONDITIONS PART A – CONTRACT DATA

CLAUSE	CLAUSE DESCRIPTION	INFORMATION
1.1.20	Where the Contract allows for Cost Plus Profit, percentage profit to be added to the Cost	%
1.1.27	Defects Notification Period (DNP)	days
1.1.30	Employer’s name and address	Diamond Trading Company Botswana Proprietary Limited Plot 63016, Airport Road Block 8 Gaborone, Botswana
1.1.35	Engineer’s name and address	
1.1.86	Time for Completion	days
1.3(a)(i)	Agreed methods of electronic transmission	
1.3(d)	Address of Employer for communications	Plot 63016, Airport Road Block 8 Gaborone, Botswana
1.3(d)	Address of Engineer for communications	
1.3(d)	Address of Contractor for communications	
1.4	Contract shall be governed by the law of	
1.4	Ruling language	
1.4	Language for communications	English
1.8	Number of additional paper copies of Contractor’s Documents	
1.9	Period of notification of errors, faults, or other defects in the Employer’s Requirements	days
1.15	Total liability of the Contractor to the Employer under or in connection with the Contract	(sum)
2.1	After receiving the Letter of Acceptance, the Contractor shall be given right of access to all or part of the Site within	days
2.4	Employer’s financial arrangements	
4.2	Performance Security (as percentages of the Accepted Contract Amount in Currencies): Percent: Currency: Percent: Currency:	% %

CLAUSE	CLAUSE DESCRIPTION	INFORMATION
4.4(a)	Maximum allowable accumulated value of work subcontracted (as a percentage of the Accepted Contract Amount)	%
4.4(b)	Parts of the Works for which subcontracting is not permitted	
4.7.2	Period for notification of errors in the items of reference	days
4.19	Period of payment for temporary utilities	days
4.20	Number of additional paper copies of progress reports	
6.5	Normal working hours on the Site	
8.3	Number of additional paper copies of programmes	
8.8	Delay Damages payable for each day of delay	
8.8	Maximum amount of Delay Damages	
13.4(b)(ii)	Percentage rate to be applied to Provisional Sums for overhead charges and profit	%
14.2	Total amount of Advance Payment (as a percentage of Accepted Contract Amount)	%
14.2	Currency or currencies of Advance Payment	
14.2.3	Percentage deductions for the repayment of the Advance Payment	%
14.3	Period of payment	
14.3(b)	Number of additional paper copies of Statements	
14.3(ii)	Percentage of retention	%
14.3(iii)	Limit of Retention Money (as a percentage of Accepted Contract Amount)	%
14.5(b)(i)	Plant and Materials for payment when shipped	
14.5(c)(i)	Plant and Materials for payment when delivered to the Site	
14.6.2	Minimum amount of Interim Payment Certificate (IPC)	
14.7(a)	Period for payment of Advance Payment to the Contractor	days
14.7(b)(i)	Period for the Employer to make interim payments to the Contractor under Sub-Clause 14.6 [Interim Payment]	days
14.7(b)(ii)	Period for the Employer to make interim payments to the Contractor under Sub-Clause 14.13 [Final Payment]	days

CLAUSE	CLAUSE DESCRIPTION	INFORMATION
14.7(c)	Period for the Employer to make final payment to the Contractor	days
14.8	Financing charges for delayed payment (percentage points above the average bank short-term lending rate as referred to under sub-paragraph (a))	%
14.11.1(b)	Number of additional paper copies of draft Final Statement	
14.15	Currencies for payment of Contract Price	
14.15(a)(i)	Proportions or amounts of Local and Foreign Currencies are: Local: Foreign:	
14.15(c)	Currencies and proportions for payment of Delay Damages	
14.15(f)	Rates of exchange	
17.2(d)	Forces of nature, the risk of which are allocated to the Contractor	
19.1	Permitted deductible limits: insurance required for the Works insurance required for Goods insurance required for liability for breach of professional duty insurance required against liability for fitness for purpose (if any is required) insurance required for injury to persons and damage to property insurance required for injury to employees Other insurances required by Law and by Local practice:	
19.2(1)(b)	Additional amount to be insured (as a percentage of the replacement value, if less or more than 15%)	%
19.2(1)(iv)	List of Exceptional Risks which shall not be excluded from the insurance cover for the Works	
19.2.2	Extent of insurance required for Goods amount of insurance required for Goods	
19.2.3(a)	Amount of insurance required for liability for breach of professional duty	
19.2.3(b)	Insurance required against liability for fitness for purpose	yes/no (delete as appropriate)

CLAUSE	CLAUSE DESCRIPTION	INFORMATION
19.2.3	Period of insurance required for liability for breach of professional duty	
19.2.4	Amount of insurance required for injury to persons and damage to property	
19.2.6	Other insurances required by Laws and by local practice (give details)	
21.1	Time for appointment of DAAB	
21.1	The DAAB shall comprise	members
21.1	List of proposed members of DAAB Proposed by Employer
	Proposed by Contractor
21.2	Appointing entity (official) for DAAM members	<i>(Unless otherwise stated here, it shall be the President of FIDIC or a person appointed by the President)</i>

SIGNATURES FOR CONTRACT DATA

Signature: _____
 (SIGNATURE OF TENDERER)

Date: _____

for: _____
 (NAME OF TENDERER)

WITNESSES:

Signature: _____ Signature: _____

Name: _____ Name: _____

Date: _____ Date: _____

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SUBCONTRACTORS

The Tenderer must state which subcontractors are intended to be employed for providing the goods and services.

SUB-CONTRACTOR	GOODS OR SERVICES INVOLVED	BOTSWANA LOCAL OR CITIZEN OWNED STATUS

NON-DISCLOSURE AGREEMENT

MADE AND ENTERED INTO BY AND BETWEEN

DIAMOND TRADING COMPANY BOTSWANA (PROPRIETARY) LIMITED

a company duly registered in Botswana
represented herein by XX
in his capacity as XXXX
(hereinafter referred to the Disclosing party)

And

XXXX a company duly registered in Botswana
represented herein by xxxx
in his capacity as xxx
(hereinafter referred to as the Receiving Party)

WHEREAS the disclosing party wishes to exchange information with the receiving party for the sole purpose of the receiving party to provide proof of concept for the proposed telephone management system at the disclosing party's premises

WHEREAS the Disclosing party desires that the Receiving party protects the confidentiality of such information

NOW THEREFORE the parties agree as follows:

1. DEFINITIONS

In this Agreement, the following terms will have the following meanings:

" Confidential Information " means any information which is confidential in nature or that is treated as being confidential by the Disclosing party, whether such information is or has been conveyed to a Receiving party orally or visually or in written or other tangible form, and whether such information is received or accessed by the Receiving party, directly or indirectly.

" Disclosing Party " means a party that discloses confidential information to the other party pursuant to this Agreement.

“Receiving Party” means a party that receives confidential information from the other party pursuant to this Agreement.

2. RECEIVING PARTY’S OBLIGATION

- a. To hold the confidential information in strict confidence and take all reasonable precautions to protect such information
- b. Not to disclose any confidential information or any information derived therefrom to any third party
- c. Ensure that its employees, agents or subcontractors to whom confidential information is disclosed or who have access to such information sign a nondisclosure agreement
- d. Not to make any use whatsoever at any time of such information except to evaluate internally its relationship with the Disclosing party
- e. Not copy or transmit in any manner such information

3. EXCEPTIONS

Notwithstanding anything to the contrary herein, the following will not constitute confidential information for the purpose of this agreement:

- a. Information that the Receiving party can show, by documentary and competent evidence, was known by it prior to the disclosure thereof to the Receiving party;
- b. Information that is or becomes generally available to the public other than as a result of disclosure directly or indirectly by a Receiving party in breach of this Agreement;
- c. Information of which the Disclosing party has authorised the unrestricted disclosure
- d. Information that a Receiving Party can show, by documentary and competent evidence, to have been developed independently by the Receiving party without using the Disclosing party’s confidential information;
- e. Information that becomes available to a Receiving party on a non-confidential basis from a source other than the Disclosing Party, provided that such a source is not in breach of its obligations of non-disclosure toward the Disclosing party

4. OWNERSHIP

All confidential information is and shall remain the property of the Disclosing party. Nothing in this Agreement is to be construed as granting a Receiving party any title or ownership of the Disclosing party’s confidential information.

5. GENERAL

Addresses for Service

The Parties choose as their addresses for all purposes under this agreement, whether in respect of notices or other documents or communications of whatsoever nature, the following addresses:

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DTCB:

Physical : Plot 63016, Block 8, Gaborone
Postal : P/Bag 0074, Gaborone
Attention : XXXXX(POSITION)

The Contractor:

Physical : XXXXX
Postal : XXXXX
Attention : XXXXX

Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing and hand delivered or posted to the other party by prepaid registered or recorded mail.

SIGNED by and for **DIAMOND TRADING COMPANY BOTSWANA (PROPRIETARY) LIMITED**

on this _____ day of _____ 20__

Name: _____ Place: _____

Position: _____ Signature: _____

Witness Name: _____ Signature: _____

Date: _____

SIGNED by and for **XXXXX(name of info recipient company)**

on this _____ day of _____ 20__

Name: _____ Place: _____

Position: _____ Signature: _____

Witness Name: _____ Signature: _____

Date: _____

HUMAN RIGHTS DECLARATION

HUMAN RIGHTS DECLARATION BY THE MANAGEMENT OF **XXXXX** FOR DTCB

CERTIFICATE OF COMPLIANCE

It is hereby certified that the following International Declaration, Principles and Codes of Conduct are subscribed to:

- a. The United Nations Global Compact (The Principles of the Global Conduct).
- b. The Universal Declaration of Human Rights.
- c. The Voluntary Principles on Security and Human Rights.
- d. The United Nations Code of Conduct for Law Enforcement Officials.
- e. The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

It is further certified that:

- a. The management of **XXXXX** will not unfairly discriminate in the administration of its business, directly or indirectly against any of its employees on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- b. The Company is committed to embracing the diversity of the people in its business activities both internally towards its staff and externally toward its customers, supplier, partner and stakeholders.
- c. The Company and its management will actively seek to purge from its business organisation, all forms of discrimination and abuse in pursuance of its principles.
- d. The Company and its management will endeavour at all times to ensure that the principles of equality, respect, transformation and the freedom of association are upheld.
- e. All operations conducted by **XXXXX** on behalf of the DTCB will be conducted within the confines of the laws and regulations applicable to any and all countries wherein these operations take place.
- f. The manpower which is utilised have not been found guilty in a court of law or credibly implicated of any human right abuses and it is acknowledged that any involvement in human rights abuses will be reason for contract termination.
- g. No employee working for **XXXXX** will undertake any activity to prevent diamond theft that infringes the human rights set forth in the Universal Declaration of Human Rights and international humanitarian law.
- h. All staff involved in operations conducted by **XXXXX** on behalf of the DTCB will be trained on how to prevent human rights abuses and how to protect human rights in their area of work as a condition of contract.
- i. The Company policies, standard operating procedures and practice regulating the daily operations of personnel contracted to the DTCB are based on the above-mentioned principles and codes of conduct

XXXXX will not use other third party companies and consultants, without the prior knowledge and permission of DTCB and with full adherence to the terms and conditions stipulated above.

Signature: _____ Date: _____