

NEC3 Term Service

Short Contract (TSSC3)

A contract between Fraser Alexander **TAILINGS**, a division of Fraser Alexander Proprietary Limited (Registration number 2005/028043/07)

and [] (Registration
number [])

for the Tamarisk Control at Bafokeng Royal Platinum Mine(BRPM) Tailings Dam

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Documentation prepared by: Aubrey Baloyi & Thato Letsoalo

C1 Contract Data

10.1	The <i>Employer</i> is	
	Name	Fraser Alexander Tailings, a division of Fraser Alexander (Proprietary) Limited, a private company incorporated in terms of the company laws of the Republic of South Africa, registration number 2005/028043/07
	Address (registered office)	19 9th Street, Building 2, 2nd Floor, Suite 3 Houghton Estate Johannesburg, RSA
	Telephone	+27 (0)11 929 3600
	E-mail address	Kholofelom@fraseralexander.co.za
14.5	If the Employer appoints an Employer's Agent, <i>Employer's agent</i> is	
	Name	Surprise Kaise
	Telephone	+27 (0)11 929 3600/
	E-mail address	suprisek@fraseralexander.co.za
	The authority of the <i>Employer's Agent</i> is	to issue and receive communications, including Task Orders, for and on behalf of the <i>Employer</i> .
11.2(5)	The service is	Tamarisk control
30.1	The <i>starting date</i> is	01 March 2024
30.1	The <i>service period</i> is	Thirty-six (36) months
13.2	The <i>period for reply</i> is	1 (one) week
50.1	The <i>assessment day</i> is the	25 th of each month.
51.1	The period within which payment shall be made is	<ul style="list-style-type: none"> 7 (seven) days of receipt of the statement <p>Payments are only made on a Friday, in the event that the payment date falls on a day which is not a Friday, the payment date shall be the next Friday.</p>
	The currency of this contract is	the South African Rand (ZAR / R)
51.2	The interest rate on late payment is	N/A
	The language of the contract is	English
	Does the United Kingdom Housing Grants, Construction and Regeneration Act (1996) apply?	No

41.1	The <i>defects date</i> is	52 weeks after Task Completion Date.
42.2	The period for the correction after task Completion Date is	1 (one) week
80.1	The <i>Contractor</i> is not liable to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property in excess of	the insurance deductibles
82.1	The <i>Employer</i> provides this insurance	<i>Employer's</i> property insurance
82.1	The minimum cover for the first insurances stated in the Insurance Table is	R5,000,000.00 (five million Rand) in respect of each claim, without limit to the number of claims.
82.1	The minimum cover for the third insurances stated in the Insurance Table is	R5,000,000.00 (five million Rand) in respect of each claim, without limit to the number of claims.
82.1	The minimum cover for the fourth insurances stated in the Insurance Table is	R5,000,000.00 (five million Rand) in respect of each claim, without limit to the number of claims.
93.1	The <i>Adjudicator</i> is	<p>the person selected by the Parties from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators (see www.ice-sa.org.za).</p> <p>If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (UK) or its successor body (See www.ice-sa.org.za).</p>
93.2(2)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the Institution of Civil Engineers (UK) or its successor body (See www.ice-sa.org.za).
93.4	<p>The <i>tribunal</i> is:</p> <p>If the <i>tribunal</i> is arbitration, the arbitration procedure is</p> <p>The place where arbitration is to be held is</p> <p>The person or organisation who will choose an arbitrator</p> <ul style="list-style-type: none"> - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is 	<p>arbitration.</p> <p>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</p> <p>Johannesburg, South Africa</p> <p>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</p>

11.1 **The conditions of contract are the NEC3 Term Service Short Contract (April 2013)¹ and the following additional conditions.**

Z1 Cession delegation and assignment

- Z1.1 The *Contractor* does not cede, delegate, subcontract or assign any of its rights or obligations to any person without the written consent of the *Employer*.
- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Contractor* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring.

Z2 Change of Broad Based Black Economic Empowerment (B-BBEE) status

- Z2.1 Where a change in the *Contractor's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor's* B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change.
- Z2.2 The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Employer* within thirty days of the notification or as otherwise instructed by the *Employer*.
- Z2.3 Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor's* obligation to Provide the Service.
- Z2.4 Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are the same as for Reason 3 identified in clause 90.3.

Z3 Ethics

- Z3.1 Any offer, payment, consideration, or benefit of any kind made by the *Contractor*, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Contractor's* obligation to Provide the Service or taking any other action as appropriate against the *Contractor* (including civil or criminal action).
- Z3.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Service if the *Contractor* (or any member of the *Contractor* where the *Contractor* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Employer* or other people or organisations and including in circumstances where the *Contractor* or any such member is removed from the an approved vendor data base of the *Employer* as a consequence of such practice.

¹ Can be obtained from Engineering Contract Strategies on www.ecs.co.za, Tel 011 803 3008, Fax 086 539 1902

Z3.3 Notwithstanding the provisions of clause 90, the procedures on termination in terms of this clause are the same as for Reason 3 identified in clause 90.3. The *Employer* shall also have the right to claim a penalty from the *Contractor* that is:-

- the actual amount lost calculated as the difference between the price paid to the *Contractor* and the lower price the *Employer* could have procured the Service from Others.

Z4 Confidentiality undertaking

- Z4.1 The *Contractor* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others, the *Contractor* ensures that the provisions of this undertaking are complied with by the recipient.
- Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Employer*.
- Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Contractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The *Contractor* shall not make or issue any formal or informal announcement, advertisement or statement to the press in connection with this Contract or otherwise disclose the existence of this Contract or the subject matter thereof to any other person without the prior written consent of the *Employer*.
- Z4.5 The *Contractor* ensures that all his subcontractors abide by the undertakings in this clause.
- Z4.6 This confidentiality undertaking shall survive the termination of this Contract for any reason whatsoever.

Z5 Waiver and estoppel: Add to clause 12.3:

- Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z6 Provision of a Tax Invoice and interest. Add to clause 51

- Z6.1 The *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Service Information, showing the correctly assessed amount due.

- Z6.2 If the *Contractor* does not provide a tax invoice by the time required in this contract for his assessment of each amount due, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due (if any) by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
- Z6.3 The *Contractor* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4860224031 on each invoice he submits for payment.
- Z6.4 The *Employer* shall be entitled to stipulate, on reasonable written notice, invoicing standards applicable to any claims by the *Contractor*.

Z7 *Employer's limitation of liability*

- Z7.1 The *Employer's* liability to the *Contractor* for the *Contractor Contractor's* indirect or consequential loss is none.
- Z7.2 The *Contractor's* entitlement under the indemnity in 83.1 is provided for in 60.1 (8) and the *Employer's* liability under the indemnity is limited.

Z8 *Termination: Add to clause 90.2 before (Reason 1)*

- Z8.1 or had a judicial management order granted against it.

Z9 *Addition to clause 50.5*

- Z9.1 If the amount due for the *Contractor's* payment of *delay damages* reaches the limits stated in this Contract Data (if any), the *Employer* may terminate the *Contractor's* obligation to Provide the Service using the same procedures and payment on termination as those applied for Reason 3. Identified in clause 90.3.

Z10 *Proprietary rights*

- Z10.1 The *Contractor* acknowledges and agrees that all rights in and to the *Employer's* Intellectual Property made available to the *Contractor* by the *Employer* from time to time, vest and shall remain vested in the *Employer* and that the *Employer* is the owner thereof.

Z11 *Non Solicitation*

- Z11.1 Neither Party shall, without the prior written consent of the other Party, either during, or within twenty four (24) months after termination or expiration of this Contract, solicit for employment, whether directly or indirectly, any person who, at any time during the duration of this Contract, was a member of the other Party's personnel or who was directly involved with any activity relating to this Contract.

Z12 *Prevention*

Z12.1 No Party shall be liable for any default or delay in the performance of its obligations under this Contract if and to the extent:-

- such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, riots, civil disorder, rebellions or revolutions in any country or any other cause beyond the reasonable control of such Party;
- the non-performing Party is without fault in causing such default or delay;
- such default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means.

Z12.2 If any event under clause Z12.1 substantially prevents, hinders, or delays the Delivery of the Service necessary for the performance of the *Employer's* functions reasonably identified by the *Employer* as critical for more than three (3) consecutive days, then at the *Employer's* option:-

- the *Employer* may procure such service from an alternate source; and/or
- the *Employer* may terminate any portion of this Contract so affected without liability and the amounts payable under this Contract shall be equitably adjusted to reflect those terminated service and/or services; and/or
- the *Employer* may terminate this Contract without liability to the *Contractor* as of a date specified by the *Employer* in a written notice of termination to the *Contractor*.

Z13 Add clause 22.5:

Z13.1 The *Contractor* shall advise and assist the *Employer* with respect to all aspects of the provision of the Service.

Z14 Add clause 91.3:

Z14.1 The *Contractor* shall, within 1 (one) week of termination of this Contract or scope, as the case may be, deliver to the *Employer* all correspondence, documents, material and property belonging to the *Employer* which may be in its possession or under its control, or in the possession of any of its personnel or under their control, together with all the Confidential Information or proprietary rights, provided that in the case of a termination of a particular scope, this clause 91.3 shall only apply to those items which relate to such scope.

Z15 Amend clause 92.3:

Z15.1 '5%' is replaced with '0%'.

Z16 Dispute Resolution: Add to clause 93.1 before first sentence.

Z16.1 Any disagreement arising under or in connection with this contract shall be referred to the managing directors of each of the Parties or alternates appointed by them, who will use their best endeavours to resolve the dispute within ten (10) days of it having been referred to them.

Z16.2 Any disagreement not resolved in accordance with clauses Z16.1, will immediately become a dispute.

Z17 Relationship of the Parties

- Z17.1 The relationship of the Parties, inter se, shall be governed by the terms of this Contract and nothing contained herein shall be deemed to constitute a partnership or to constitute one Party the agent of the other for any purpose whatsoever.
- Z17.2 No Party shall by reason of the actions of any other party incur any personal liability as a co-partner to any third party and no Party shall be entitled to authorise, to represent or hold out to any third party that the relationship between the Parties is that of a partnership, as aforesaid
-

C2 The Contractor's Offer

The *Contractor* is advised to read both the NEC3 Term Services Short Contract (April 2013) and the relevant parts of its Guidance Notes (SSC3-GN)² in order to understand the implications of this Data which the *Contractor* is required to complete

10.1 The *Contractor* is

Name

Registration number

Address (registered address)

Tel No.

Fax No.

E-mail address

The *Contractor's* agent is (Name):

Tel No.

E-mail address

63.2 The percentage for overheads and profit added to the Defined Cost for people is %

63.2 The percentage for overheads and profit added to other Defined Cost is %

The *Contractor* offers to Provide the Service in accordance with the conditions of contract for an amount to be determined in accordance with the conditions of contract.

The offered total of the Prices for part of the service in Part 1 of the Price List is

The offered total of the Prices for part of the service in Part 2 of the Price List is

Signed on behalf of the *Contractor*

Name

Position

Signature Date

Witness

² Available from Engineering Contract Strategies on www.ecs.co.za Tel 011 803 3008, Fax 086 539 1902.

C3 The *Employer's* Acceptance

The *Employer* accepts the *Contractor's* Offer to Provide the Service

Signed on behalf of the *Employer*

Name			
Position			
Signature		Date	
Witness			

C4 Price List

C4.1 Pricing assumptions

The Price List is in two parts. Part 1 is for work described in the Service Information not requiring the Employer to issue a Task Order. Part 2 is for work to be carried out within a stated period of time on a Task by Task basis and instructed by Task Order. The service may comprise work under Part 1 only or Part 2 only or a mix of both.

Entries in the first four columns of Part 1 and Part 2 of the Price List are made either by the *Employer* or the *Contractor*. The Contractor enters a rate for each item and multiplies it by the Expected quantity to produce the Price to be entered in the final column.

If the *Contractor* is to be paid an amount for the item which is not adjusted if the quantity of service in the item changes, the *Contractor* enters the amount in the Price column only, the Unit, Quantity and Rate columns being left blank.

If the *Contractor* is to be paid an amount for the item of work which is the rate for the work multiplied by the quantity completed, the *Contractor* enters a rate for each item and multiplies it by the Expected Quantity to produce the Price, to be entered in the final column.

If the Contractor is to be paid a Price for an item proportional to the length of time for which a service is provided, a unit of time is stated in the Unit column and the expected length of time (as a quantity of the stated units of time) is stated in the Expected quantity column.

Price adjustment for poor performance

The *Employer* reserves the right to proportionally reduce the amount due to the *Contractor* for non-performance and / or partial performance.

C4.2 Price List

The rates and Prices entered for each item includes for all work and other things necessary to supply the item. The rates and Prices are excluding VAT.

Part 1

Item no.	Description	Unit	Expected Quantity	Rate	Price

Total of the Prices for Part 1

Part 2

Item no.	Description	Unit	Expected Quantity	Rate	Price
1	Cut, chemically treat, and burn tamarisk trees, Chemically treated on the stump within same day of felling, not more than 12 hours exposed, to prevent regrowth, and Stockpile tamarisk branch for burning	m ²	65000 m2		

Total of the Prices for Part 2

C4.3 Price adjustment for inflation

The rates and Prices entered for each item may be adjusted as per the below.

Price adjustment components (to be completed by Contractor)

COMPONENT	% CONTRIBUTION TO TOTAL PRICE	RELEVANT INDEX	BASE DATE	BASE INDICATOR
Labour		SEIFSA Table C2		
Fuel				
Plant				
Material		SEIFSA Table D2 – StatsSA CPI		
Fixed portion	15%			
TOTAL	100%			

- The rates and Prices shall be fixed and firm for the period of twelve (12) months from the *starting date* and will be adjusted once on the anniversary of the *starting date* in accordance with this C2.3 (price adjustment for inflation) for the consecutive years.

No adjustment in the rates and Prices shall be effective until accepted in writing by the Snr Procurement Manager of the *Employer*. Requests by the *Contractor* for an adjustment in the rates and Prices ("Requests") will be considered by the *Employer*, without any obligation on the part of the *Employer* to agree thereto, provided that –

- Requests are addressed to the Snr Procurement Manager, of the *Employer* and submitted in writing to the *Employer* at least 60 (sixty) calendar days prior to the proposed date of the adjustment, supported by such documentary evidence as may be required by the *Employer*, it being clearly understood that the 60 (sixty) day period will only commence when documentary evidence to the satisfaction of the Snr Procurement Manager, on behalf of the *Employer*, has been submitted;
- An adjustment shall be with effect from the date of written acceptance thereof by the Snr Procurement Manager on behalf of the *Employer*, shall only apply in respect of Service to be rendered pursuant to Task Orders issued after the date of such acceptance, and no such adjustment shall be applied by the *Contractor* in respect of Service Provided pursuant to any Task Orders issued prior to such acceptance.

- 1.3. At any time after receipt of a Request, the *Employer* shall be entitled to call for tenders in respect of the Service and shall be entitled but not obliged to terminate this Contract upon 30 (thirty) days written notice to the *Contractor*. Neither Party shall have any claim of whatsoever nature against the other by reason of such termination.
- 1.4. Acceptance or rejection of any Request shall be in the sole and absolute discretion of the *Employer*. Should the Snr Procurement Manager, on behalf of the *Employer*, and the *Contractor* fail to reach agreement on any adjustment in the rates and Prices, the *Employer* shall be entitled, but not obliged, to terminate this Contract upon 30 (thirty) days written notice to the *Contractor*. Neither party shall have any claim of whatsoever nature against the other by reason of such termination.

C5: Service Information

C3.1 Service Information

1. Description of the service

In providing the services, the Contractor shall:

2. Specifications

The following specifications that apply to this Contract.

Title	Date or revision	Tick if publicly available
<u>General Specifications:</u>		
Health and Safety requirements		
Sub Contractors SHEQ Pack	3 March 2018	
Sub Contractors Agreement Section 37(2)	3 March 2018	
Vehicle and driving policy and procedure	27 February 2019	
Nuvogon 480 EC Chemical	Act 36/1947	
BRPM SHE Pack File		
HIRA training		
Basis hand tool training		
First aid training and Fire Fighter		
<u>Technical specifications:</u>		
Proof of machine maintenance and service (Bush cutter)		
Monthly Dashboard (Area cut, treated, piles burned)		
Business Conduct		
Fraser Alexander Code of Conduct		
Declaration of Fair Bidding Practice		
Disclosure of Interests		

3. Constraints on how the Contractor Provides the Service

State any constraints on how the *Contractor* is to provide the service such as any limits on subcontracting. Also include any management related constraints, invoicing and payment procedures some of which have been inserted below as a minimum guide.

3.3 Invoicing and payment

In terms of core clause 50 the *Contractor* assesses the amount due and applies to the *Employer* for payment. The *Contractor* applies for payment with a tax invoice addressed to the *Employer* as follows:

The *Contractor* includes the following information on each tax invoice:

- Name and address of the *Contractor*
- The contract number and title;
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number which is 4860224031;
- The total of
- The Price for each lump sum item in the Price List or Task Order which the *Contractor* has completed;
- Where a quantity is stated for an item in the Price List or Task Order, an amount calculated by multiplying the quantity which the *Contractor* has completed by the rate,
- Other amounts to be paid to the *Contractor*;
- Less amounts to be paid by or retained from the *Contractor*;
- The invoiced amount - excluding VAT, the VAT and including VAT;

4. Requirements for the plan

This information is required by clause 32.1. State whether a plan is required and, if it is, state what form it is to be in, what information is to be shown on it, when it is to be submitted and when it is to be updated.

5. Services and other things provided by the *Employer*

Describe what the *Employer* will provide, in connection with the supply of the service, such as transport, loading or unloading of the service.

Item	Date by which it will be provided

C6 Pro Forma Task Order

Task Order form for use when work within the service is instructed to be carried out within a stated time period on a task Order Basis.

Contract number [●]

service [●]

Task Order No. [●]

Date

To: [●]..... (the Contractor)

I propose to instruct you to carry out the following task:

Description [●]

Starting date [●]

Completion date [●]

Delay damages per week [●]

Please submit your price and programme proposals below:

Signed

Name

Date

(for the Employer)

Item no.	Description	Unit	Quantity	Rate	Price
Total of Prices for items of work on the Price List					
Total of Prices for items of work not on the Price List					
Total of the Prices					

The programme for the Task is [●]

Signed

Name

Date

(for the Contractor)

I accept the above price and programme and instruct you to carry out the Task

Signed:

Name (in print)

(for the Employer)