

**CHUKA**



**UNIVERSITY**

# **PROPOSED KAIRINI WATER INTAKE**

**CONTRACT NO: CU/OPNT/54/2020 – 2021**

Prepared by:  
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P.O. BOX 229,  
NKUBU

Issued by:  
Quantity Surveyor  
Chuka University  
P.O. BOX 109-60400 CHUKA

March, 2021

CONTRACT BILLS OF QUANTITIES

The contract for the proposed **Water Intake Weir and Water reticulation for Chuka University** – Tharaka Nithi County entered into on .....day of ..... 20 .....  
**by the under signed parties refers to these Bills of Quantities consisting of all the pages listed in the contents page of these Bills of Quantities and General Specifications dated 1976 all of which shall be read and construed as part of tits contract.**

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

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

(Contractor)

(Client)

**SPECIAL NOTES**

The contractor is required to check the number of pages of these Bills of Quantities together with all summaries and should he find any missing or indistinct, he must inform the Quantity Surveyor, Chuka University at once and have the same rectified.

Should the contractor be in any doubt of the precise meaning of any item or figure for any reason whatsoever, he must inform the Quantity Surveyor, Chuka University so that the correct meaning may be decided before the date of submission of tenders.

The contractor shall check his printed hard copy and compare it with the soft copy posted in the website Chuka University. Where there is a difference between the soft copy as posted in the website and the printed copy, the soft copy shall prevail. The contractor shall take all care and ensure that the hard copy is a replica of the soft copy.

Neither liability will be admitted nor claim allowed in respect of errors in the contractor's tender due to mistakes in the Bills of Quantities that could have been rectified in the manner described above.

SIGNATURE PAGE AND SPECIAL NOTES

# FORM OF TENDER

Tender for the -----

In accordance with the special specifications and the following drawings: -

To:

THE VICE CHANCELLOR,  
CHUKA UNIVERSITY,  
P.O. BOX 109-60400,  
CHUKA.

I/we -----

(contractors name), under and subject to the conditions of tendering annexed hereto, hereby tender and offer to execute and perform the works, provisions and supply all labour and materials and everything of every kind respectively named, shown, described and / or included to ,in or to be in inferred from the general conditions of contract, specifications and the drawings governing the contract between Chuka University and the main contractor, and in conformity with the said specifications conditions and drawings for the lump sum named herein below.

The undersigned agrees to be bound by and submit to the said general conditions of contract, specifications, and priced Bills of Quantities which shall form a basis for the valuation of interim certificates and any extra or omitted work which may from time to time be ordered by the Project Manager (P.M.)

The total sum of this tender in accordance with the specifications and/or Bills of Quantities is the lump sum of Kenya shillings .....

Whereas it is understood that you reserve to yourself the right to agree or refuse tits tender whether it is lower or higher than any other tender or of the same amount, the undersigned agrees that the tender shall remain valid and shall not be withdrawn within **one hundred and fifty (150)** days from the final date of submission of the tenders stipulated in the advertisement or letter of invitation to tender.

And further the undersigned agrees, in the event of your acceptance of tits tender, to enter into a contract as herein before described within ten days of posting, or delivery if by hand, of Notification of Award.

Name and address of company.....  
.....

Name of person signing on behalf of company.....

Date .....

Binding Signature .....

**CONFIDENTIAL BUSINESS QUESTIONNAIRE****(FORM S 13)**

You are required to give the particulars indicated in part 1 and either part 2 (a), 2 (b), or 2 (c) whichever applies to your type of business.

You are advised that it is a serious offence to give false information on this form.

**Part 1 General:**

Business name .....

Location of business premises .....

Plot No. ....

Postal address ..... Tel. No. ....

Nature of business .....

Current consolidated license no. .... Expiring date .....

Maximum value of business which you can handle at any one time (Kshs).....

Name of your banker ..... branch .....

**Part 2 (a) Sole proprietorship**

Your full name ..... age .....

Nationality ..... country of origin .....

\*Citizenship details .....

**Part 2 (b) partnership**

Give details of partners as follows:

Name	Nationality	Citizenship Details	Shares
1 .....			
2 .....			

**Part 2 (C) Registered Company**

Public or private .....

State the nominal and issued capital of the company

Nominal (Kshs) .....

Issued (Kshs) .....

Give details of all directors as follows;

Name	Nationality	Citizenship Details	Shares
1 .....			
2 .....			
3 .....			

Date ..... signature of tenderer .....

If Kenyan citizen, indicate under "citizen details" whether by birth, naturalization etc.

**\*Attach a copy of records (CR12) from the Registrar of Companies to show the company's directors**

**FINANCIAL INFORMATION**

FORM FS - 1

1.0 Attach a copy of the firm's annual financial statements for the past two years

2.0 summary of quick assets and current liabilities as of ..... 20 .....

**A. ASSETS**

2.1 Cash.

(A) cash in hand Kshs .....

(b) cash deposited in banks  
(state details) Kshs .....**TOTAL** Kshs .....

2.2 Deposit with bids / guarantees Kshs .....

2.3 Due from contracts receivable within 90 days Kshs .....

2.4 Other quick assets Kshs .....

**TOTAL ASSETS** Kshs .....**B LIABILITIES**

(i) Notes payable Kshs .....

(ii) Accounts payable Kshs .....

(ii) Sundry creditors Kshs .....

**TOTAL CURRENT LIABILITIES** Kshs .....**C. NET QUICK ASSETS (A - B)** Kshs .....**TOTAL LINE OF CREDIT.** Kshs .....**TOTAL NET QUICK ASSETS** Kshs .....

Certified as a true extract of the financial statement for the year 20.....

Signed.....

Name of certified public accountant .....

Address .....

### FORM OF BOND

CONTRACT NO. ....

**KNOW ALL MEN BY THESE PRESENTS** that we ..... (surety)  
of .....are bound to the Chuka University for  
payment to them of shillings .....

.....  
(Kshs .....) **WHEREAS** by an agreement in writing of even date  
herewith

.....  
(Contractor) of.....  
contracted with the said Chuka University to (description of the works) .....  
said agreement particularly described and conformable thereto.

NOW the condition of the above written bond is such that if the said  
..... (Contractor)  
its/their executors, administrators or assignees shall conform to the said agreement the above written bond to  
be void otherwise to remain in full force. Provided always and it is hereby agreed and declared that the  
liability of us the said.....  
(surety)

under the above-written bond shall not in any way be discharged or impaired by reason of breach or breaches  
(wilful or otherwise) of the said agreement committed with or without the knowledge or consent of the said  
..... (Contractor)

by or on behave of or with the knowledge or consent of the said Chuka University .  
in witness whereof we have hereunto set our hands tits .....  
day of

....., two thousand and .....  
..... (surety)

.....  
witness

\*The full names of the parties must be inserted in the space left for the purpose.

To be filled if  
tenderer is  
awarded job

**BID SECURITY**

Whereas .....

(Name of the tenderer)

Has submitted its tender dated ..... for the construction, completion and maintenance of .....

.....  
.....

KNOW ALL MEN by these presents that we .....

(Name of guarantor)

.....

(Registered address)

Are bound unto the government of Kenya (herein after called "the employer") in the sum of Kenya shillings (words) (As stated in the advertisement) for which payment shall well and truly be made to the said employer.

The guarantor binds itself, its successors and assignees to these presents sealed with the common seal of the guarantor this ..... day of ..... 20....

THE CONDITIONS of its obligation are: -

- (a) If the tenderer withdraws the tender during the period of tender validity specified in the form of tender or ...
- (b) If the tenderer, having been notified of the acceptance of its tender,
  - (i) Withdraws or

To be filled on the letterhead of the company issuing the guarantee  
Sample

(ii) Fails or refuses to execute the Contract Agreement when required in accordance with the conditions of tendering

(iii) Fails or refuses to furnish the performance bond guarantee required in accordance with the conditions of tendering

Provided such notification shall have been made to the tenderer during the period of tender validity.

We undertake to pay the employer an amount not exceeding the above stated amount upon receipt of its first written demand without having to substantiate its demand. Provide that in its demand the employer shall state that the amount claimed by him is due to the occurrence of one or more of the stated CONDITIONS.

The validity of this guarantee shall be until **One Hundred and Eighty (180)** days from the date of tender opening At the request of the employer the tender validity may be extended by mutual agreement between the employer and the tenderer and we undertake to extend the validity of tits guarantee accordingly, without you having to inform us of such extension of tender validity period.

## **CONTRACTOR IDENTIFICATION**



**Legal Name of the firm** .....

**Postal Address** .....

**Physical Address** .....

.....

**Telephone No.** ..... **Fax No.** ..... **E - Mail address** .....

**Person to contact** .....

**Title** .....

**Key personnel**

Name	Profession	Designation	Experience (years)

\* Attach certificates, testimonials and other documentary evidence to prove years of experience

**EXPERIENCE**

The contractor is supposed to state the contracts of a similar nature which he has completed in the last five years as per the table below: -

<b>Period</b>	<b>Project</b>	<b>Scope</b>	<b>Contract Sum</b>	<b>Client</b>	<b>Consultants</b>
1					
2					
3					
4					
5					

**\* Attach completion certificates or other documents to authenticate the provided information**

## INSTRUCTIONS TO TENDERERS.

### 1. General/Eligibility/Qualifications/Joint venture/Cost of tendering

- 1.1 The Employer as defined in the Appendix to Conditions of Contract invites tenders for Works Contract as described in the tender documents. The successful tenderer will be expected to complete the Works by the Intended Completion Date specified in the tender documents.
- 1.2 All tenderers shall provide the Qualification Information, a statement that the tenderer (including all members of a joint venture and subcontractors) is not associated, or has not been associated in the past, directly or indirectly, with the Consultant or any other entity that has prepared the design, specifications, and other documents for the project or being proposed as Project Manager for the Contract. A firm that has been engaged by the Employer to provide consulting services for the preparation or supervision of the Works, and any of its affiliates, shall not be eligible to tender.
- 1.3 All tenderers shall provide in the Form of Tender and Qualification Information, a preliminary description of the proposed work method and schedule, including drawings and charts, as necessary.
- 1.4 In the event that pre-qualification of potential tenderers has been undertaken, only tenders from pre-qualified tenderers will be considered for award of Contract. These qualified tenderers should submit with their tenders any information updating their original pre-qualification applications or, alternatively, confirm in their tenders that the originally submitted pre-qualification information remains essentially correct as of the date of tender submission.
- 1.5 Where no pre-qualification of potential tenderers has been done, all tenderers shall include the following information and documents with their tenders, unless otherwise stated:
- (a) copies of original documents defining the constitution or legal status, place of registration, and principal place of business; written power of attorney of the signatory of the tender to commit the tenderer:
  - (b) total monetary value of construction work performed for each of the last five years:
  - (c) experience in works of a similar nature and size for each of the last five years, and details of work under way or contractually committed; and names and addresses of clients who may be contacted for further information on these contracts;
  - (d) Major items of construction equipment proposed to carry out the Contract and an undertaking that they will be available for the Contract.
  - (e) Qualifications and experience of key site management and technical personnel proposed for the Contract and an undertaking that they shall be available for the Contract.
  - (f) reports on the financial standing of the tenderer, such as profit and loss statements and auditor's reports for the past five years;
  - (g) evidence of adequacy of working capital for this Contract (access to line(s) of credit and availability of other financial resources);
  - (h) authority to seek references from the tenderer's bankers;
  - (i) information regarding any litigation, current or during the last five years, in which the tenderer is involved, the parties concerned and disputed amount; and
  - (j) Proposals for subcontracting components of the Works amounting to more than 10 per cent of the Contract Price.
- 1.6 Tenders submitted by a joint venture of two or more firms as partners shall comply with the following requirements, unless otherwise stated:
- (a) the tender shall include all the information listed in clause 1.5

Above for each joint venture partner;

- (b) the tender shall be signed so as to be legally binding on all Partners;
  - (c) all partners shall be jointly and severally liable for the execution Of the Contract in accordance with the Contract terms;
  - (d) one of the partners will be nominated as being in charge, authorised to incur liabilities, and receive instructions for and on behalf of all partners of the joint venture; and
  - (e) the execution of the entire Contract, including payment, shall be done exclusively with the partner in charge.
- 1.7 To qualify for award of the Contract, tenderers shall meet the following minimum qualifying criteria;
- (a) experience as main contractor in the construction of at least one job of a nature and complexity equivalent to the Works over the last 10 years (to comply with this requirement, works cited should be at least 50 per cent complete);
  - (b) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed as required for the Works;
  - (c) a Contract manager with experience in works of an equivalent nature and volume, and
  - (d) liquid assets and/or credit facilities, net of other contractual commitments and exclusive of any advance payments which may be made under the Contract
- 1.8 The figures for each of the partners of a joint venture shall be added together to determine the tenderer's compliance with the minimum qualifying criteria of clause 1.7 (a) and (e); however, for a joint venture to qualify, each of its partners must meet at least 25 per cent of minimum criteria 1.7 (a), (b) and (d) for an individual tenderer, and the partner in charge at least 40 per cent of those minimum criteria. Failure to comply with this requirement will result in rejection of the joint venture's tender. Subcontractors' experience and resources will not be taken into account in determining the tenderer's compliance with the qualifying criteria, unless otherwise stated.
- 1.9 Each tenderer shall submit only one tender, either individually or as a partner in a joint venture. A tenderer who submits or participates in more than one tender (other than as a subcontractor or in cases of alternatives that have been permitted or requested) will cause all the proposals with the tenderer's participation to be disqualified.
- 1.10 The tenderer shall bear all costs associated with the preparation and submission of his tender and the Employer will in not be responsible or liable for those costs.
- 1.11 The tenderer, at the tenderer's own responsibility and risk, is encouraged to visit and examine the Site of the Works and its surroundings, and obtain all information that may be necessary for preparing the tender and entering into a contract for construction of the Works. The costs of visiting the Site shall be at the tenderer's own expense.
- 1.12 The procuring entity's employees, committee members, board members and their relative (spouse and children) are not eligible to participate in the tender.
- 1.13 The price to be charged for the tender document shall not exceed Kshs.1,000/=
- 1.14 The procuring entity shall allow the tenderer to review the tender document free of charge before purchase.

## 2. Tender Documents

- 2.1 The complete set of tender documents comprises the documents listed below and any addenda issued in accordance with Clause 2.4.
- (a) These Instructions to Tenderers

- (b) Form of Tender and Qualification Information
  - (c) Conditions of Contract
  - (d) Appendix to Conditions of Contract
  - (e) Specifications
  - (f) Bills of Quantities
  - (g) Forms of Securities
- 2.2 The tenderer shall examine all Instructions, Forms to be filled and Specifications in the tender documents. Failure to furnish all information required by the tender documents, or submission of a tender not substantially responsive to the tendering documents in every respect will be at the tenderer's risk and may result in rejection of his tender.
- 2.3 A prospective tenderer making an inquiry relating to the tender documents may notify the Employer in writing or by cable, email or facsimile at the address indicated in the letter of invitation to tender. The Employer will only respond to requests for clarification received earlier than seven days prior to the deadline for submission of tenders. Copies of the Employer's response will be forwarded to all persons issued with tendering documents, including a description of the inquiry, but without identifying its source.
- 2.4 Before the deadline for submission of tenders, the Employer may modify the tendering documents by issuing addenda. Any addendum thus issued shall be part of the tendering documents and shall be communicated in writing or by cable, email or facsimile to all tenderers. Prospective tenderers shall acknowledge receipt of each addendum in writing to the Employer.
- 2.5 To give prospective tenderers reasonable time in which to take an addendum into account in preparing their tenders, the Employer shall extend, as necessary, the deadline for submission of tenders, in accordance with Clause 4.2 here below.

### 3. Preparation of Tenders

- 3.1 All documents relating to the tender and any correspondence shall be in English language.
- 3.2 The tender submitted by the tenderer shall comprise the following:
- (a) These Instructions to Tenderers, Form of Tender, Conditions of Contract, Appendix to Conditions of Contract and Specifications;
  - (b) Tender Security;
  - (c) Priced Bill of Quantities;
  - (d) Qualification Information Form and Documents;
  - (e) Alternative offers where invited; and
  - (f) Any other materials required to be completed and submitted by the tenderers.
- 3.3 The tenderer shall fill in rates and prices for all items of the Works described in the Bill of Quantities. Items for which no rate or price is entered by the tenderer will not be paid for when executed and shall be deemed covered by the other rates and prices in the Bill of Quantities. All duties, taxes, and other levies payable by the Contractor under the Contract, or for any other cause relevant to the Contract, as of 30 days prior to the deadline for submission of tenders, shall be included in the tender price submitted by the tenderer.
- 3.4 The rates and prices quoted by the tenderer shall only be subject to adjustment during the performance of the Contract if provided for in the Appendix to Conditions of Contract and provisions made in the Conditions of Contract.
- 3.5 The unit rates and prices shall be in Kenya Shillings.
- 3.6 Tenders shall remain valid for a period of **one hundred and fifty (150) days** from the date of submission. However in exceptional circumstances, the Employer may request that the tenderers extend the period of validity for a specified additional period. The request and the tenderers' responses shall be made in writing. A tenderer may refuse the request without forfeiting the Tender Security. A tenderer agreeing to the request will not be

required or permitted to otherwise modify the tender, but will be required to extend the validity of Tender Security for the period of the extension, and in compliance with Clause 3.7 - 3.11 in all respects.

- 3.7 The tenderer shall furnish, as part of the tender, a Tender Security in the amount and form specified in the appendix to invitation to tenderers. This shall be in the amount not exceeding 2 per cent of the tender price.
- 3.8 The format of the Tender Security should be in accordance with the form of Tender Security included in the Standard forms or any other form acceptable to the Employer. Tender Security shall be valid for **180 days** from the date of tender opening.
- 3.9 Any tender not accompanied by an acceptable Tender Security shall be rejected. The Tender Security of a joint venture must define as “Tenderer” all joint venture partners and list them in the following manner: a joint venture consisting of “.....”, “.....”, and “.....”.
- 3.10 The Tender Securities of unsuccessful tenderers will be returned within 28 days of the end of the tender validity period specified in Clause 3.6.
- 3.11 The Tender Security of the successful tenderer will be discharged when the tenderer has signed the Contract Agreement and furnished the required Performance Security.
- 3.12 The Tender Security may be forfeited
  - (a) if the tenderer withdraws the tender after tender opening during the period of tender validity;
  - (b) if the tenderer does not accept the correction of the tender price, pursuant to Clause 5.7;
  - (c) in the case of a successful tenderer, if the tenderer fails within the specified time limit to
    - (h) sign the Agreement, or
    - (ii) Furnish the required Performance Security.
- 3.13 Tenderers shall submit offers that comply with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. Alternatives will not be considered, unless specifically allowed in the invitation to tender. If so allowed, tenderers wishing to offer technical alternatives to the requirements of the tendering documents must also submit a tender that complies with the requirements of the tendering documents, including the basic technical design as indicated in the Drawings and Specifications. In addition to submitting the basic tender, the tenderer shall provide all information necessary for a complete evaluation of the alternative, including design calculations, technical specifications, breakdown of prices, proposed construction methods and other relevant details. Only the technical alternatives, if any, of the lowest evaluated tender conforming to the basic technical requirements shall be considered.
- 3.14 The tenderer shall prepare one original of the documents comprising the tender documents as described in Clause 3.2 of these Instructions to Tenderers, bound with the volume containing the Form of Tender, And clearly marked “ORIGINAL”. In addition, the tenderer shall submit copies of the tender, in the number specified in the invitation to tender, and clearly marked as “COPIES”. In the event of discrepancy between them, the original shall prevail.
- 3.15 The original and all copies of the tender shall be typed or written in indelible ink and shall be signed by a person or persons duly authorised to sign on behalf of the tenderer, pursuant to Clause 1.5 (a) or 1.6 (b), as the case may be. All pages of the tender where alterations or additions have been made shall be initialled by the person or persons signing the tender.
- 3.16 Clarification of tenders shall be requested by the tenderer to be received by the procuring entity not later than 7 days prior to the deadline for submission of tenders.
- 3.17 The procuring entity shall reply to any clarifications sought by the tenderer within 3 days of receiving the request to enable the tenderer to make timely submission of its tender.
- 3.18 The tender security shall be in the amount of 0.0 – 2.0 per cent of the tender price.

#### 4. Submission of Tenders

- 4.1 The tenderer shall seal the original and all copies of the tender in two inner envelopes and one outer envelope, duly marking the inner envelopes as “**ORIGINAL**” and “**COPIES**” as appropriate. The inner and outer envelopes shall:
- (a) be addressed to the Employer at the address provided in the invitation to tender;
  - (b) bear the name and identification number of the Contract as defined in the invitation to tender; and
  - (c) provide a warning not to open before the specified time and date for tender opening.
- 4.2 Tenders shall be delivered to the Employer at the address specified above not later than the time and date specified in the invitation to tender. However, the Employer may extend the deadline for submission of tenders by issuing an amendment in accordance with Sub-Clause 2.5 in which case all rights and obligations of the Employer and the tenderers previously subject to the original deadline will then be subject to the new deadline.
- 4.3 Any tender received after the deadline prescribed in clause 4.2 will be returned to the tenderer un-opened.
- 4.4 Tenderers may modify or withdraw their tenders by giving notice in writing before the deadline prescribed in clause 4.2. Each tenderer’s modification or withdrawal notice shall be prepared, sealed, marked, and delivered in accordance with clause 3.13 and 4.1, with the outer and inner envelopes additionally marked “**MODIFICATION**” and “**WITHDRAWAL**”, as appropriate. No tender may be modified after the deadline for submission of tenders.
- 4.5 Withdrawal of a tender between the deadline for submission and the expiry of the tender validity period specified in the invitation to tender or as extended pursuant to Clause 3.6 may result in the forfeiture of the Tender Security pursuant to Clause 3.11.
- 4.6 Tenderers may only offer discounts to, or otherwise modify the prices of their tenders by submitting tender modifications in accordance with Clause 4.4 or be included in the original tender submission.

#### 5. Tender Opening and Evaluation

- 5.1 The tenders will be opened by the Employer, including modifications made pursuant to Clause 4.4, in the presence of the tenderers’ representatives who choose to attend at the time and in the place specified in the invitation to tender. Envelopes marked “**WITHDRAWAL**” shall be opened and read out first. Tenderers’ and Employer’s representatives who are present during the opening shall sign a register evidencing their attendance.
- 5.2 The tenderers’ names, the tender prices, the total amount of each tender and of any alternative tender (if alternatives have been requested or permitted), any discounts, tender modifications and withdrawals, the presence or absence of Tender Security, and such other details as may be considered appropriate, will be announced by the Employer at the opening. Minutes of the tender opening, including the information disclosed to those present will be prepared by the Employer.
- 5.3 Information relating to the examination, clarification, evaluation, and comparison of tenders and recommendations for the award of Contract shall not be disclosed to tenderers or any other persons not officially concerned with such process until the award to the successful tenderer has been announced. Any effort by a tenderer to influence the Employer’s officials, processing of tenders or award decisions may result in the rejection of his tender.
- 5.4 To assist in the examination, evaluation, and comparison of tenders, the Employer at his discretion, may ask any tenderer for clarification of the tender, including breakdowns of unit rates. The request for clarification and the response shall be in writing or by email, telex or facsimile but no change in the price or substance of the tender shall be sought, offered, or permitted except as required to confirm the correction of arithmetic errors discovered in the evaluation of the tenders in accordance with Clause 5.7.
- 5.5 Prior to the detailed evaluation of tenders, the Employer will determine whether each tender
- (a) meets the eligibility criteria defined in Clause 1.7;
  - (b) has been properly signed;

(c) is accompanied by the required securities; and

(d) is substantially responsive to the requirements of the tendering documents.

A substantially responsive tender is one which conforms to all the terms, conditions and specifications of the tendering documents, without material deviation or reservation. A material deviation or reservation is one: -

(a) which affects in any substantial way the scope, quality, or performance of the works;

(b) which limits in any substantial way, inconsistent with the tendering documents, the Employer's rights or the tenderer's obligations under the Contract; or

(c) whose rectification would affect unfairly the competitive position of other tenderers presenting substantially responsive tenders.

5.6 If a tender is not substantially responsive, it will be rejected, and may not subsequently be made responsive by correction or withdrawal of the nonconforming deviation or reservation.

5.7 Tenders determined to be substantially responsive will be checked for any arithmetic errors. Errors will be corrected as follows:

- (a) where there is a discrepancy between the amount in figures and the amount in words, the amount in words will prevail; and
- (b) where there is a discrepancy between the unit rate and the line item total resulting from multiplying the unit rate by the quantity, the unit rate as quoted will prevail, unless in the opinion of the Employer, there is an obvious typographical error, in which case the adjustment will be made to the entry containing that error.
- (c) In the event of a discrepancy between the tender amount as stated in the Form of Tender and the corrected tender figure in the main summary of the Bill of Quantities, the amount as stated in the Form of Tender shall prevail.
- (d) The Error Correction Factor shall be computed by expressing the difference between the tender amount and the corrected tender sum as a percentage of the corrected Builder's Work (i.e. Corrected tender sum less P.C. and Provisional Sums)
- (e) The Error Correction Factor shall be applied to Builder's Work (as a rebate or addition as the case may be) for the purposes of valuations for Interim Certificates and valuation of variations.
- (f) the amount stated in the tender will be adjusted in accordance with the above procedure for the correction of errors and, with concurrence of the tenderer, shall be considered as binding upon the tenderer. If the tenderer does not accept the corrected amount, the tender may be rejected and the Tender Security may be forfeited in accordance with clause 3.11.

5.8 The Employer will evaluate and compare only the tenders determined to be substantially responsive in accordance with Clause 5.5.

5.9 In evaluating the tenders, the Employer will determine for each tender the evaluated tender price by adjusting the tender price as follows:

- (a) making any correction for errors pursuant to clause 5.7;
- (b) excluding provisional sums and the provision, if any, for contingencies in the Bill of Quantities, but including Day-works where priced competitively.
- (c) making an appropriate adjustment for any other acceptable variations, deviations, or alternative offers submitted in accordance with clause 3.12; and
- (d) making appropriate adjustments to reflect discounts or other price modifications offered in accordance with clause 4.6



- 5.10 The Employer reserves the right to accept or reject any variation, deviation, or alternative offer. Variations, deviations, and alternative offers and other factors which are in excess of the requirements of the tender documents or otherwise result in unsolicited benefits for the Employer will not be taken into account in tender evaluation.
- 5.11 The tenderer shall not influence the Employer on any matter relating to his tender from the time of the tender opening to the time the Contract is awarded. Any effort by the Tenderer to influence the Employer or his employees in his decision on tender evaluation, tender comparison or Contract award may result in the rejection of the tender.
- 5.12 Firms incorporated in Kenya where indigenous Kenyans own 51% or more of the share capital shall be allowed a 10% preferential bias provided that they do not sub-contract work valued at more than 50% of the Contract Price excluding Provisional Sums to a non-indigenous sub-contractor.

## 6. Award of Contract

- 6.1 Subject to Clause 6.2, the award of the Contract will be made to the tenderer whose tender has been determined to be substantially responsive to the tendering documents and who has offered the lowest evaluated tender price, provided that such tenderer has been determined to be: -
- (a) Eligible in accordance with the provision of Clauses 1.2, and
  - (b) Qualified in accordance with the provisions of clause 1.7 and 1.8.
- 6.2 Notwithstanding clause 6.1 above, the Employer reserves the right to accept or reject any tender, and to cancel the tendering process and reject all tenders, at any time prior to the award of Contract, without thereby incurring any liability to the affected tenderer or tenderers.
- 6.3 The tenderer whose tender has been accepted will be notified of the award prior to expiration of the tender validity period in writing or by email, telex or facsimile. This notification (hereinafter and in all Contract documents called the "Letter of Notification of award") will state the sum (hereinafter and in all Contract documents called the "Contract Price or sum") that the Employer will pay the Contractor in consideration of the execution, completion, and maintenance of the Works by the Contractor as prescribed by the Contract. At the same time, the other tenderers shall be informed that their tenders have not been successful.
- The contract shall be formed on the parties signing the contract.
- 6.4 The Agreement will incorporate all agreements between the Employer and the successful tenderer. Within 14 days of receipt the successful tenderer will sign the Agreement and return it to the Employer.
- 6.5 Fifteen (15) days after receipt of the Letter of Notification of award, the successful tenderer shall deliver to the Employer a Performance Security in the amount stipulated in the Appendix to Conditions of Contract and in the form stipulated in the Tender documents. The Performance Security shall be in the amount and form specified
- 6.6 Failure of the successful tenderer to comply with the requirements of clause 6.5 shall constitute sufficient grounds for cancellation of the award and forfeiture of the Tender Security.
- 6.7 Preference where allowed in the evaluation of tenders shall not be allowed for contracts not exceeding one year (12 months)
- 6.8 The tender evaluation, acceptance, and negotiation committee shall evaluate the tender within fifteen days from date of tender opening. The period for tender evaluation may be extended by an extra 30 days for complex projects of where there is a huge number of tenderers and it is not practically possible to examine all the tenders within 15 days after tender opening.
- 6.9 The parties to the contract shall have it signed within 30 days from the date of notification of contract award unless there is an administrative review request.
- 6.10 Contract price variations shall not be allowed for contracts not exceeding one year (12 months)

- 6.11 Where contract price variation is allowed, the valuation shall not exceed 25% of the original contract price.
- 6.12 Price variation request shall be processed by the procuring entity within 30 days of receiving the request.
- 6.13 The procuring entity may at any time terminate procurement proceedings before contract award and shall not be liable to any person for the termination.
- 6.14 The procuring entity shall give prompt notice of the termination to the tenderers and on request give its reasons for termination within 14 days of receiving the request from any tenderer.
- 6.15 A tenderer who gives false information in the tender document about its qualification or who refuses to enter into a contract after notification of contract award shall be considered for debarment from participating in future public procurement.

**7. Corrupt and Fraudulent practices**

- 7.1 The procuring entity requires that tenderers observe the highest standards of ethics during procurement process and execution of contracts. A tenderer shall sign a declaration that he has not and will not be involved in corrupt and fraudulent practices.

**8. APPENDIX (INSTRUCTIONS TO TENDERERS): TENDER EVALUATION CRITERIA**

**STAGE 1: (TENDER RESPONSIVENESS)**

In accordance with the requirements of the Conditions of Tendering under Clauses 26 only substantially responsive tenders will be subjected to detailed evaluation. For purposes of Clauses 26, a responsive tender is one which conforms to all the terms, conditions and specifications of the tendering documents, without material deviation or reservation. The mandatory conditions to be complied with are -

- a) Form of tender (duly filled and signed)
- b) Tender Security as stated in the tender advertisement valid for 180 days from the date of tender opening and in the format of attached form of bid security.
- c) Class of Registration with National Construction Authority as stated in the letter of invitation / advertisement
- d) Valid tax compliance certificate
- e) All documents must be serialised including all the pages submitted by Chuka University and the total number of pages clearly stated.
- f) Must not have a contract that is behind schedule or must not have had a contract that was terminated by Chuka University.
- g) Must attach a letter of attendance of the mandatory pre-tender meeting as stated in the advertisement.
- ii) A company shall fulfil all the conditions above in order to proceed to technical evaluation.
- iii) Any company that does not fulfil any of the above conditions shall be disqualified from further evaluation at this stage.

**STAGE 2: (Technical Evaluation)**

<b>item</b>	<b>Criterion</b>	<b>Marks allocation</b>	<b>Total Score</b>	
1	Similar Works (at least 50% complete) KES	0 - < 2,000,000	0	14
		2 – < 5 Million	2	
		5 – < 8 Million	4	
		8 – < 11 Million	6	
		11 – < 14 Million	8	
		14 – < 17 Million	10	
		17 – < 20 Million	12	
		20 million and over	14	
2	Availability of equipment	Truck lorry (one and above)	2	9
		Excavator	4	
		1 or more Concrete mixers	1	
		Other relevant plant or equipment	2	
3	Qualified personnel (Directors qualification in relevant trade)	Trade Test Grade 1	1	3
		Certificate	2	
		Diploma and above	3	
4	Class of Registration	NCA 6	0	6
		NCA 5	1	
		NCA 4	2	
		NCA 3	3	
		NCA 2	4	
		NCA 1	6	
<b>Total score</b>			<b>32</b>	

item	Criterion			Marks allocation	Total Score	
5	Financial status KES	<b>For limited companies</b> (2019 or 2020 financial year)	Non-current Asset base (KES)	0 – < 200,000	0	10
				200,000 – < 250,000	1	
				250,000 – < 300,000	2	
				300,000 – < 350,000	4	
				350,000 – < 400,000	6	
				400,000 – < 450,000	8	
				450,000 and over	10	
	Liquid assets		Attach bank statement for last three months showing three months (gross deposits as follows: KES )	0 – < 200,000	1	13
				200,000 – < 250,000	2	
				250,000 – < 300,000	4	
				300,000 – < 350,000	6	
				350,000 – < 400,000	8	
				400,000 – < 450,000	10	
6	Arithmetic errors		0%	5	5	
			0 > to <1%	4		
			1% to < 2%	3		
			2% to < 3%	2		
			3% to <4%	1		
			4% and over	0		
				<b>Total score</b>	<b>60</b>	

iii) All companies that score 41 marks and below (out of 60) will be disqualified from further evaluation and will not proceed to financial analysis.

iv) All companies that score 42 marks and above (out of 60) will proceed to financial analysis

**3. FINANCIAL EVALUATION**

i) Arithmetic errors will be done for the bidders who will have scored between 37 and 40 on items 1 to 5 of the technical analysis.

ii) The tenders deemed technically responsive will be ranked from the lowest bidder to the highest bidder based on their tender prices.

**iii) Due Diligence**

Due diligence may be done for the lowest ranked responsive bidder to determine the correctness of the information submitted and the ability of the company to perform the works.

**iv) Recommendation**

The bid ranked lowest shall be recommended for award if the tender sum is within the prevailing market price.

# **PARTICULAR PRELIMINARIES**

Item	Description	KES
	<p><b><i>The tenderer shall enter a price or rate against each item. All totals shall be carried to the Bills summary.</i></b></p> <p><b><i>Lump sums for the whole part of the bill, or several items grouped together will not be permitted.</i></b></p> <p><b>A Performance Bond.</b>  The contractor shall find and submit on the form of tender the name of one surety who shall be an established bank, guarantee company or approved insurance company and who will be willing to be bound to the Employer in an amount equal to five per cent (5%) of the contract amount for the due performance of the contract up to the date of completion as certified by the Engineer and who will, when and if called upon to do so, sign a bond to that effect on sample form of bond included in the tender documents (without the addition of any limitations) on the same day as the contract agreement is signed. In case of the surety named in the form of tender not being approved by the Employer, the contractor shall furnish within seven days another surety to the approval of the Chuka University.</p> <p><b>B Bid Security</b>  The bidder shall furnish, as part of his bid, a bid security in the sum and form stated in the invitation to tender advertisement.  The bid security shall, at the bidder's option, be in the form of a Banker's Cheque, bank draft, standby letter of credit or guarantee from a bank or approved insurance company located in Kenya or a foreign bank which has been determined by the bidder to be acceptable to the Chuka University.</p> <p><b>C Insurances</b>  The contractor shall insure as required in condition no.30 of the conditions of contract.  No payments on account of work executed will be made to the contractor until he has satisfied the PM. either by production of an insurance policy or by an insurance certificate that the provisions of the foregoing insurance clauses have been complied with in all aspects.  Thereafter the Engineer shall from time to time ascertain that the contractor who shall, if called upon to do so, produce receipted premium renewals for the PM's inspection duly pays up premiums.</p> <p><b>D STAMP CHARGES</b>  The contractor shall allow for the payment of all stamp charges in connection with the Contract Agreement.</p>	

Item	Description	KES
A	<p><b>PUBLIC AND PRIVATE ROADS PAVEMENTS ETC.</b></p> <p>The contractor will be required to make good, at his own expenses, any damage he may cause to the present road surfaces and pavement, within or beyond the boundary of this site, during the period of the works. In particular, all existing trees, shrubs, plants etc. which may be destroyed or damaged during the progress of the works are to be made good by the contractor to the approval of the Engineer.</p>	
B	<p><b>WATER</b></p> <p>All water shall be fresh, clean and pure free from earthy, vegetable or organic matter, acid or alkaline substance in solution or suspension.</p> <p>The contractor shall provide at his own risk and cost all water for use in connection with the works including the work of Sub-contractors, make arrangements with the relevant Authorities for the installation of a separate meter or and permit for all water used by him throughout the contract provided temporary storage tanks and tubing etc. as he may consider necessary and clear away on completion of the works.</p>	
C	<p><b>Samples</b></p> <p>The contractor shall furnish at the earliest possible opportunity before work commences and at his own cost any samples of materials or workmanship that may be called for by the Engineer for his approval or rejection, and any further samples in the case of rejection. Until such samples are approved by the Engineer and such samples when approved, shall be the minimum standard for the work to which they apply.</p>	
D	<p><b>CONCRETE TESTS</b></p> <p>Concrete test cubes i.e. per set of three as later described, including testing fee, labour and materials, making moulds, transport and handling etc.</p> <p><i>Successful test only (PROVISIONAL)</i></p> <p>Sets of three No. 100 @ KShs.....</p> <p>The Contractor is to organize with the testing Laboratory that one copy of the Test Cube Reports is forwarded direct to the Engineer</p> <p>An accurate record of all test cubes taken and crushed must be kept on site and the contractor will only be reimbursed for successful tests upon production of the laboratory certificates.</p>	



Item	Description	KES
	<p style="text-align: center;"><b>TEMPORARY WORKS</b></p> <p><b>A OFFICES AND SHEDS</b> The contractor shall erect and maintain temporary office accommodation for his own use, and ample temporary watertight sheds for the proper storage of materials and for the use of artisans including removal when ordered. Floors of sheds shall be at least 150mm above ground level.</p> <p><b>B OFFICES AND SERVICES FOR THE CONSULTANTS</b> The Contractor shall provide, erect and maintain where directed on the site, an approved weather and sun-proof lock-up office for the use of the consultants with a total floor area of not less than 10 square metres. The office shall be constructed with masonry stone and concrete floor and the ceilings internally lined with fiberboard. Glazed windows of not less than 2 square metres and stout door with lock and fastenings shall be provided and the office furnished with wooden stools, tables and chairs and drawing table along the full length of one side. Complete with drawers of sufficient size to carry the drawings laid flat. The office shall be removed on completion.  <b>The Contractor shall keep on site and maintain in good condition</b> one dumpy or quickset level and leveling staff and one 30 meters steel tape for the use of the consultants. Carried to summary sheet</p> <p><b>C SANITATION</b> The Contractor shall provide the necessary latrine of not less than 12m deep for his staff and workmen to the requirements and satisfaction of the Health Authorities and maintain the same in a thoroughly clean and sanitary condition and pay all conservancy fees during the period of the works and remove when no longer required.</p> <p><b>D EXISTING AND ADJACENT PROPERTY</b> The Contractor must take all steps necessary to safeguard existing and adjacent property, make good at his own expenses any injury or any damage to persons or property caused there on and hold the Employer indemnified against any such claim arising. The Contractor will be held fully responsible for the safety of the existing adjacent buildings and structures for any damages caused in consequence of these works. He must reinstate all damages at his own expenses and indemnify the employer against any loss.</p>	

Item	Description	KES
A	<p>The Contractor must take such steps and exercise such care and diligence as to minimize nuisance from dust, noise or any other cause to the occupiers of the existing and adjacent property. property on site.</p>	
B	<p><b>WATCHING AND LIGHTING</b></p> <p>The Contractor shall provide at his own risk and cost all watching and lighting as necessary to safeguard the works, plant and materials against damage and theft.</p>	
C	<p><b>TEMPORARY ROADS</b></p> <p>The Contractor is to allow for providing where directed all temporary access roads, track and paths necessary for the execution of the works including making good when no longer required.</p>	
D	<p><b>Signboard</b></p> <p>The Contractor shall provide 3 signboards and the lettering on the same for the display of the general and sub-contractor's names shall be of an approval size with the Employer's name printed there on. The Engineer and consultants names and other shall be printed in 50mm letters unless otherwise stated in the specifications. The signboard shall be maintained in good condition throughout the contract and removed upon completion.</p>	
E	<p style="text-align: center;"><b>PROTECTION AND CLEANING</b></p> <p><b>PROTECTION</b></p> <p>The contractor shall cover up and protect from damage including damage from inclement weather all finished work and unfixed materials, including that of sub-contractors etc. to the satisfaction of the Engineer until the completion of the contract. Carefully preserve all trees or bushes on or near the site.</p>	
F	<p><b>Cleaning</b></p> <p>The Contractor shall upon completion of the works at his expenses, remove and clear away all surplus excavated materials, plant, rubbish and unused materials and shall leave the whole of the site and works in a clean and tidy state to the satisfaction of the Engineer, including clearing away and making good all traces of temporary access roads, offices, sheds, camps etc. Particular care</p>	

Item	Description	KES
A	shall be taken to leave clean all floors and windows and to remove all paint and cement stains. He shall also remove all rubbish and dirt as it accumulates. The Contractor is to find his own dump and shall pay all charges in connection therewith. collection sheet	
B	<b>Training Levy</b> The Contractor's attention is drawn to legal Notice No. 237 of October, 1971, which requires payment by the contractor of a Training Levy on all contracts of more than Kshs. 50,000/= in value and his Tender must include for all costs arising or resulting there from.	
C	<b>TESTING</b> The contractor operate and test the completed project prior to handing over, including all costs for 14 days	
D	<b>Project Management costs</b> Allow for project documentation and supervision costs and allowances to be expended by Project Engineer, Surveyor etc. to be expended when and as directed by the Project Manager	700,000

**PRELIMINARIES AND GENERAL ITEMS SUMMARY**

Total from page 25

Total from page 26

Total from page 27

Total from page 28

Total from above

**Total to preliminaries summary**

## **CONDITIONS OF CONTRACT**

## **CONDITIONS OF CONTRACT**

### **1.0 Definitions**

“**Employer**” or the “**Procuring entity**” as defined in the Public Procurement Regulations (i.e. Central or local Government administration, Universities, public Institutions and Corporations, etc.) is the party who employs the Contractor to carry out the Works.

“**Equipment**” is the Contractor's machinery and vehicles brought temporarily to the site for the execution of the Works.

“**The Intended Completion Date**” is the date on which it is intended that the Contractor shall complete the works. The Intended Completion Date may be revised only by the Project Manager by issuing an extension of time or an acceleration order.

“**Materials**” are all supplies, including consumables, used by the Contractor for incorporation in the works.

“**Plant**” is any integral part of the works that shall have a mechanical, electrical, chemical, or biological function.

“**Project Manager**” is the person named in the Appendix to Conditions of Contract (or any other competent person appointed by the Employer and notified to the Contractor, to act in replacement of the Project Manager) who is responsible for supervising the execution of the works and administering the Contract and shall be an "Architect" or a "Quantity Surveyor" registered under the Architects and Quantity Surveyors Act Cap 525 or an "Engineer" registered under Engineers Registration Act Cap 530.

“**Site**” is the area defined as such in the Appendix to Condition of Contract.

“**Site Investigation Reports**” are those reports that may be included in the tendering documents which are factual and interpretative about the surface and subsurface conditions at the site.

“**Specifications**” means the specifications of the works included in the Contract and any modification or addition made or approved by the Project Manager.

“**Start Date**” is the latest date when the Contractor shall commence execution of the works. It does not necessarily coincide with the site possession date(s).

“**A Subcontractor**” is a person or corporate body who has a Contract with the Contractor to carry out a part of the work in the Contract, which includes work on the site.

“**Temporary works**” are works designed, constructed, installed, and removed by the Contractor which are needed for construction or installation of the works.

“**A Variation**” is an instruction given by Project Manager, which varies the works

“**The Works**” are what the contract requires the contractor to construct, Install, and turnover to the Employer, as defined in the Appendix to the Conditions of Contract.

### **2.0 Interpretation**

2.1 In interpreting these Conditions of Contract, singular also means plural, male also means female or neuter, and the other way round. Headings have no significance. Words have their normal meaning in English Language unless specifically defined. The Project Manager will provide instructions clarifying queries about these Conditions of Contract.

2.2 If sectional completion is specified in the Appendix to Conditions of Contract, reference in the Conditions of Contract to the works, the Completion Date and the Intended Completion Date apply to any section of the works (other than references to the Intended Completion Date for the whole of the works).

2.3 The following documents shall constitute the Contract documents and shall be interpreted in the following order of priority:

- (i) Agreement
- (ii) Letter of Acceptance.
- (iii) Contractor’s Tender,
- (iv) Appendix to Conditions of Contract,
- (v) Conditions of Contract,
- (vi) Specifications,
- (vii) Drawings,

- (viii) Bill of Quantities.
- (ix) Any other document listed in the Appendix to Conditions of Contract as forming part of the Contract.

Immediately after the execution of the Contract, the Project Manager shall furnish both the Employer and the Contractor with two copies each of all the Contract documents. Further, as and when necessary the Project Manager shall furnish the Contractor (always with a copy to the Employer) with three (3) copies of such further drawings or details or descriptive schedules as are reasonably necessary either to explain or amplify the Contract drawings or to enable the Contractor to carry out and complete the works in accordance with these Conditions.

### **3 Language and Law**

- 3.1 Language of the Contract and the law governing the Contract shall be English Language and the Laws of Kenya Respectively unless otherwise stated.  
Except where otherwise specifically stated the Project Manager will decide contractual matters between the employer and the contractor in the role representing the Employer.

### **4.0 Project Manager's Decision**

- 4.1 Except where otherwise specifically stated, the Project Manager will decide contractual matters between the Employer and the Contractor in the role representing the employer

### **5.0 Delegation.**

- 5.1 The Project Manager may delegate any of its duties and responsibilities to other person after notifying the Contractor.

### **6.0 Communications**

- 6.1 Communication between parties shall be effective only when in writing. A notice shall be effective only when it is delivered.

### **7. Subcontracting.**

- 7.1 The Contractor may subcontract with the approval of the Project Manager, but may not assign the Contract without the approval of the Employer in writing. Subcontracting shall not alter the Contractor's obligations.

### **8 Other Contractors:**

- 8.1 The Contractor shall cooperate and share the site with other contractors, public authorities, utilities etc. as listed in the Appendix to Conditions of Contract and also with the Employer, as per the directions of Project Manager. The Contractor shall also provide facilities and services for them. The Employer may modify the said List of Other Contractors etc., and shall notify the Contractor of any such modification.

### **9 Personnel:**

- 9.1 The Contractor shall employ the key personnel named in the Qualification Information, to carry out the functions stated in the said Information or other personnel approved by the Project Manager. The Project Manager will approve any proposed replacement of key personnel only if their relevant qualifications and abilities are substantially equal to or better than those of the personnel listed in the Qualification Information. If the Project Manager asks the Contractor to remove a person who is a member of the Contractor's staff or work force, stating the reasons, the Contractor shall ensure that the person leaves the site within seven days and has no further connection with the work in the Contract.

### **10. The Works**

- 10.1 The Contractor shall construct and install the Works in accordance with the specifications and drawings. The Works may commence on the Start date and shall be carried out in accordance with the program submitted by the Contractor, as updated with the approval of the Project Manager, and complete them by the Intended Completion Date.

### **11. Safety and Temporary Works.**

- 11.1 The Contractor shall be responsible for the design of temporary works. However before erecting the same, he shall submit its designs including specifications and drawings to the Project Manager and to any other relevant third parties for their approval. No erection of temporary works shall be done until such approvals are obtained.
- 11.2 The Project Manager's approval shall not alter the Contractor's responsibility for design of the Temporary works and all drawings prepared by the Contractor for the execution of the temporary or permanent works, shall be subject to prior approval by the Project Manager before they can be used.
- 11.3 The Contractor shall be responsible for the safety of all activities on the site.

#### **12.0 Discoveries:**

- 12.1 Anything of historical or other interest or of significant value unexpectedly discovered on site shall be the property of the Employer. The Contractor shall notify the Project Manager of such discoveries and carry out the Project Manager's instructions for dealing with them.

#### **13.0 Work Program:**

- 13.1 Within the time stated in the Appendix to Conditions of Contract, the Contractor shall submit to the Project Manager for approval a program showing the general methods, arrangements, order, and timing for all the activities in the works. An Update of the program shall be a program showing the actual progress achieved on each activity and the effect of the progress achieved on the timing of the remaining work, including any changes to the sequence of the activities.

The Contractor shall submit to the Project Manager for approval an updated program at intervals no longer than the period stated in the Appendix to Conditions of Contract. If the Contractor does not submit an updated program within this period, the Project Manager may withhold the amount stated in the said Appendix from the next payment certificate and continue to withhold this amount until the next payment after the date on which the overdue program has been submitted. The Project Manager's approval of the programme shall not alter the Contractor's obligations. The contractor may revise the program and submit it to the Project Manager again at any time. A revised program shall show the effect of Variations and Compensation Event:

#### **14 Possession of Site.**

- 14.1 The Employer shall give possession of all parts of the site to the contractor. If possession of a part is not given by the date stated in the appendix to Conditions of Contract, the Employer will be deemed to have delayed the start of the relevant activities, and this will be a Compensation Event

#### **15. Access to Site**

- 15.1 The Contractor shall allow the project Manager and any other person authorized by the Project Manager, access to the site and to any place where work in connection with the Contract is being carried out or is intended to be carried out.

#### **16. Instructions**

- 16.1 The Contractor shall carry out all instructions of the project Manager, which are in accordance with the Contract

#### **17. Extension or Acceleration of Completion Date**

- 17.1 The Project Manager shall extend the Intended Completion date if a Compensation Event occurs or a variation is issued which makes it impossible for completion to be achieved by the Intended Completion Date without the Contractor taking steps to accelerate the remaining work, which would cause the Contractor to incur additional cost. The Project Manager shall decide whether and by how much to extend the Intended Completion date within 21 days of the Contractor asking the Project Manager in writing for a decision upon the effect of a compensation Event or Variation and submitting full supporting information. If the Contractor has failed to file early warning of a delay or has failed to cooperate in dealing with a delay, the delay caused by such failure shall not be considered in assessing the new (extended) completion date.

- 17.2 No bonus for early completion of the works shall be paid to the Contractor by the Employer.

#### **18.0 Management Meeting.**

- 18.1 A contract management meeting shall be held monthly and attended by the Project Manager and the Contractor. Its business shall be to review the plans for the remaining work and deal matters raised in accordance with the early warning procedure. The Project Manager shall record minutes of the management meetings and provide copies of the same to those attending the meeting and the employer. The responsibilities for the parties for action to be taken shall be decided by the Project Manager either at the management meeting or after the management meeting and stated in writing to all who attended the meeting.

## **19 Early Warning:**

- 19.1 The Contractor shall warn the Project Manager at the earliest opportunity of specific likely future events or circumstances that may adversely affect the quality of the work, increase the Contract Price or delay the execution of the works. The Project Manager may require the Contractor to provide an estimate of the expected effect of the future event or circumstance on the Contract Price and Completion Date. The contractor as soon as reasonably possible shall provide the estimate.
- 19.2 The Contractor shall cooperate with the Project Manager in making and considering proposals on how the effect of such an event or circumstance can be avoided or reduced by anyone involved in the work and in carrying out any resulting instructions of the Project Manager.

## **20 Defects**

- 20.1 The Project Manager shall inspect the Contractor's works and notify the Contractor of any defects that are found. Such inspection shall not affect the Contractor's responsibilities. The Project Manager may instruct the contractor to search for a defect and to uncover and test any work that the Project Manager considers may have a defect. Should the defect be found, the cost of uncovering and making good shall be borne by the Contractor. However, if there is no defect found the cost of uncovering and making good shall be treated as a variation and added to the Contract Price.
- 20.2 The Project Manager shall give notice to the Contractor of any defects before the end of the Liability Period, which begins at Completion, and is defined in the Appendix to Conditions of Contract. The defects Liability period shall be extended for as long as defects remain to be corrected.
- 20.3 Every time notice of a defect is given, the Contractor shall correct the notified defect within the length of time specified by the Project Manager's notice. If the Contractor has not corrected a defect within the time specified in the project Manager's notice, the project Manager will assess the cost of having the defect corrected by other parties and such cost shall be treated as a variation and be deducted from the Contract Price.

## **21. Bills of Quantities**

- 21.1 The Bills of Quantities shall contain items for the construction, installation, testing and commissioning of the work to be done by the Contractor. The Contractor will be paid for the quantity of the work done at the rate in the Bills of Quantities for each item.
- 21.2 If the final quantity of the work done differs from the quantity in the Bills of Quantities for the particular item by more than 25 percent and provided the change exceeds 1 per cent of the Initial Contract price, the project Manager shall adjust the rate to allow for the change.
- 21.3 If requested by the project Manager, the Contractor shall provide the Project Manager with a detailed cost breakdown of any rate in the Bills of Quantities.

## **22. Variations:**

- 22.1 All variations shall be included in update programs produced by the Contractor.
- 22.2 The Contractor shall provide the Project Manager with a quotation for carrying out the variations when requested to do so. The Project Manager shall assess the quotation, which shall be given within seven days of the request or within any longer period as may be stated by the Project Manager and before the Variation is ordered.
- 22.3 If the work in the variation corresponds with an item description in the Bills of Quantities and if in the opinion of the Project Manager, the quantity of work is not above the limit stated in Clause 21.2 or the timing of its execution does



not cause the cost per unit of quantity to change, the rate in the Bills of Quantities shall be used to calculate the value of the variation.

- 22.4 If the cost per unit of quantity changes, or if the nature or timing of the works in the variation does not correspond with items in the Bills of Quantities, the quotation, giving detailed price build up calculations, by the Contractor shall be in the form of new rates for the relevant items of work.
- 22.5 If the Project Manager decides that the urgency of varying the work would prevent a quotation being given and considered without delaying the work, no quotation shall be given and the variation shall be treated as a Compensation Event.
- 22.6 The Contractor shall not be entitled to additional payment for costs that could have been avoided by giving early warning.
- 22.7 When the program is update, the Contractor shall provide the Project Manager with an updated cash flow forecast.

### **23. Payment Certificates, Currency of Payments and Advance Payments:**

- 23.1 The Contractor shall submit to the project Manager monthly applications for payment giving sufficient details of the work done and materials on site and the amounts which the Contractor considers himself to be entitled to. The Project Manager shall check the monthly application and certify the amount to be paid to the Contractor within 14days. The value of work executed and payable shall be determined by the project Manager.
- 23.2 The value of work executed shall comprise the value of the quantities of the items in the Bills of Quantities completed, materials delivered on site, variations and compensation events, such materials shall become the property of the Employer once the Employer has paid the Contractor for their value. Thereafter, they shall not be removed from site without the Project Manager's instructions except for use upon the works.
- 23.3 Payment shall be adjusted for deductions for retention. The Employer shall pay the Contractor the amounts certified by the Project Manager within 30 days of the date of issue of each certificate. If the employer makes a late payment, the Contractor shall be paid simple interest on the late payment in the next payment. Interest shall be calculated on the basis of number of days delayed at a rate three percentage points above the Central Bank of Kenya's average rate for base lending prevailing as of the first day the payment becomes overdue.
- 23.4 If an amount certified is increased in a later certificate or as a result of an award by an Arbitrator, the Contractor shall be paid interest upon the delayed payment as set out in tits clause. Interest shall be calculated from the date upon which the increased amount would have been certified in the absence of dispute.
- 23.5 Items of the works for which no rate or price has been entered in will not be paid for by the Employer and shall be deemed covered by other rates and prices in the Contract.
- 23.6 The Contract price shall be stated in Kenya Shillings. All payments to the Contractor shall be made in Kenya Shillings and foreign currency in the proportion indicated in the tender, or agreed prior to the execution of the contract agreement and indicated therein. The rate of exchange for the calculation of the amount of foreign currency payment shall be the rate of exchange indicated in the appendix to conditions of contract. If the contractor indicated foreign currencies for payment other than the currencies of the countries of origin of related goods and services. The Employer reserves the right to pay the equivalent at the time of payment in the currencies of the countries of such goods and services. The employer and the Project Manager shall be notified promptly by the Contractor of a changes in the expected foreign currency requirements of the contractor during the execution of the works as indicated in the Schedule of Foreign Currency Requirements and the foreign and local currency portions of the balance of the contract price shall then be amended by agreement between Employer and the Contractor in order to reflect appropriately such changes.
- 23.7 In the event that an advance payment is granted the following shall apply: -
- a) On signature of the Contract, the Contractor shall at its request, and without furnishing proof of expenditure, be entitle to an advance of 10% (ten per cent) of the original amount of the Contract. The advance shall not be subject to retention money.
  - b) No advance payment may be made before the Contractor has submitted proof of the establishment of deposit or a directly liable guarantee satisfactory to the Employer in the amount of the advance payment. The guarantee shall be in the same currency as the advance.

- C) Reimbursement of the lump sum shall be made by deductions from the interim payments and where applicable from the balance owing to the Contractor. Reimbursement shall begin when the amount of the sums due under the Contract reaches 20% of the original amount of the Contract. It shall have been completed by the time 80% of the amount is reached.

The amount to be paid by way of successive deductions shall be calculated by means of the formula: -

$$R = \frac{A(X^1 - X^{11})}{80 - 20}$$

Where:

R = the amount to be reimbursed.

A = the amount of the advance which has been granted.

X<sup>1</sup> = the amount of proposed cumulative payments as a percentage of the original amount of the Contract. This figure will exceed 20% but not exceed 80%

X<sup>11</sup> = the amount of the previous cumulative payments as a percentage of the original amount of the Contract. This figure will be below 80% but not less than 20%

- b) With each reimbursement the counterpart of the directly liable guarantee may be reduced accordingly.

## 24. Compensation Events:

24.1 The following issues shall constitute Compensation Events: -

- a) The Employer does not give access to a part of the site by the site Possession Date stated in the appendix to Conditions of Contract.
- b) The Employer modifies the list of other Contractors, etc., in a way that affects the work of the Contractor under the Contract.
- c) The Project Manager orders a delay or does not issue drawings, specifications or instructions required for the execution of the work on time.
- d) The Project Manager instructs the contractor to uncover or carry out additional tests upon the work, which is then found to have no defects.
- e) The Project Manager unreasonably does not approve a subcontract to be let.
- f) Ground conditions are substantially more adverse than could reasonably have been assumed before issuance of the Letter of Acceptance from the information issued to tenderer (including the site investigation reports), from information available publicly and from visual inspection.
- g) The Project Manager gives an instruction for dealing with an unforeseen condition, caused by the Employer or additional work required for safety or other reasons.
- h) Other contractors, public authorities, utilities or the Employer does not work within the dates and other constraints stated in the contract, and they cause a delay or extra cost to the contractor.
- i) The effects on the contractor of any of the Employer's risks.
- j) The Project Manager unreasonably delays issuing a certificate of completion.
- k) Other compensation events described in the contract or determined by the Project Manager shall apply.

24.2 If a compensation event would cause additional cost or would prevent the works being completed before the Intended Completion Date, the Contract Price shall be increased and / or the Intended Completion Date shall be extended. The Project Manager shall decide whether and by how much the Contract Price shall be increased and whether and by how much the Intended Completion Date shall be extended..

24.3 As soon as the information demonstrating the effect of each compensation event upon the Contractor's forecast cost has been provided by the contractor, it shall be assessed by the Project Manager, and the contract price shall be adjusted accordingly. If the contractor's forecast is deemed unreasonable, the Project Manager shall adjust the

Contract Price based on the Project Manager's own forecast. The Project manager will assume that the contractor will react competently and promptly to the event.

- 24.4 The Contractor shall not be entitled to compensation to the extent that the employer's interests are adversely affected by the Contractor not having given early warning or not having co-operated with the Project Manager.
- 24.5 Prices shall be adjusted for fluctuations in the cost of input only if provided for in the Appendix to Conditions of Contract.
- 24.6 The Contractor shall give written notice to the Project Manager of its intention to make a claim within thirty days after the event giving rise to the claim has first arisen. The claim shall be submitted within thirty days thereafter.

Provided always that should the event giving rise to the claim of continuing effect, the Contractor shall submit an interim claim within the said thirty days and a final claim within thirty days of the end of the event giving rise to the claim.

## 25. Price Adjustment

- 25.1 The Project Manager shall adjust the Contract Price if taxes, duties and other levies are changed between the date 30 days before the submission of tenders for the Contract and the date of Completion. The adjustment shall be the change in the amount of tax payable by the Contractor.
- 25.2 The Contract Price shall be deemed to be based on exchange rates current at the date of tender submission in calculating the cost to the Contractor of materials to be specifically imported (by express provisions in the Contract Bills of Quantities or specifications) for permanent incorporation in the works. Unless otherwise stated in the Contract, if at any time during the period of the Contract exchange rates shall be varied and this shall affect the cost to the Contractor of such materials, then the Project Manager shall assess the varying amount from time to time and the amount so assessed shall be added to or deducted from the Contract Price as the case may be.
- 25.3 Unless otherwise stated in the Contract, the Contract Price shall be deemed to have been calculated in the manner set out below and in sub-clauses 25.4 and 25.5 and shall be subject to adjustment in the events specified hereunder: -
- (i) The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the rates of wages and other emoluments and expenses as determined by the Joint Building Council (JBC) and set out in the schedule of rates issued 30 days before the date of submission of tenders. A copy of schedule used by the contractor in its pricing shall be attached in the appendix to Conditions of Contract.
  - (ii) Upon JBC determining that any of the said rates of wages or other emoluments and expenses are increased or decreased, then the contract price shall be increased or decreased by the amount assessed by the Project Manager based on the difference, expressed as a percentage, between the rates set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the JBC and applied to the quantum of labour incorporated within the amount of work remaining to be executed at the date of publication of such increase or decrease.
  - (iii) No adjustment shall be made in respect of changes in the rates of wages and other emoluments and expenses which occur after the date of completion except during such other period as may be granted as an extension of time under clause 17 of these conditions.
- 25.4 The prices contained in the Contract Bills of Quantities shall be deemed to be based upon the basic prices of materials to be permanently incorporated in the works as determined by the JBC and set out in the schedule of basic rates issued 30 days before the date for submission of tenders. A copy of the schedule used by the contractor in its pricing shall be attached in the appendix to conditions of contract.
- 25.5 Upon the JBC determining that any of the said basic prices are increased or decreased then the Contract Prices shall be increased or decreased by the amount to be assessed by the Project Manager based upon the difference between the price set out in the schedule of basic rates issued 30 days before the date for submission of tenders and the rate published by the JBC and applied to the quantum of relevant materials which have not been taken into account in arriving at the amount of any interim certificate under clause 23 of these conditions of contract issued before the date of publication of such increase or decrease.

- 25.6 No adjustment shall be made in respect of changes in basic prices of materials which occur after date for Completion except during such other period as may be granted as extension of time under clause 17 of these conditions.
- 25.7 The provisions of sub-clause 25.1 to 25.2 herein shall not apply in respect of any materials included in the schedule of basic rates.

#### **26.0 Retention**

- 26.1 The Employer shall retain from each payment due to the Contractor the proportion stated in the Appendix to Conditions of Contract until Completion of the whole of the works, half the total amount retained shall be repaid to the Contractor and the remaining half when the Defects Liability Period has passed and the Project Manager has certified that all defects notified to the Contractor before the end of this period have been Corrected.

#### **27. Liquidated Damages**

- 27.1 The Contractor shall pay liquidated damages to the Employer at the rate stated in the Appendix to conditions of Contract for each day that the actual completion date is later than the intended completion date. The Employer may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not alter the Contractor's liabilities.
- 27.2 If the Intended Completion Date is extended after liquidated damages have been paid, the Project Manager shall correct any overpayment of liquidated damages by the Contractor by adjusting the next payment certificate. The Contractor shall be paid interest on the overpayment, calculated from the date of payment to the date of repayment, at the rate specified in Clause 23.30.

#### **28. Securities.**

- 28.1 The Performance Security shall be provided to the Employer no later than the date specified in the Letter of Acceptance and shall be issued in an amount and form and by a reputable bank acceptable to the Employer, and denominated in Kenya Shillings. The Performance Security shall be valid until a date 30 days beyond the date of issue of the Certificate of Completion.

#### **29. Day works:**

- 29.1 If applicable, the Day Works rates in the Contractor's tender shall be used for small additional amounts of work only when the Project Manager has given written instructions in advance for additional work to be paid for in that way.
- 29.2 All works to be paid for as Day Works shall be recorded by the Contractor on Forms approved by the Project Manager- Each completed form shall be verified and signed by the Project Manager within two days of the works being done.
- 29.3 The contractor shall be paid for day-works subject to obtaining signed Day-works forms

#### **30. Liability and Insurance**

- 30.1 From the Start Date until the Defects Correction Certificate has been issued, the following are the Employer's risks:
- (a) The risk of personal injury, death or loss of or damage to property (excluding the works, plant, materials and equipment), which are due to: -
    - (i) Use or occupation of the site by the works or for the purpose of the works, which is the unavoidable result of the *works*, or
    - (ii) Negligence, breach of statutory duty or interference with any legal right by the people employed by or contracted to him except the contractor.

- (b) The risk of damage to the works, plant, materials, and equipment to the extent that it is due to a fault of the employer or in employer's design, or due to war or radioactive contamination directly affecting the place where the works are being executed.
- 30.2 From the Completion Date until the Defects Correction Certificate has been issued, the risk of loss of or damage to the works, plant and materials is the Employer's risk except loss or damage due to:-
- (a) a defect which existed on or before the Completion date.
  - (b) An event occurring before the completion date, which was not itself, the Employer's risk.
  - (c) The activities of the contractor on the site after the completion date.
- 30.3 From the start date until the defects correction certificate has been issued, the risks of personal injury, death and loss of or damage to property (including, without limitation, the works, plant, material and equipment) which are not Employer's risk are contractor's risks
- The Contractor shall provide, in the joint names of the Employer and the contractor, insurance cover from the start date to the end of the Defects Liability Period, in the amounts stated in the Appendix to Conditions of Contract for the following events:-
- (a) loss of or damage to the works, plant and materials.
  - (b) loss of or damage to equipment.
  - (c) loss of or damage to property (except the works, plant, materials and equipment) in connection with the contract and
  - (d) personal injury or death.
- 30.4 Policies and certificates for insurance shall be delivered by the Contractor to the Project Manager for the Project Manager's approval before the state date. All such insurance shall provide for compensation required to rectify the loss or damage incurred.
- 30.5 If the Contractor does not provide any of the policies and certificates required, the Employer may effect the insurance which the contractor should have provided and recover the premiums from payments otherwise due to the contractor or, if no payment is due, the payment of the premiums shall be a debt due.
- 30.6 Alterations to the terms of insurance shall not be made without the approval of the Project Manager. Both parties shall comply with any conditions of insurance policies.

### **31. Completion and Taking over,**

- 31.1 Upon deciding that the works are complete, the Contractor shall issue a written request to the Project Manager to issue a certificate of completion of the works. The Employer shall take over the site and the works within seven (7) days of the Project Manager's issuing a Certificate of Completion.

### **32. Final Account:**

- 32.1 The contractor shall issue the Project Manager with a detailed account of the total amount that the Contractor considers payable to him by the Employer under the Contract before the end of the Defects Liability period. The Project Manager shall issue a Defects Liability Certificate and certify any final payment that is due to the Contractor within 30 days of receiving the Contractor's account if it is correct and complete. If it is not, the Project Manager shall issue within 30 days a schedule that states the scope of the corrections or additions that are necessary. If the final account is still unsatisfactory after it has been resubmitted, the Project Manager shall decide on the amount payable to the Contractor and issue a Payment Certificate. The Employer shall pay the Contractor the amount due in the Final Certificate within 60 days.

### **33. Termination:**

- 33.1 The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the contract. These fundamental breaches of contract shall include but shall not be limited to, the following:-

- (a) the Contractor stops work for 30 days when no stoppage of work is shown on the current program and the stoppage has not been authorized by the Project Manager;
  - (b) the Project Manager instructs the Contractor to delay the progress of the works, and the instruction is not withdrawn within 30 days;
  - (c) the Contractor is declared bankrupt or goes into liquidation other than for a reconstruction or amalgamation;
  - (d) a payment certified by the Project Manager is not paid by the Employer to the Contractor within 30 days (for Interim Certificate) or 60 days (for Final Certificate) of issue.
  - (e) The Project Manager gives notice that failure to correct a particular defect is a fundamental breach of contract and the Contractor fails to correct it within a reasonable period of time determined by the Project Manager;
  - (f) The Contractor does not maintain a security, which is required.
- 33.2 When either party to the Contract gives notice of a breach of Contract to the Project Manager for a cause other than those listed under Clause 33.1 above, the Project Manager shall decide whether the breach is fundamental or not.
- 33.3 Notwithstanding the above, the Employer may terminate the Contract for convenience.
- 33.4 If the Contract is terminated, the Contractor shall stop work immediately, make the site safe and secure, and leave the site as soon as reasonably possible. The Project Manager shall immediately thereafter arrange for a meeting for the purpose of taking record of the works executed and materials, foods, equipment and temporary buildings on site.

#### **34. Payment upon Termination:**

- 34.1 If the Contract is terminated because of a fundamental breach of Contract by the Contractor, the Project Manager shall issue a certificate for the value of the work done and materials ordered and delivered to site up to the date of the issue of the certificate. Additional liquidated damages shall not apply. If the total amount due to the Employer exceeds any payment due to the Contractor the difference shall be a debt payable by the Contractor.
- 34.2 If the contract is terminated for the employer's convenience or because of a fundamental breach of contract by the employer, the Project Manager shall issue a certificate for the value of work done, materials on site, the reasonable cost of removal of equipment from the site repatriation of the Contractor's personnel employed solely on the works, and the Contractor's costs of protecting and securing the works.
- 34.3 The Employer may employ and pay other persons to carry out and complete the works and to rectify any defects and may enter upon the works and use all materials on the site, plant, equipment and temporary works.
- 34.4 The Contractor shall, during the execution or after the completion of the works under this clause remove from the site as and when required, within such reasonable time as the Project Manager may in writing specify, any temporary buildings, plant, machinery, appliances, goods or materials belonging to or hired by him and in default the Employer may without being responsible for any loss or damage remove and dispose of the same and the proceeds less all costs incurred shall be to the credit of the Contractor.

Until after completion of the works under this clause the Employer shall not be bound by any other provision of this Contract to make any payment to the Contractor, but upon such completion as aforesaid and the verification within a reasonable time of the accounts therefore the Project Manager shall certify the amount of expenses properly incurred by the Employer and if such amount added to the money paid to the Contractor before such determination exceeds the total amount which would have been payable on due completion in accordance with this Contract the difference shall be a debt payable to the Employer by the Contractor; and if the said amount added to the said money be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

#### **35 Release from Performance:**

- 35.1 If the Contract is frustrated by the outbreak of war or by any other event entirely outside the control of either the Employer or the Contractor, the Project Manager shall certify that the Contract has been frustrated. The Contractor

shall make the site safe and stop work as quickly as possible after receiving its certificate and shall be paid for all work carried out before receiving it.

### 36. Corrupt gifts and payments, of commission:

The Contractor shall not:-

- a) Offer or give or agree to give to any person in the service of the Employer any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for Having done or forborne to do any act in relation to obtaining or execution of this contract for the employer or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for the Employer.
- (b) Enter into this or any other contract with the Employer in connection with which commission has been paid or agreed to be paid by him or on its behalf or to its knowledge, unless before the Contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Employer.
- (c) Any breach of this Condition by the Contractor or by anyone employed by him or acting on its behalf (whether with or without the knowledge of the Contractor) shall be an offence under the provisions of the Public Procurement Regulations issued under the exchequer and Audit Act Cap 412 of the Law of Kenya.

### 37. Settlement of Disputes:

37.1 In case any dispute or difference shall arise between the Employer or the Project Manager on its behalf and the Contractor, either during the progress or after the completion or termination of the works such dispute shall be notified in writing by either party to the other with a request to submit it to arbitration and to concur in the appointment of an Arbitrator within thirty days of the notice. The dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties. Failing agreement to concur in the appointment of an Arbitrator, the Arbitrator shall be appointed by the Chairman or Vice Chairman of any of the following professional institutions:-

- (i) Architectural Association of Kenya
- (ii) Institute of Quantity Surveyors of Kenya
- (iii) Association of Consulting Engineers of Kenya
- (iv) Chartered Institute of Arbitrators (Kenya branch)
- (v) Institution of Engineers of Kenya

on the request of the applying party. The institution written to first by the aggrieved party shall take precedence over all other institutions.

37.2 The arbitration may be on the Construction of this contract or any matter or thing whatsoever nature arising there under or in connection therewith, including any matter or thing left by this Contract to the discretion of the Project Manager, or the withholding by the Project Manager of any certificate to which the Contractor may claim to be entitled to or the measurement and valuation referred to in clause 23.0 of these conditions, or the rights and liabilities of the parties subsequent to the termination of Contract.

37.3 Provided that no arbitration proceedings shall be commenced on any dispute or difference where notice of a dispute or difference has not been given by the applying party within ninety days of the occurrence or discovery of the matter or issue giving rise to the dispute.

37.4 Notwithstanding the issue of a notice as stated above, the arbitration of such a dispute or difference shall not commence unless an attempt has in the first instance been made by the parties to settle such dispute or difference amicably with or without the assistance of third parties. Proof of such attempt shall be required.

37.5 Notwithstanding anything stated herein, the following matters may be referred to arbitration before the practical completion of the works or abandonment of the works or termination of the Contract by either party

- (i) The appointment of a replacement Project Manager upon the said person ceasing to act.
- (ii) Whether or not the issue of an instruction by the Project Manager is empowered by these Conditions.
- (iii) Whether or not a certificate has been improperly withheld or is not in accordance with these Conditions.

- (iv) Any dispute or difference arising in respect of war risks or war damage.
- 37.6 All other matters shall only be referred to arbitration after the completion or alleged completion of the works or termination or alleged termination of the Contract, unless the employer and the Contractor agree otherwise.
- 37.7 The Arbitrator shall, without prejudice to the generality of its powers, have powers to direct such measurements, computation, tests or valuations as may in its opinion be desirable in order to determine the rights of the parties and assess and award any sums which ought to have been the subject of or included in any certificate.
- 37.8 The Arbitrator shall, without prejudice to the generality of its powers, have power to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.
- 37.9 The award of such Arbitrator shall be final and binding upon the parties.

### **APPENDIX TO CONDITIONS OF CONTRACT**

1. Clause 37 is deleted and substituted with the following: -

#### **A. Settlement of Disputes**

In case any dispute or difference shall arise between the Employer or the Project Manager on its behalf and the Contractor, either during the progress or after the completion or termination of the works such dispute shall be notified in writing by either party to the other with a request to submit it to a **competent law courts**

#### **B. Alternative Dispute Resolution**

It shall be a condition that no dispute shall be referred to the laws courts unless and until the matter has been dealt with through Alternative Dispute Resolution (ADR) mechanism.

- (i) The person or persons to conduct the Alternative Dispute shall be agreed upon between the parties.
- (ii) The Alternative Dispute Resolution shall involve Reconciliation, Mediation or Adjudication



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Item	Description	KES
	<p><b><u>APPENDIX TO CONDITIONS OF CONTRACT</u></b></p> <p>The Employer is:  Name: <b>Chuka University</b>  <b>P.O. Box 109 – 60400 Chuka</b></p> <p>Name of Authorized Representative: <b>Vice Chancellor, Chuka University</b>  <b>P.O. BOX 109 - 60400</b>  <b>CHUKA</b>  Telephone: <b>+254 61304004.</b></p> <p><b>The Project Manager is: -</b></p> <p>Name: <b>University Architect (Moses Kirimi)</b>  <b>P.O. BOX 109 - 60400</b>  <b>CHUKA</b>  Telephone: <b>0721 218525.</b></p> <p>Name of Authorized Representative:</p> <p>Name: <b>University Quantity Surveyor (Elias Nyaga)</b>  Address <b>P.O. BOX 109 - 60400</b>  <b>CHUKA</b>  Telephone: <b>0722 670935.</b></p> <p>The Works consist of: <b>constructing weir, sedimentation tank and pipeline</b></p> <p>1. Clause 2.2 (Sectional Completion) - the work shall be constructed in one phase unless ordered otherwise by the Project Manager</p> <p style="padding-left: 40px;">- Completion date shall be 16 weeks from date of site possession</p> <p>2. Clause 8.0 (Other contractors to share site) - Any contractor that the Project Manager may Nominate</p> <p>3. Clause 13.0 (Works program) -</p> <p style="padding-left: 40px;">(i) to be provided within 7 days of site possession.</p> <p style="padding-left: 40px;">(ii) Updated program to be supplied monthly.</p> <p style="padding-left: 40px;">(iii) Amount to withdraw from next payment for non-submission of updated program - 10% of valuation certificate.</p> <p>4. Clause 14 (Site possession) - To be agreed with Project Manager</p> <p>5. Clause 20 (Defects liability Period) - twelve months from date of completion date</p> <p>6. Clause 23 (Interim certificates) - (i) Valuation done – Monthly</p>	

Item	Description	KES
	6. Clause 23 (Interim certificates) - (i) Valuation done - Monthly - (ii) Period of honouring certificate – 60 days - (iii) Advance payment – shall not apply  7. Clause 26 (Retention money) - (i) Percentage retained – 10% - (ii) Limit of retention – 5% of contract price  8. Clause 27 (Liquidated damages) - At the rate of KES 1,000/- per week or part thereof  9. Clause 24.5 (Fluctuations) - Shall not apply  10. Clause 25.2 (Materials to be specifically imported) - Exchange rate is KES 110 per US\$  11. Clause 28 (performance security) 5 % of the contract price  12. Clause 30 (Liability and insurance) - Minimum cover for other properties is Kenya shillings one million  - Minimum cover for other people is Kenya shillings one million	

**Collection page for Conditions of Contract**

Total from page 43.....

Total from page 44 .....

Total from page 45.....

Total from above .....

Total carried to Summary for Conditions of Contract

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\_\_\_\_\_

# **PREAMBLES AND PRICING NOTES**

## **PREAMBLES AND PRICING NOTES**

### **A. GENERALLY**

All work to be carried out in accordance with the Ministry of Public Works General Specifications for Building Works issued in 1976 or as qualified or amended below.

### **B. MANUFACTURERS' NAMES**

Where manufacturers' names and catalogue references are given for guidance to quality and standard only. Alternative manufacturer of equal quality will be accepted at the discretion of the Project Manager.

### **C. WALLING**

All precast concrete blocks shall be manufactured by the methods and to the sizes specified in the Ministry of Public Works "Specification for Metric Sized Concrete Blocks for Building (1972)"

Walling of 100 mm thickness or under shall be reinforced with hoop iron every alternate course.

Prices for walling must allow for all costs in preparing, packing and sending sample blocks for testing as and when required by the Project Manager.

### **D. CARPENTRY**

The grading rules for cypress shall be the same for podocarpus and all timber used for structural work shall be select second grade.

All structural timber must conform to the minimum requirements for moisture content and preservative treatment and timber prices must allow for preparing, packing and sending samples for testing when required. Prices must also include for all nails and fasteners.

### **E. STRUCTURAL STEELWORK**

All structural steelwork shall comply with the Public Works Department "Structural Steelwork Specification (1973) and shall be executed by an approved Sub-contractor.

### **F. PLASTERWORK AND OTHER FINISHES**

All finishing shall be as described in the general specifications and in these Bills of Quantities.

Prices for pavings are to include for brushing concrete clean, wetting and coating with cement and sand grout 1:1.

Rates for glazed wall tiling are to include for a 12 mm cement and sand (1:4) backing screed unless otherwise specified in these Bills of Quantities.

**G. PAINTING**

Painting shall be premium quality and applied in accordance with the manufacturers' instructions unless specified in these Bills of Quantities.

Prices for painting are to include for scaffolding, preparatory work, priming coats, protection of other works and for cleaning up on completion. Prices for painting on galvanized metal are to include for mordant solution as necessary.

**PRELIMINARIES SUMMARY**

**KES**

Total from page ..... (Instructions to bidders)

Total from page ..... (Particular and General Preliminaries)

Total from page ..... (Conditions of contract)

**Total to Grand Summary page for preliminaries**

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\_\_\_\_\_

ITEM	DESCRIPTION	UNIT	QTY	RATE	KES
	<b>PIPELINE</b> <b>(All provisional)</b>				
A	Clear the pipeline corridor (approx. 5 metres wide) of all bushes, shrubs, trees and other obstructions and dispose off as directed.	sm	28,520		
	<b>Excavations and Earthworks</b> <i>1100 x 600mm deep (average) trench excavation cross section for twin pipeline.</i>				
B	Excavation in normal soil	CM	3,000		
C	Excavation in soft/ loose rock and murrum	CM	800		
D	Excavation in hard rock	CM	214		
E	Return and fill in excavated materials into the trench, excess materials to be spread evenly along the pipeline.	CM	2,760		
	<b>Pipeline</b> <i>Rates to include for Supply, Transportation to project site, installation, rubber rings, gasket paper, bolts, steel washers, nuts etc.</i>				
F	ND 150mm (6") flanged steel pipes class 'A'	LM	60		
G	ND 50mm (2") flanged steel pipes class 'A'	LM	60		
H	ND 110mm (4") Upvc class 'C' pipes	LM	3,588		
J	ND40mm (1.5") Upvc class 'C' pipes	LM	2,880		
K	ND 40mm (1.5") flanged steel pipes class 'A'	LM	60		
L	ND 100mm (4") flanged steel pipes class 'A'	LM	156		
	<b>High level tank line</b>				
M	ND40mm (1.5") Upvc class 'C' pipes	LM	1,800		
N	ND 40mm (1.5") flanged steel pipes class 'A'	LM	100		
p	DN 40mm Gate valve as 'Pegler' or equivalent	Nr	1		
Q	150mmx 25mm Saddle clamp	Nr	1		
R	DN 25mm Valve Socket	Nr	1		
<b>Total to collection</b>					



ITEM	DESCRIPTION	UNIT	QTY	RATE	KES
	<b>Valve chambers</b>				
A	Construct masonry valve chamber of 1.4m x 1.4m plan dimensions and 1.2m depth with a 100mm thick reinforced concrete slab complete with a lockable heavy duty plastic manhole cover together with frame fixed into concrete. Rates to include for internal render and plaster	Nr	4		
	<b>Thrust Blocks</b>				
B	Supply materials and construct 750 x 450 x 1000mm mass concrete 1 :3:6 mix Thrust Blocks at all points where the pipelines change direction. The rate to included for all necessary earthworks, formwork and curing.	Nr	10		
	<b>Individual Connections</b>				
C	150mmx 25mm Saddle clamp	Nr	15		
D	DN 25mm Upvc class 'C' Pipes	Nr	15		
E	DN 25mm Gate valve as 'Pegler' or equivalent	Nr	15		
F	DN 25mm Valve Socket	Nr	15		
	<b>MASTER METERS</b>				
G	Provide and install 300mm Diameter master meter, British make or equivalent with all accessories	Nr	1		
H	Provide and install 100mm Diameter master meter, British make or equivalent with all accessories	Nr	1		
J	Allow a sum of Kenya shillings two hundred thousand for extra pipeline works	Nr.	1		
<b>Total to collection below</b>					

**PIPELINE COLLECTION**

Total from page 1 of 5

Total from above

**Total to summary for the pipeline**

ITEM	DESCRIPTION	UNIT	QTY	RATE	KES
	<b>INTAKE WEIR &amp; SEDIMENTATION BASIN</b> (All provisional)				
	<b>Site Clearance</b>				
A	Clear the intake area of all bushes, shrubs, trees and other obstructions and dispose off as directed.	sm	400		
	<b>Diversion works</b>				
B	Diversion of river flow and keeping excavations free from running water including accessory coffer dams, pumping etc.	Item	1		
	<b>Foundation Excavation</b>				
C	Excavation in hard rock	CM	64		
	<b>Concrete Works</b> <i>Supply materials, batch, mix, vibrate place and cure the following concrete grades</i>				
D	Structural Concrete Class 25/20 vibrated concrete. Water proofing cement MUST be added at the ratio of 1 Kg of water proof cement to 1 Bag (50Kg) of pozzolana Portland cement	CM	92		
	<b>Formwork</b>				
E	Provide formwork for fair finish to concrete works.  Rates to include for support, strutting and removal	SM	560		
	<b>Reinforcement</b> <i>Provide, cut, bend and fix the following reinforcements</i>				
F	Diameter 16mm Ribbed bars	Kg	1,740		
G	Diameter 12mm Ribbed bars	Kg	1,850		
H	Diameter 10mm Ribbed bars	Kg	1,694		
J	Diameter 8mm Ribbed bars	Kg	1,150		
<b>Total to collection</b>					

ITEM	DESCRIPTION	UNIT	QTY	RATE	KES
	<b>Screens</b>				
A	Supply and install 600mm x 600mm galvanized steel coarse screen, 25mm bar thickness spaced at 30mm centers and welded onto steel plate bedded in concrete. Rates to include for cleaning mechanism including 2 rakes.	Nr	1		
B	Supply and install 600mm x 600mm galvanized steel fine screen, 25mm bar thickness spaced at 10mm centers and welded onto steel plated bedded in concrete. Rates to include for cleaning mechanism including 2 rakes	Nr	1		
	<b>Manhole Covers</b>				
C	Supply and install to the sedimentation basin concrete roof and other 600mmx600mm HG cast Iron lockable manhole covers complete with frame. Rates to include for applying 2 coats of primer and 3 coats of gloss paint as directed by the engineer	Nr	9		
	<b>Pipe Fittings</b>				
	<i>ALL STEEL PIPES. Supply, install and test the following fittings. Rates shall be deemed to include for all necessary labour and fixing accessories including but not limited to rubber gaskets, raw bolts, nuts, steel washers</i>				
D	DN 150mm VJ Couplings	Nr	5		
E	DN 110mm VJ Couplings	Nr	5		
F	ND 300mm Sluice Valves	Nr	4		
G	ND 150mm Sluice Valves	Nr	1		
H	ND 110mm Sluice Valves	Nr	3		
J	ND 300mm Flanged Bend	Nr	1		
K	Allow a sum of Kenya shillings one hundred thousand for extra weir and sedimentation tank works.	Nr.	1		
<b>Total to collection</b>					

ITEM	DESCRIPTION	UNIT	QTY	RATE	KES
A	ND 300x 250 Flanged steel tapper; 600mm long.	Nr	1		
B	ND 300mm Flanged spigot pipe with puddle flange approximately 500mm Long	Nr	4		
C	300mm Flanged spigot pipe with puddle flange approximately 1000mm Long	Nr	1		
D	300mm Flanged spigot pipe with puddle flange approximately 5900mm Long	Nr	1		
E	300mm Flanged spigot pipe with puddle flange approximately 1650mm Long	Nr	1		
F	ON 150mm Flanged spigot pipe with puddle flange approximately 1150mm Long	Nr	1		
G	ON 150mm Double Flanged spigot pipe with puddle flange approximately 1110mm Long	Nr	1		
H	Supply and delivery to site of 1 mx 1 mx1 m gabion boxes together with the necessary 3.5mm steel tying wire.	Nr	14		
J	Supply and deliver to site broken hard natural rock, pack in gabion boxes and arrange to form a 5m	CM	14		
K	<b>Temporary weir access</b> Allow a sum for the provision of both motorable and non motorised access to the weir location during the construction period.	Item	1		
<b>Total to collection</b>					

**COLLECTION FOR WEIR**

Total from page 3

Total from page 4

Total from above

**TOTAL TO SUMMARY FOR WEIR AND  
SEDIMENTATION TANK**

ITEM	DESCRIPTION	UNIT	QTY	RATE	KES
	<b>FISH PONDS</b> <b>(All provisional)</b> <b>Excavations</b>				
A	Excavate in normal soil starting from existing level, wheel and dispose to the excavation embankments	CM	2120		
B	Excavate in soft rock or hard murrum starting from stripped level, wheel and dispose to the excavation embankments	CM	3000		
C	Fill up the embankments with the excavated materials and compact with pedestrian roller in 150mm layers	CM	5120		
D	Extra over all excavations for excavating in hard rock	CM	1000		
E	Grade the sides and bottom of the excavation to the satisfaction of the Project Manager.	Item			
	<b>Membrane</b>				
F	1mm thick UV treated dam liner placed in position	SM	4300		
G	excavate trench and tuck in ends of dam liner as approved	LM	820		
	<b>Piping and fitting</b>				
H	Excavate trench 600x900mm deep and return fill and ram thereafter.	LM	500		
J	ND 50mm (2") Upvc class 'C' supply pipes	LM	500		
K	ND 110mm (4") Upvc class 'C' outlet pipes	LM	60		
L	50mm diameter brass gate valve as 'Peglar' or other equal and approved.	Nr.	10		
M	100mm diameter brass gate valve as 'Peglar' or other equal and approved.	Nr.	1		
N	100x50x100mm PVC reducing tee	Nr.	1		
P	50x50x50mm PVC equal tee	Nr.	10		
Q	50mm PVC bend	Nr.	1		
R	Allow a sum of kenya shillings one hundred thousand for additional fish ponds works	Item	1		
<b>Total to summary for fish ponds</b>					

SUMMARY

Preliminaries from page 47 of 47

Water Pipeline from page 2 of 7

Intake weir and Sedimentation tank from page 5 of 7

Fish ponds from page 6 of 7

Subtotal

Add 16% VAT

**Total carried to form of tender**

Amount carried to form of tender in Words (Kenya Shillings) .....  
.....  
.....

Contractor's Name .....

Address .....

Date ..... Signature .....