

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis



NEC3 Supply Contract (SC3)

**Between ESKOM HOLDINGS SOC Ltd
(Reg No. 2002/015527/30)**

**and
(Reg No. _____)**

**for The manufacture, supply and delivery of padlocks
within the LimLanga Cluster for five years (5) on an
“as and when” required basis.**

Contents:

Part C1 Agreements & Contract Data

Part C2 Pricing Data

Part C3 Scope of Work

ENQUIRY No.

Documentation prepared by: **Contracts Management Department- LOU**

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

PART C1: AGREEMENTS & CONTRACT DATA

Contents:

C1.1 Form of Offer and Acceptance

C1.2a Contract Data provided by the *Employer*

C1.2b Contract Data provided by the *Tenderer*

C1.3 Proforma Guarantees

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

C1.1 Form of Offer & Acceptance

Offer

The Employer, identified in the Acceptance signature block, has solicited offers to enter into a contract for the procurement of:

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis.

<i>either</i>	examined the documents listed in the Contract Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Contract.
<i>or</i>	examined the draft contract as listed in the Acceptance section and agreed to provide this Offer.

By the representative of the Tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the Tenderer offers to perform all of the obligations and liabilities of the *Tenderer* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data.

The offered total of the Prices exclusive of VAT is	Rates Based Contract
Value Added Tax @ 15% is	Rates Based Contract
The offered total of the Prices inclusive of VAT is	Rates Based Contract
Rates based contract	

This Offer may be accepted by the Employer by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the Tenderer before the end of the period of validity stated in the Contract Data, or other period as agreed, whereupon the Tenderer becomes the party named as the *Tenderer* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s)

Capacity

**For the
Tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the Tenderer's Offer. In consideration thereof, the Employer shall pay the Tenderer the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the Tenderer's Offer shall form an agreement between the Employer and the Tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1	Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: Goods Information including Supply Requirements

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Contract Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the Tenderer and the Employer during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The Tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the Tenderer receives one fully completed and signed original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)

Capacity

**for the
Employer**

Eskom Holdings SOC Ltd, 90 Hans Van Rensburg Street, Polokwane, 0699

(Insert name and address of organisation)

Name &
signature of
witness

Date

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

Schedule of Deviations to be completed by the *Employer* prior to contract award

Note:

1. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive Contracting.
2. The extent of deviations from the Contract documents issued by the Employer prior to the Contract closing date is limited to those permitted in terms of the Conditions of Contract.
3. A Tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.

No.	Subject	Details
1		
2		
3		
4		
5		
6		
7		

By the duly authorised representatives signing this Schedule of Deviations below, the Employer and the Tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Contract Data and any addenda thereto listed in the Contract Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the Tenderer and the Employer during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the Contract documents and the receipt by the Tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

For the Tenderer:

For the Employer

Signature

Name

Capacity

On behalf
of

(Insert name and address of organisation)

**Eskom Holdings SOC Ltd, Megawatt
Park, Maxwell Drive, Sandton,
Johannesburg, 2199**

Name &
signature
of witness

Date

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

C1.2 SC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for Options	
		X1: Price adjustment for inflation
		X2: Changes in the law
		X7: Delay damages
		X17: Low performance damages
		Z: Additional conditions of contract
	of the NEC3 Supply Contract (April 2013) ¹	(If the December 2009 edition is to be used delete April 2013 and replace by December 2013)
10.1	The <i>Employer</i> is (name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
10.1	The Employer's representative to whom the Employer in terms of clause 14.4 delegates his actions is (Name):	Charmaine Silaule
	Address	48 Brown Street Nelspruit
	Tel No.	0177797057
	E-mail address	SilaulC@eskom.co.za
11.2(13)	The <i>goods</i> are	Padlocks
11.2(13)	The <i>services</i> are	The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902, www.ecs.co.za.

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

years (5) on an “as and when” required basis.

11.2(14)	The following matters will be included in the Risk Register	Shortage of material Late issue of Task Orders		
11.2(15)	The Goods Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.		
11.2(15)	The Supply Requirements as part of the Goods Information is in	Annexure A to this Contract Data		
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa		
13.1	The <i>language of this contract</i> is	English		
13.3	The <i>period for reply</i> is	One-week (5 working days) weeks		
2	The <i>Tenderer's</i> main responsibilities			
3	Time			
30.1	The <i>starting date</i> is.	To be advised		
30.1	The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is:	goods and services		delivery date
		1	As per Task Order	As per Task Order
30.2	The <i>Tenderer</i> does not bring the <i>goods</i> to the Delivery Place more than one week before the Delivery Date.			
31.1	The <i>Tenderer</i> is to submit a first programme for acceptance within	One week of the Contract Date.		
32.2	The <i>Tenderer</i> submits revised programmes at intervals no longer than	Two weeks.		
4	Testing and defects			
42	The <i>defects date</i> is	52 weeks after Delivery		
43.2	The <i>defect correction period</i> is	5 working days		
42.2	The <i>defects access period</i> is	3 working days		
5	Payment			
50.1	The <i>assessment interval</i> is	between the 25 th day of each successive month.		
51.1	The <i>currency of this contract</i> is the	South African Rand		
51.2	The period within which payments are made is	3 weeks.		

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

51.4 The *interest rate* is

the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and

(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.

6	Compensation events	As per the conditions of the NEC3 Supply Contract (April 2013).
7	Title	As per the conditions of the NEC3 Supply Contract (April 2013).
8	Risks, liabilities, indemnities and insurance	
80.1	These are additional <i>Employer's</i> risks	<p>1. Shortage of material from suppliers</p> <p>2. Protests</p> <p>3. Subcontracting work without notifying the client and using unaccredited subcontractors</p>
84.1	The <i>Employer</i> provides these insurances from the Insurance Table	See notes about <i>Employer</i> provided insurance in Annexure B to this Contract Data
	1. Insurance against	Loss of or damage to the <i>goods</i> , plant and materials.
	Cover / indemnity is	Overseas shipment / transit insurance (only) to cover events at the <i>Tenderer's</i> risk (if any) after the <i>goods</i> have left the <i>Tenderer's</i> overseas premises. See notes in Annexure B
		If this contract includes the supervision of installation, testing, commissioning or building work at the <i>Employer's</i> premises, the <i>Employer</i> also provides cover for physical loss of or damage to the <i>Employer's</i> surrounding property including any temporary work required to complete the Delivery.

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

The deductibles are **See notes in data for clause 88.2 below and Annexure B**

84.1	The <i>Tenderer</i> provides these additional insurances	See notes in Annexure B
84.2	The minimum amount of cover for loss of or damage to any plant and materials provided by the <i>Employer</i> is:	R5 million
84.2	The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the <i>goods</i> , plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Tenderer</i>) caused by activity in connection with this contract for any one event is:	<p>whatever the <i>Tenderer</i> deems necessary in addition to that provided by the <i>Employer</i> for any one event with cross liability so that the insurance applies to the Parties separately.</p> <p>However if the <i>Tenderer</i> is exposed to damage to the <i>Employer's</i> property the cover limit amount is not less than</p> <p>whatever the <i>Tenderer</i> deems necessary</p> <p>for any one occurrence or series of occurrences arising out of one event but unlimited during the period of insurance.</p>
84.2	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Tenderer</i> arising out of and in the course of their employment in connection with this contract for any one event is:	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (five hundred thousand Rand).
88.1	The <i>Tenderer's</i> liability to the <i>Employer</i> for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to	R0.0 (zero Rand)
88.2	For any one event, the <i>Tenderer's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to	<p>(1) for the <i>Employer's</i> existing and surrounding property in the care, custody and control of the <i>Tenderer</i> the amount of the deductible (first amount payable) relevant to the event described in the “Format A” / “Format B” / “Format D insurance policy available on http://www.eskom.co.za/Contracts/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</p> <p>and</p> <p>See notes in Annexure B</p>
88.3	The <i>Tenderer's</i> liability for Defects due to his design which are not notified before the last <i>defects date</i> is limited to:	R5 million rands
88.4	The <i>Tenderer's</i> total liability to the <i>Employer</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	R5 million rands

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

88.5	The <i>end of liability date</i> is	5 years after Delivery of the whole of the goods and services.
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9 Termination and dispute resolution

94.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
94.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za)
94.4(2)	The <i>tribunal</i> is:	arbitration
94.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
94.4(5)	The place where arbitration is to be held is	South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	the Chairman for the time being or his nominee
	- if the arbitration procedure does not state who selects an arbitrator, is	of the Association of Arbitrators (Southern Africa) or its successor body.

10 Data for Option clauses

X1	Price adjustment for inflation		
X1.1	The <i>base date</i> for indices is	The contract will be fixed and firm for 12 months and thereafter Contract Price Adjustment (CPA) will be used for second, third and fourth year of the contract anniversary	
X2	Changes in the law		
X2.1	A change in the law	is a compensation event if it occurs after the Contract Date	
X7	Delay damages		
X7.1	Delay damages for Delivery are	Delivery of	amount per day
		Padlocks	R1000.00

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

X17	Low performance damages	
X17.1	<div>The amounts for low performance damages are:</div> <div>amount</div> <div>R 1000.00/ day</div>	<div>performance level</div> <div>The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis.</div>
Z	<div>The <i>additional conditions of contract</i> are</div> <div>Z1 to Z12 always apply for Eskom</div>	

Z1 Cession delegation and assignment

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

Z2 Joint ventures

- Z2.1 If the *Tenderer* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Employer* for the performance of this contract.
- Z2.2 Unless already notified to the *Employer*, the persons or organisations notify the *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Tenderer* on their behalf.
- Z2.3 The *Tenderer* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Tenderer* in writing.

Z3 Change of Broad Based Black Economic Empowerment (B-BBEE) status

- Z3.1 Where a change in the *Tenderer's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Tenderer's* B-BBEE status, the *Tenderer* notifies the *Employer* within seven days of the change.
- Z3.2 The *Tenderer* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Supply Manager* within thirty days of the notification or as otherwise instructed by the *Supply Manager*.
- Z3.3 Where, as a result, the *Tenderer's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Tenderer's* obligation to Provide the Goods and Services.
- Z3.4 Failure by the *Tenderer* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

Z4 Ethics

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Tenderer*, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Tenderer's* obligation to Provide the Goods and Services or taking any other action as appropriate against the *Tenderer* (including civil or criminal action).
- Z4.2 The *Employer* may terminate the *Tenderer's* obligation to Provide the Goods and Services if the *Tenderer* (or any member of the *Tenderer* where the *Tenderer* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

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

- Z4.3 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P3 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

Z5 Confidentiality

- Z5.1 The *Tenderer* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Tenderer*, enters the public domain or to information which was already in the possession of the *Tenderer* at the time of disclosure (evidenced by written records in existence at that time). Should the *Tenderer* disclose information to Others in terms of clause 23.1, the *Tenderer* ensures that the provisions of this clause are complied with by the recipient.
- Z5.2 If the *Tenderer* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*.
- Z5.3 In the event that the *Tenderer* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Tenderer*, to the extent permitted by law prior to disclosure, notifies the *Employer* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Tenderer* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z5.4 The taking of images (whether photographs, video footage or otherwise) of the *goods* or any portion thereof, in the course of Providing the Goods and Services and after Delivery, requires the prior written consent of the *Supply Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z5.5 The *Tenderer* ensures that all his subcontractors abide by the undertakings in this clause.

Z6 Waiver and estoppel: Add to core clause 12.3:

- Z6.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Supply Manager* or the *Adjudicator* does not constitute a waiver of rights, and does

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z7 Health, safety and the environment: Add to core clause 25.4

Z7.1 The *Tenderer* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the provision of the *goods* and execution of the *services*.

Without limitation the *Tenderer*:

- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of supply and
- undertakes, in and about the execution of the supply, to comply with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Tenderer's* direction and control, likewise observe and comply with the foregoing.

Z7.2 The *Tenderer*, in and about the execution of the supply, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Tenderer's* direction and control, likewise observe and comply with the foregoing.

Z8 Provision of a Tax Invoice and interest. Add to core clause 51

Z8.1 Within one week of receiving a payment certificate from the *Supply Manager* in terms of core clause 51.1, the *Tenderer* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate.

Z8.2 If the *Tenderer* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z8.3 The *Tenderer* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Employer's* VAT number 4740101508 on each invoice he submits for payment.

Z9 Notifying compensation events

Z9.1 As per the conditions of the NEC3 Supply Contract (April 2013).

Z10 Employer's limitation of liability

Z10.1 The *Employer's* liability to the *Tenderer* for the *Tenderer's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z10.2 The *Tenderer's* entitlement under the indemnity in 83.1 is provided for in 60.1(12) and the *Employer's* liability under the indemnity is limited.

Z11 Termination

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

Z11.1 As per the conditions of the NEC3 Supply Contract (April 2013).

Z12 Addition to secondary Option X7 Delay damages

Z12.1 If the amount due for the *Tenderer's* payment of delay damages reaches the limits stated in this Contract Data for Option X7, the *Employer* may terminate the *Tenderer's* obligation to Provide the Goods and Services using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

Z13 Ethics

For the purposes of this Z-clause, the following definitions apply:

Affected Party	means, as the context requires, any party, irrespective of whether it is the <i>Supplier</i> or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,
Coercive Action	means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,
Collusive Action	means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,
Committing Party	means, as the context requires, the <i>Supplier</i> , or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,
Corrupt Action	means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,
Fraudulent Action	means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,
Obstructive Action	means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action and
Prohibited Action	means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

Z 12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z 12.2 The *Purchaser* may terminate the *Supplier's* obligation to Provide the Goods and Services if a Committing Party has taken such Prohibited Action and the *Supplier* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Purchaser* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Purchaser* can terminate the *Supplier's* obligation to Provide the Goods and Services for this reason.

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

- Z 12.3 If the *Purchaser* terminates the *Supplier's* obligation to Provide the Goods and Services for this reason, the procedures and amounts due on termination are respectively P1, P2 and P3, and A1 and A3.
- Z 12.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Purchaser* does not have a contractual bond with the Committing Party, the *Supplier* ensures that the Committing Party co-operates fully with an investigation.

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

Annexure A: Supply Requirements

The Supply Requirements for this contract;

As per attached scope of work.

Annexure B: Insurance provided by the *Employer*

These notes are provided as guidance to Contracting tenderers and the Tenderer about the insurance provided by the Employer. These notes are not part of this contract. The Tenderer must obtain its own advice.

Transit insurance of goods originating from outside the borders of the Republic of South Africa

For the purpose of supply contracts, the only insurance provided by Eskom (the *Employer*) is transit shipment cover, commonly known as Marine Insurance for air, sea, rail and road freight (including local land arrangements) for conveyance of *goods* originating outside RSA. Please consult the website stated below to ascertain whether Format A, Format B or Format Dx is applicable to this contract and then the

- Marine Insurance Policy wording;
- Eskom Shipment Policies and Procedures – note a pre-shipment survey form has to be completed under certain circumstances;
- Marine Claims Handling Procedures – for important shipment actions and claims forms in event of damages to cargo freight via sea, barge, air, road or rail.

For EXW (Ex Works collections) this is of no concern to the *Tenderer* but for any other Supply Requirement (such as CIF, DDU, or DDP) the *Tenderer* need not provide such insurance even if the INCOTERM requires it and Contracting tenderers should ‘discount’ their prices when Contracting to allow for this provision by the *Employer* (Eskom).

***Tenderer’s* liability for damage to the *Employer’s* property**

Whilst this is a liability the *Tenderer* carries and should cover (if he is required to deliver the *goods* to the *Employer’s* premises) his liability is limited to the amount of cover provided to the *Employer* within his assets policy. This amount varies depending on the Division within Eskom to which the *Tenderer* is making the delivery. For any one occurrence or series of occurrences arising out of one event but unlimited during the period of insurance the *Tenderer’s* liability would be:

- R15million for Generation Division projects,
- R7.5million for Transmission Division projects or
- R1.0million for Distribution Division projects

All other insurance

As required by clause 84, the *Tenderer* provides all other insurance for his risks. The *Tenderer* should give further consideration to providing for these additional insurance concepts [for amounts and periods of insurance the *Tenderer* deems fit and necessary].

Professional Indemnity: The insurance provided shall indemnify the *Tenderer* (and/or his professional consultant) for those sums which the *Tenderer* or his consultant shall become legally liable to pay as damages arising from any claim first made against the *Tenderer* / consultant and reported to their insurers during the Period of Insurance, directly arising out of any negligent act, error or omission committed or alleged to have been committed by the *Tenderer* / consultant in the conduct of **professional services** (for example, design) in connection with this contract.

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

Products Liability: A special General Liability extension for liability arising out of the *Tenderer's* **defective**:

- production and manufacturing process (workmanship or material), or
- product design, or
- warnings, instructions, usage and maintenance manuals and specifications.

For any further explanation of insurance requirements Contracting tenderers are advised to consult their brokers or insurers who may in turn contact Eskom Insurance Management Services per contact details provided on the following website:

C1.2 Contract Data

Part two - Data provided by the *Tenderer*

Clause	Statement	Data
10.1	The <i>Tenderer</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The Goods Information for the <i>Tenderer's</i> design is in:	
11.2(11)	The Contracted total of the Prices is	R Excluding VAT
11.2(12)	The <i>price schedule</i> is in:	The attached Price List
11.2(14)	The following matters will be included in the Risk Register	
25.2	The restrictions to access for the <i>Supply Manager</i> and Others to work being done for this contract are	

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

30.1	The <i>delivery date</i> of the <i>goods and services</i> is:	<i>goods and services</i> 1 As per Task Order	<i>delivery date</i> As per Task Order
31.1	The programme identified in the Contract Data is contained in:		
63.2	The <i>percentage for overheads and profit</i> added to the Defined Cost is	%	

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

C1.3 Forms of Securities

Pro formas for Bonds & Guarantees- **NOT APPLICABLE TO THIS CONTRACT**

For use with the NEC3 Supply Contract (SC3)

[Note to contract compiler:

Once it has been decided which securities are required for this contract delete from this file the ones not required, revise the notes below accordingly and delete this note.]

The *conditions of contract* stated in the Contract Data Part 1 may include the following Options:

- Option X4: Parent company guarantee
- Option X13: Performance bond
- Option X14 Advanced payment to the *Tenderer*

These Options require a bond or guarantee “in the form set out in the Goods Information”.

Pro forma documents for these bonds and guarantees are provided here for convenience but are to be treated as part of the Goods Information.

The organisation providing the bond / guarantee does so by copying the pro forma document onto it's letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Employer* within the time stated in the contract.

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

PART 2: PRICING DATA

NEC3 Supply Contract

Document reference	Title	
C2.1	Pricing assumptions	
C2.2	The <i>price schedule</i>	

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

C2.1 Pricing assumptions

How goods and services are priced and assessed for payment

Clause 11 in NEC3 Supply Contract, (SC3) core clauses states:

Identified and defined terms	11	
	11.2	(11) The Prices are the amounts stated in the price column of the Price Schedule. Where a quantity is stated for an item in the Price Schedule, the Price is calculated by multiplying the quantity by the rate.
		(12) The Price Schedule is the <i>price schedule</i> unless later changed in accordance with this contract.
Assessing the amount due	50.2	The amount due is
		<ul style="list-style-type: none"> the Price for each lump sum item in the Price Schedule which the <i>Tenderer</i> has completed, where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the <i>Tenderer</i> has completed by the rate, plus other amounts to be paid to the <i>Tenderer</i>, less amounts to be paid by or retained from the <i>Tenderer</i>.
		Any tax which the law requires the <i>Employer</i> to pay to the <i>Tenderer</i> is included in the amount due.

This confirms that the Supply Contract is a priced contract where the Prices are derived from a list of items of *goods* and *services* which can be priced as lump sums or as expected quantities of *goods* and *services* multiplied by a rate, or a mix of both.

Function of the Price Schedule

Clause 53.1 states: “Information in the Price Schedule is not Goods Information”. This confirms that instructions to do work or how it is to be done are not included in the Price Schedule but in the Goods Information. This is further confirmed by Clause 20.1 which states, “The *Tenderer* Provides the Goods and Services in accordance with the Goods Information”. Hence the *Tenderer* does **not** Provide the Goods and Services in accordance with the Price Schedule. The Price Schedule is only a pricing document.

Preparing the *price schedule*

Items in the *price schedule* may have been inserted by the *Employer* and the Contracting tenderer should insert any additional items which he considers necessary. Whichever party provides the items in the *price schedule* the total of the Prices is assumed to be fully inclusive of everything necessary to Provide the Goods and Services as described at the time of entering into this contract.

It will be assumed that the Contracting tenderer has

- Read Pages 8, 11, 12 and Appendix 5 of the SC3 Guidance Notes before preparing the *price schedule*;
- Included in his Prices and rates for correction of Defects (core clause 43.1) as there is no compensation event for this unless the Defect is due to a *Tenderer's* risk;
- Spread the cost of doing work he chooses not to list as separate items in the *price schedule* across other Prices and rates in order to fulfil the obligation to Provide the Goods and Services for

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

- the Contracted total of the Prices;
- Understood that there is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item later turns out to be different to that which the *Tenderer* estimated at time of Contract. The only basis for a change to the Prices is as a result of a compensation event per clause 60.1;
- Understood that the *Tenderer* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event.

Format of the *price schedule*

Entries in the first four columns in the *price schedule* in section C2.2 are made either by the *Employer* or the Contracting tenderer.

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

If the *Tenderer* is to be paid an amount for the item which is the rate for the item multiplied by the quantity completed, the Contracting *Tenderer* enters the rate which is then multiplied by the Quantity to produce the Price, which is also entered.

If the *Tenderer* is to be paid an amount for an item proportional to the length of time for which the *goods* and *services* are provided, a unit of time is stated in the Unit column and the length of time (as a quantity of the stated units of time) is stated in the Quantity column.

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis.

C2.2 the *price schedule*

ITEM	Material	SHORT DESCRIPTION	Unit Price
1	0187155	PADLOCK: MASTER STL RESTR-A ORANGE LOU	R
2	0187162	PADLOCK: MASTER STEEL PROH GREEN L OU	R
3	0187169	PADLOCK: MASTER STEEL OPER YELLOW L OU	R
4	0187176	PADLOCK: MASTER STEEL LIVE BLACK L OU	R
5	0187183	PADLOCK: SAFENONSTD STL SUP BLUE LOU;6 MM	R

The contract will be fixed and firm for twelve months, and thereafter Contract Price Adjustment (CPA) will be used for second, third and fourth year of the contract anniversary using relevant SEIFSA Indices

Table O2 -Index for plastic products

Table C3 – Labour Hourly Paid

Table F – Copper Metric Ton

Table R – Aluminium Melting Ingot

Table U- (A) Electricity and Water

Table R Aluminium Melting Ingot

Table Q-(A) Stainless Steel 304

Table C3 Labour Hourly Paid

Table U-(A) Electricity and Water

Table F- Bio-metallic materials (Metal indices)

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis.

PART 3: SCOPE OF WORK

Document reference	Title	
	This cover page	
C3.1	<i>Employer's</i> Goods Information	
C3.2	<i>Tenderer's</i> Goods Information	

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis.

C3.1: *EMPLOYER’S GOODS INFORMATION*

Overview and purpose of the *goods and services*

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis

Areas (Plant and Storage Locations) where items are to be delivered

Specification and description of the *goods*

Supply and delivery of Padlocks

Material	Short Text	Estimated Consumption
0187155	PADLOCK: MASTER STL RESTR-A ORANGE LOU	150,000
0187162	PADLOCK: MASTER STEEL PROH GREEN L OU	75,000
0187169	PADLOCK: MASTER STEEL OPER YELLOW L OU	50,000
0187176	PADLOCK: MASTER STEEL LIVE BLACK L OU	25,000
0187183	PADLOCK: SAFENONSTD STL SUP BLUE LOU;6 MM	15,000

Note: the estimated consumption is for a five-year period.

Areas (Plant and Storage Locations) where items are to be delivered

Plant/ Storage Location	Plant name
5510	Middelburg Major Capital
5515	Middelburg Maintenance
5520	Nelspruit Major Capital
5525	Nelspruit Maintenance
5710	Polokwane Major Capital
5715	Polokwane Maintenance
5720	Bela Bela Major Capital
5725	Bela Bela Maintenance

Employer’s design

Not applicable

Procedure for submission and acceptance of *Tenderer’s design*

Not applicable

Other requirements of the *Tenderer’s design*

Not applicable

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis.

Use of *Tenderer's* design

Not applicable

Manufacture & fabrication

N/A

SDL & I Objective Criteria

Tenderers who complete and submit the undertaking as required, but who do not meet Eskom's targets, will not be disqualified. SD&L undertakings do not form part of scoring but commitments will form part of contractual obligations

Job Opportunities

Tenderers to indicate number of jobs to be created and/or retained from this contract

Jobs to be created	Jobs to be retained

Communities based local to site (villages around site) should be prioritized for employment.

Skills Development

Tenderers are required to propose against the following training initiatives:

Candidates for skills development will be unemployed graduates from FET colleges and matriculants within the areas of supply.

Factory acceptance testing (FAT)

Core Clauses 40 and 41 both make reference to the Goods Information regarding tests and inspections.

There are often comprehensive requirements for testing at place of manufacture and before delivery. The tests are to be witnessed by the *Supply Manager* or by a testing agency of the *Employer's* nomination. Note, *Tenderer* may not restrict *Supply Manager's* right to witness tests per clause 25.2

Other tests and inspections and commissioning in place of use

Not applicable

Operating manuals and maintenance schedules

Not applicable

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis.

Supply Requirements

The Supply Requirements for this contract are in scope of works to the Contract Data provided by the *Employer*.

Specification of the services to be provided

As per scope of works.

Constraints on how the *Tenderer* Provides the Goods

Programming constraints

Work to be done by the Delivery Date

As per Task Order

Marking the goods

Not applicable

Constraints at the delivery place and place of use

None

Cooperating with Others

Although not a direct requirement of the *conditions of contract* if the *Employer* is aware of the *Tenderer's* need to co-operate with Others (for example where the supply is to one of the *Employer's* contractor's on a project or design of the *goods* needs to be discussed with Others)

Services & other things to be provided by the *Employer* or *Tenderer*

Will be indicated per Task Order

Management meetings

Regular meetings of a general nature may be convened and chaired by the *Supply Manager* as follows.

Meetings of a specialist nature may be convened as specified elsewhere in this Goods Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the manufacture of the *goods*. Records of these meetings shall be submitted to the *Supply Manager* by the person convening the meeting within five days of the meeting.

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis.

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

Documentation control

Documents will be identified with an alpha numeric which indicates source, recipient, communication number etc. Provide details of any particular format or other constraints; for example that all contractual communications will be in the form of properly compiled letters or forms attached to e mails and not as a message in the e mail itself.

Health and safety risk management

All tenderers shall comply with, but not limited to the following legislation during the period of this contract.

- The National Road Traffic Act (Act 93 of 1996)
- The Hazardous Substance Act (Act 15 of 1973)
- The Occupational, Health and Safety Act (Act 85 Of 1993)
- The Environment Conservation Act (Act 73 of 1989)
- The National Environmental Management Act (Act 107 of 1998)
- The National Water Act (Act 36 of 1998)
- The National Waste Management Act (Act 59 of 2008)
- All Environmental Provincial and Local Government laws relevant to the scope of work

All tenderers shall comply with all relevant Eskom procedures but not limited to the following:

- Waste Management Procedure: EPC 32-245
- The Limpopo Operating Unit (LOU) Waste Management Plan: 240- 84907678
- Safety, Health, Environmental and Quality Policy: 32-727
- Procedure for the Effective Management of Safety, Health and Environmental Related Incidents: 32-95

Ensure that all Health and Safety Plans are updated to include the management of all COVID 19 risks (office and on – site, transportation, during lunch breaks etc.)

Environmental constraints and management

The Contractor undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the works. Without limitation the Contractor:

- accepts that the Employer may appoint him as the “Principal Contractor” (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) (“the Construction Regulations”) for the Site;
- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of works; and
- undertakes, in and about the execution of the works, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the Contractor’s direction and control, likewise observe and comply with the foregoing.

The Contractor, in and about the execution of the works, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his subcontractors, employees and others under the Contractor’s direction and control, likewise observe and comply with the foregoing.

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis.

Quality

Specifications

Title	Date revision or	Tick if publicly available
<u>General Specifications:</u>		
Health and Safety requirements	Latest	
Environmental requirements	Latest	
Site regulations and access control	Latest	
Waste Management Procedure	Latest	
Recommended Herbicides	Latest	
Herbicides Management	Latest	
PROCEDURE FOR CLEARING VEGETATION AND MAINTENANCE WITHIN OVERHEAD POWERLINES	Latest	
LOCAL STANDARD FOR THE OPERATING OF HIGH CUTTER / CHAIN SAW	Latest	
<ul style="list-style-type: none"> Eskom Distribution Standard Copies available from Eskom Distribution Technology, Technical Administrator, Telephone 011-871 2214. Important Note: where material options (i.e coastal and inland) are available the coastal option will be applicable in Eskom's Limpopo Operating Region (Refer to Engineering Instruction EI-039-MVL). 	Latest	
<ul style="list-style-type: none"> Technical Bulletins As issued by Eskom's Distribution Technology, Simmerpan Copies of the relevant Bulletins are available on request. 	Latest	
Environnemental Management Environnemental Management Programme (EMP) Procedure SHEQ Policy	Latest	
Quality Quality Requirements for the Procurement of Assets, Goods & Services	Latest	
Safety Occupational Health and Safety Requirements to be met by Contractors and Subcontractors Employed by Eskom. Co-ordination of Safety on Capital Projects Standard applicable to Contractors working in Close Proximity to Live Apparatus	Latest	

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis.

Management of Substance Abuse	Latest	
Business Conduct Suspending Tenderers from Eskom's Tenderer Lists Eskom Business Conduct Policy and Guidelines Declaration of Conflict of Interest Copies of the abovementioned documents are not attached but are available from Eskom's Contract Advise Centre, Clare Loittering, (031) 710 5429	Latest	
Technology & Quality Engineering Instruction : Generic Stubby Line	Latest	
Authorisation of contractors / Eskom staff	Latest	
Standard for a fall arrest system Procedure for using a fall arrest system Specification for a fall arrest system	Latest	
Checklist of Eskom Qualified Tenderers List of Eskom Qualified Tenderers	Latest	
Contract Specification for Vegetation Management Services on Eskom Networks	Latest	

Invoicing and payment

Within one week of receiving a payment certificate from the *Supply Manager* in terms of core clause 51.1, the *Tenderer* provides the *Employer* with a tax invoice showing the amount due for payment equal to that stated in the *Supply Manager's* certificate.

The *Tenderer* shall address the tax invoice to *Employer* and include on each invoice the following information:

Name and address of the *Tenderer* and the *Supply Manager*;

The contract number and title;

Tenderer's VAT registration number;

The *Employer's* VAT registration number.

Description of *goods* and *services* provided for each item invoiced based on the Price Schedule;

Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;

Insurance provided by the *Employer*

As per the Contract Data

Contract change management

Compensation events Process will be followed.

Provision of bonds and guarantees

The form in which a bond or guarantee required by the *conditions of contract* (if any) is to be provided by the *Tenderer* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis.

The *Employer* may withhold payment of amounts due to the *Tenderer* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Tenderer* by the *Supply*

Manager to receive and accept such bond or guarantee. Such withholding of payment due to the *Tenderer* does not affect the *Employer's* right to termination stated in this contract.

Records of Defined Cost, payments & assessments of compensation events to be kept by the *Tenderer*

The *Tenderer* is required to keep any records of Defined Cost. Include any other constraint which may be required in regard to format and filing of the records, and whether access for the *Supply Manager* shall be provided in hard copy or electronically.

Procurement

Subcontracting

Preferred subcontractors

SC does not make use of nominated subcontracting, but the *Employer* may list which subcontractors or sub-tenderers the *Tenderer* is required to enter into subcontracts with (if any). This is usually only required where plant and materials need to be obtained from a particular tenderer or group of tenderers in order to comply with operational standards for the *goods*.

Limitations on subcontracting

The *Employer* may require that the *Tenderer* must subcontract certain specialised work, or that the *Tenderer* shall not subcontract more than a specified proportion of the whole of the contract.

Spares and consumables

Some contracts may need to include provision for the supply of a minimum category of spares, fuel, oil or other consumables which the *Employer* may need at or just after delivery or commissioning of the *goods* and that it is best the *Tenderer* provide these initially as part of his Providing the Goods and Services

Other requirements related to procurement

Other requirements such as ASGISA or socio political enhancements the *Tenderer* is to provide as part of Providing the Goods and Services (if any) could be included here.

Cataloguing requirements by the *Tenderer*

Cataloguing is not applicable.

List of drawings

Drawings issued by the *Employer*

This is the list of drawings issued by the *Employer* at or before the Contract Date and which apply to this contract.

The manufacture, supply and delivery of padlocks within the LimLanga Cluster for five years (5) on an “as and when” required basis.

Drawing number	Revision	Title
Drawings will be available on request		

C3.2 *TENDERER'S* GOODS INFORMATION

As per the scope of works