

**The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..**



**NEC3 Supply Contract (SC3)**

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

**and**

**for The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases.**

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**CONTRACT No.:**

**Document Compiled by:**

**The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..****PART C1: AGREEMENTS & CONTRACT DATA**

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# C1.1 Form of Offer & Acceptance

**Offer**

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

**The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases.**

The tenderer, identified in the Offer signature block, has

<i>either</i>	examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.
<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 *Supplier* 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	<b>R</b>
	Value Added Tax @ 15% is	<b>R</b>
	The offered total of the amount due inclusive of VAT is <sup>1</sup>	<b>R</b>
	(in words)	

This Offer may be accepted by the Purchaser 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 Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Supplier* 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

<sup>1</sup> This total is required by the *Purchaser* for budgeting purposes only. Actual amounts due will be assessed in terms of the *conditions of contract*.

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**Acceptance**

By signing this part of this Form of Offer and Acceptance, the Purchaser identified below accepts the tenderer's Offer. In consideration thereof, the Purchaser shall pay the Supplier 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 Purchaser 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 Tender 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 Purchaser 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 Purchaser'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 Purchaser**

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

*(Insert name and address of organisation)*

Name & signature of witness

Date

Note: If a tenderer wishes to submit alternative tenders, use another copy of this Form of Offer and Acceptance.

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**Schedule of Deviations to be completed by the *Purchaser* 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 tendering.
2. The extent of deviations from the tender documents issued by the Purchaser prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
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 Purchaser and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Purchaser 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 tender 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 Purchaser**

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 \_\_\_\_\_

\_\_\_\_\_

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## C1.2 SC3 Contract Data

**Part one - Data provided by the *Purchaser***

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for Options	
		<b>X1: Price adjustment for inflation</b>
		<b>X2 Changes in the law</b>
		<b>X7: Delay damages</b>
		<b>Z: <i>Additional conditions of contract</i></b>
	of the NEC3 Supply Contract (April 2013) <sup>2</sup>	(If the December 2009 edition is to be used delete April 2013 and replace by December 2013)
10.1	The <i>Purchaser</i> is (name):	<b>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</b>
	Address	<b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>
	Represented by:	
	Tel No.	
	Fax No.	
10.1	The <i>Supply Manager</i> is (name):	
	Address	<b>Camden Power Station Private Bag x1002 Nucam, 2355</b>
	Tel	
	e-mail	
11.2(13)	The <i>goods</i> are	<b>The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases.</b>
11.2(14)	The following matters will be included in the Risk Register	<b>N/A</b>
11.2(15)	The Goods Information is in	<b>Part 3: Scope of Work and all documents and drawings to which it makes reference.</b>
11.2(15)	The Supply Requirements as part of the Goods Information is in	<b>C2.2</b>

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

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12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>				
13.1	The <i>language of this contract</i> is	<b>English</b>				
13.3	The <i>period for reply</i> is	<b>1 week</b>				
2	<b>The <i>Supplier's</i> main responsibilities</b>	<b>Data required by this section of the core clauses is provided by the <i>Supplier</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.</b>				
3	<b>Time</b>					
30.1	The <i>starting date</i> is.	_____				
30.1	The <i>delivery date</i> of the <i>goods and services</i> is:	<table border="1"> <thead> <tr> <th><i>goods and services</i></th> <th><i>delivery date</i></th> </tr> </thead> <tbody> <tr> <td>1 <b><u>Supply and delivery new spares</u></b> <b>Raw Coal Pipes</b></td> <td>Once off</td> </tr> </tbody> </table>	<i>goods and services</i>	<i>delivery date</i>	1 <b><u>Supply and delivery new spares</u></b> <b>Raw Coal Pipes</b>	Once off
<i>goods and services</i>	<i>delivery date</i>					
1 <b><u>Supply and delivery new spares</u></b> <b>Raw Coal Pipes</b>	Once off					
30.2	The <i>Supplier</i> does not bring the <i>goods</i> to the Delivery Place more than one week before the Delivery Date.	<b>All goods are to be delivered as per quantities indicated on the contract or purchase order.</b>				
31.1	The <i>Supplier</i> is to submit a first programme for acceptance within	<b>N/A</b>				
32.2	The <i>Supplier</i> submits revised programmes at intervals no longer than	<b>N/A</b>				
4	<b>Testing and defects</b>					
42	The <i>defects date</i> is	<b>After Delivery and Quality check</b>				
43.2	The <i>defect correction period</i> is	<b>1 week</b>				
	except that the <i>defect correction period</i> for	<b>N/A</b>				
	and the <i>defect correction period</i> for	<b>N/A</b>				
42.2	The <i>defects access period</i> is	<b>5 days</b>				
	except that the <i>defect access period</i> for	<b>N/A</b>				
	and the <i>defect access period</i> for	<b>N/A</b>				
5	<b>Payment</b>					
50.1	The <i>assessment interval</i> is	<b>After delivery</b>				
51.1	The <i>currency of this contract</i> is the	<b>South African Rand</b>				
51.2	The period within which payments are made is	<b>4 weeks.</b>				
51.4	The <i>interest rate</i> is	<b>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</b>				

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		<p>dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</p> <p>(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 <i>mutatis mutandis</i> 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.</p>
6	<b>Compensation events</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
7	<b>Title</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
8	<b>Risks, liabilities, indemnities and insurance</b>	
80.1	These are additional <i>Purchaser’s</i> risks	<b>N/A</b>
84.1	The <i>Purchaser</i> provides these insurances from the Insurance Table	<b>See notes about <i>Purchaser</i> provided insurance in Annexure B to this Contract Data</b>
	1. Insurance against	<b>Loss of or damage to the <i>goods</i>, plant and materials.</b>
	Cover / indemnity is	<b>Overseas shipment / transit insurance (only) to cover events at the <i>Supplier’s</i> risk (if any) after the <i>goods</i> have left the <i>Supplier’s</i> overseas premises. See notes in Annexure B</b>
		<b>If this contract includes the supervision of installation, testing, commissioning or building work at the <i>Purchaser’s</i> premises, the <i>Purchaser</i> also provides cover for physical loss of or damage to the <i>Purchaser’s</i> surrounding property including any temporary work required to complete the Delivery.</b>
	The deductibles are	<b>See notes in data for clause 88.2 below and Annexure B</b>

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84.1	The <i>Supplier</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>Purchaser</i> is:	<b>The replacement cost of the plant and materials delivery to site.</b>
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>Supplier</i> ) caused by activity in connection with this contract for any one event is:	<p><b>whatever the <i>Supplier</i> deems necessary in addition to that provided by the <i>Purchaser</i> for any one event with cross liability so that the insurance applies to the Parties separately.</b></p> <p><b>However if the <i>Supplier</i> is exposed to damage to the <i>Purchaser's</i> property the cover limit amount is not less than</b></p> <ul style="list-style-type: none"> <li>• R15 million (fifteen million Rand) for exposure to Generation Division property;</li> <li>• R7.5 million (seven million five hundred thousand Rand) for exposure to Transmission Division property and;</li> <li>• R1 million (one million Rand) for exposure to Distribution Division and all other <i>Purchaser's</i> property</li> </ul> <p><b>for any one occurrence or series of occurrences arising out of one event but unlimited during the period of insurance.</b></p>
84.2	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Supplier</i> arising out of and in the course of their employment in connection with this contract for any one event is:	<b>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).</b>
88.1	The <i>Supplier's</i> liability to the <i>Purchaser</i> for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to	<b>R0.0 (zero Rand)</b>
88.2	For any one event, the <i>Supplier's</i> liability to the <i>Purchaser</i> for loss of or damage to the <i>Purchaser's</i> property is limited to	<p><b>(1) for the <i>Purchaser's</i> existing and surrounding property in the care, custody and control of the <i>Supplier</i> the amount of the deductible (first amount payable) relevant to the event described in the "Format A" / "Format B" / "Format Dx" {choose the applicable format, then delete the others and this note}, insurance policy available on <a href="http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a></b></p> <p><b>and</b></p> <p><b>(2) for all other existing <i>Purchaser's</i> property the highest applicable deductible (first amount payable) namely:</b>  <b>R15 million (fifteen million Rand) for Generation Division property;</b></p>

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**R7.5 million (seven million five hundred thousand Rand) for Transmission Division property and;  
R1 million (one million Rand) for Distribution Division and all other Purchaser's property**

**See notes in Annexure B**

88.3	The <i>Supplier's</i> liability for Defects due to his design which are not notified before the last <i>defects date</i> is limited to:	<b>Total of the Prices</b>
88.4	The <i>Supplier's</i> total liability to the <i>Purchaser</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	<b>Total of the Prices</b>
88.5	The <i>end of liability date</i> is	<b>After Quality check has been done and guarantee elapsed.</b>

**9 Termination and dispute resolution**

94.1	The <i>Adjudicator</i> is	<b>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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).</b>
	Address	<b>[•]</b>
	Tel No.	<b>[•]</b>
	Fax No.	<b>[•]</b>
	e-mail	<b>[•]</b>

94.2(3)	The <i>Adjudicator nominating body</i> is:	<b>the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>)</b>
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94.4(2)	The <i>tribunal</i> is:	<b>Arbitration</b>
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94.4(5)	The <i>arbitration procedure</i> is	<b>the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.</b>
94.4(5)	The place where arbitration is to be held is	<b>The republic of South Africa</b>
	The person or organisation who will choose an arbitrator	<b>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</b>
	- if the Parties cannot agree a choice or	
	- if the arbitration procedure does not state who selects an arbitrator, is	

**10 Data for Option clauses**

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<b>X1</b>	<b>Price adjustment for inflation</b>		
X1.1	The <i>base date</i> for indices is		
	The proportions used to calculate the Price Adjustment Factor are:	proportion	proportion
<b>Note</b>	Eskom's requirement for CPA, is that <b>Prices must be Fixed and Firm for the First 12 Months</b> of the contract and only subject to escalation thereafter. A minimum of <b>15%</b> of the contract price/prices is not adjustable throughout the life of the contract.		
<b>X2</b>	<b>Changes in the law</b>		
X2.1	A change in the law of	<b>the Republic of South Africa is a compensation event if it occurs after the Contract Date</b>	
<b>X7</b>	<b>Delay damages</b>		
X7.1	Delay damages for Delivery are	Delivery of	amount per day
			<b>10% of the Task Order or Purchase Order.</b>
<b>Z</b>	<b>The additional conditions of contract are</b>	<b>Z1 to Z12 always apply for Eskom</b>	

**Z1 Cession delegation and assignment**

- Z1.1 The *Supplier* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Purchaser*.
- Z1.2 Notwithstanding the above, the *Purchaser* may on written notice to the *Supplier* 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 *Supplier* 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 *Purchaser* for the performance of this contract.
- Z2.2 Unless already notified to the *Purchaser*, 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 *Supplier* on their behalf.
- Z2.3 The *Supplier* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Purchaser* having been given to the *Supplier* in writing.

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

- Z3.1 Where a change in the *Supplier's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Supplier's* B-BBEE status, the *Supplier* notifies the *Purchaser* within seven days of the change.

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- Z3.2 The *Supplier* 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 *Supplier's* B-BBEE status has decreased since the Contract Date the *Purchaser* may either re-negotiate this contract or alternatively, terminate the *Supplier's* obligation to Provide the Goods and Services.
- Z3.4 Failure by the *Supplier* to notify the *Purchaser* of a change in its B-BBEE status may constitute a reason for termination. If the *Purchaser* 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.

**Z4 Ethics**

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Supplier*, 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 *Supplier's* obligation to Provide the Goods and Services or taking any other action as appropriate against the *Supplier* (including civil or criminal action).
- Z4.2 The *Purchaser* may terminate the *Supplier's* obligation to Provide the Goods and Services if the *Supplier* (or any member of the *Supplier* where the *Supplier* 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 *Purchaser* or other people or organisations and including in circumstances where the *Supplier* or any such member is removed from the an approved vendor data base of the *Purchaser* 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 *Supplier* 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 *Supplier*, enters the public domain or to information which was already in the possession of the *Supplier* at the time of disclosure (evidenced by written records in existence at that time). Should the *Supplier* disclose information to Others in terms of clause 23.1, the *Supplier* ensures that the provisions of this clause are complied with by the recipient.
- Z5.2 If the *Supplier* 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 *Supplier* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Supplier*, to the extent permitted by law prior to disclosure, notifies the *Purchaser* 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 *Supplier* 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.

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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 *Purchaser*.

Z5.5 The *Supplier* 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 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 *Supplier* 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 *Supplier*:

- 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 *Supplier's* direction and control, likewise observe and comply with the foregoing.

Z7.2 The *Supplier*, 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 *Supplier'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 *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser'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 *Supplier* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Purchaser* 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 *Purchaser* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z8.3 The *Supplier* (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 *Purchaser's* VAT number 4740101508 on each invoice he submits for payment.

**Z9 Notifying compensation events**

## The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..

Z9.1 Delete from the last sentence in core clause 61.3 the words, "unless the event arises from the *Supply Manager* giving an instruction, changing an earlier decision or correcting an assumption".

### Z10 **Purchaser's limitation of liability**

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

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

### Z11 **Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":**

Z11.1 or had a business rescue order granted against it.

### Z12 **Addition to secondary Option X7 Delay damages (if applicable in this contract)**

Z12.1 If the amount due for the *Supplier's* payment of delay damages reaches the limits stated in this Contract Data for Option X7, the *Purchaser* may terminate the *Supplier'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.

## Annexure A: Supply Requirements

### The Supply Requirements for this contract are based on the use of INCOTERMS:

The *Supplier* supplies the *goods* in accordance with INCOTERMS 2010<sup>3</sup> as follows:

Group	Category	Term	Delivery Place
E	departure	EXW	
F	main carriage unpaid	FCA, FAS, FOB	
C	main carriage paid	CFR, CIF, CPT, CIP	
D	arrival	DAT, DAP, DDP	

The Parties obligations described in Incoterms for the category and term selected are now incorporated into this contract as part of the Supply Requirements and hence the Goods Information.

<sup>3</sup> International Chamber of Commerce, Incoterms 2010, Paris, January 2011

## The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..

The obligations of seller and buyer for the selected Incoterm determine each Party's costs, risks and insurance requirements incidental to the supply and transport of the *goods* from *Supplier* to *Purchaser*.

For each of the thirteen terms, Incoterms set out obligations of the seller (the *Supplier*) in ten paragraphs identified as A1 to A10 and the corresponding obligations of the buyer (the *Purchaser*) in paragraphs B1 to B10. These obligations cover the following subjects:

<b>A</b>	<b>The <i>Supplier's</i> obligations</b>	<b>B</b>	<b>The <i>Purchaser's</i> obligations</b>
<b>A1</b>	Provision of goods in conformity with contract	<b>B1</b>	Payment of the price
<b>A2</b>	Licences, authorisations and formalities	<b>B2</b>	Licences, authorisations and formalities
<b>A3</b>	Contracts of carriage and insurance	<b>B3</b>	Contracts of carriage and insurance
<b>A4</b>	Delivery	<b>B4</b>	Taking delivery
<b>A5</b>	Transfer of risks	<b>B5</b>	Transfer of risks
<b>A6</b>	Division of costs	<b>B6</b>	Division of costs
<b>A7</b>	Notice to the buyer	<b>B7</b>	Notice to the seller
<b>A8</b>	Proof of delivery, transport document or equivalent electronic message	<b>B8</b>	Proof of delivery, transport document or equivalent electronic message
<b>A9</b>	Checking - packing - marking	<b>B9</b>	Inspection of goods
<b>A10</b>	Other obligations	<b>B10</b>	Other obligations

All other information NOT pertinent to the above is given in the balance of the Goods Information

**The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..**

**The Supply Requirements for this contract are as follows:**

[Use these when INCOTERMS do not apply].

<b>1. The requirements for the supply are</b>	[State the constraints on how the <i>Supplier</i> manufactures, prototypes, tests and stores the <i>goods</i> including order and timing]	
<b>2. The requirements for transport are</b>	[State the extent to which the <i>Supplier</i> transports the <i>goods</i> and the mode of transport]	
<b>3. The delivery place is</b>	[State the location where the <i>goods</i> are to be placed by the <i>Supplier</i> , such as whether it is a dispatch department at the <i>Supplier's</i> premises, the <i>Purchaser</i> is to collect or other location the <i>Purchaser</i> may require. If the delivery place for the <i>services</i> is different to the <i>goods</i> state it here]	
<b>4. Actions of the Parties during supply</b>	<b>Action</b>	<b>Party which does it</b>
	Giving notice of Delivery	Supplier
	Checking packing and marking before dispatch	Supplier
	Contracting for transport	Supplier
	Pay costs of transport	Supplier
	Arrange access to delivery place	Purchaser
	Loading the <i>goods</i>	Supplier
	Unloading the <i>goods</i>	Supplier
<b>For international procurement</b>	Undertake export requirements	N/A
	Undertake import requirements	N/A
<b>5. Information to be provided by the <i>Supplier</i></b>	<b>Title of document</b>	
	Packing lists for cases and their contents	
	Copy of invoice for the <i>goods</i>	
	Delivery Note	
	Test results and maintenance manuals	
<b>For international procurement</b>	Licences, authorisations and other formalities associated with export of the <i>goods</i>	
	Air Waybill or Bill of Lading with associated landing, delivery and forwarding order	
	The Bill of Entry endorsed by the importation authority	
	Customs work sheets, showing tax, duties and surcharges which the law of the country into which the <i>goods</i> are being imported requires the importer to pay	
	Invoice from the importation clearing agent showing airline fees, landing charges, wharfage and dock dues as applicable	
	Specify other import documents required by authorised officials.	

All other information NOT pertinent to the above is given in the balance of the Goods Information

## The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..

### Annexure B: Insurance provided by the Purchaser

*These notes are provided as guidance to tendering suppliers and the Supplier about the insurance provided by the Purchaser. These notes are not part of this contract. The Supplier 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 *Purchaser*) 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 *Supplier* but for any other Supply Requirement (such as CIF, DDU, or DDP) the *Supplier* need not provide such insurance even if the INCOTERM requires it and tendering suppliers should 'discount' their prices when tendering to allow for this provision by the *Purchaser* (Eskom).

#### Supplier's liability for damage to the Purchaser's property

Whilst this is a liability the *Supplier* carries and should cover (if he is required to deliver the *goods* to the *Purchaser's* premises) his liability is limited to the amount of cover provided to the *Purchaser* within his assets policy. This amount varies depending on the Division within Eskom to which the *Supplier* 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 *Supplier'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 *Supplier* provides all other insurance for his risks. The *Supplier* should give further consideration to providing for these additional insurance concepts [for amounts and periods of insurance the *Supplier* deems fit and necessary].

Professional Indemnity: The insurance provided shall indemnify the *Supplier* (and/or his professional consultant) for those sums which the *Supplier* or his consultant shall become legally liable to pay as damages arising from any claim first made against the *Supplier* / 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 *Supplier* / consultant in the conduct of **professional services** (for example, design) in connection with this contract.

Products Liability: A special General Liability extension for liability arising out of the *Supplier'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 tendering suppliers 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:

[http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS\\_Policies\\_](http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_)

**The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..**

From\_\_To .aspx

## C1.2 Contract Data

**Part two - Data provided by the *Supplier***

**Notes to a tendering supplier:**

1. Please read both the NEC3 Supply Contract (SC3)<sup>4</sup> and the relevant parts of its Guidance Notes (SC3-GN)<sup>5</sup> in order to understand the implications of this Data which the tenderer is required to complete.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data
3. Where a form field like this [       ] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise complete by hand and in ink.

Completion of the data in full, according to Options chosen, is essential to create a complete contract.

Clause	Statement	Data								
10.1	The <i>Supplier</i> is (Name):  Address  Tel No.  Fax No.									
11.2(8)	The Goods Information for the <i>Supplier's</i> design is in:									
11.2(11)	The tendered total of the Prices is	<b>(see Price List on page 22)</b>								
11.2(12)	The <i>price schedule</i> is in:									
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									
30.1	The <i>delivery date</i> of the <i>goods and services</i> is:	<table style="margin: auto; border-collapse: collapse;"> <tr> <td style="border-right: 1px dashed black; padding: 5px;"><b>goods and services</b></td> <td style="padding: 5px;"><b>delivery date</b></td> </tr> <tr> <td style="border-right: 1px dashed black; padding: 5px; text-align: center;">1</td> <td style="padding: 5px;"> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="border-right: 1px dashed black; padding: 2px 5px;"><b><u>Supply and delivery new spares</u></b></td> <td style="padding: 2px 5px;"><b>Once off</b></td> </tr> <tr> <td style="border-right: 1px dashed black; padding: 2px 5px;"><b>Raw Coal Pipes</b></td> <td style="padding: 2px 5px;"></td> </tr> </table> </td> </tr> </table>	<b>goods and services</b>	<b>delivery date</b>	1	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="border-right: 1px dashed black; padding: 2px 5px;"><b><u>Supply and delivery new spares</u></b></td> <td style="padding: 2px 5px;"><b>Once off</b></td> </tr> <tr> <td style="border-right: 1px dashed black; padding: 2px 5px;"><b>Raw Coal Pipes</b></td> <td style="padding: 2px 5px;"></td> </tr> </table>	<b><u>Supply and delivery new spares</u></b>	<b>Once off</b>	<b>Raw Coal Pipes</b>	
<b>goods and services</b>	<b>delivery date</b>									
1	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="border-right: 1px dashed black; padding: 2px 5px;"><b><u>Supply and delivery new spares</u></b></td> <td style="padding: 2px 5px;"><b>Once off</b></td> </tr> <tr> <td style="border-right: 1px dashed black; padding: 2px 5px;"><b>Raw Coal Pipes</b></td> <td style="padding: 2px 5px;"></td> </tr> </table>	<b><u>Supply and delivery new spares</u></b>	<b>Once off</b>	<b>Raw Coal Pipes</b>						
<b><u>Supply and delivery new spares</u></b>	<b>Once off</b>									
<b>Raw Coal Pipes</b>										
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	%								

<sup>4</sup> Either April 2013 or December 2009 Edition as stated by *Purchaser* in Contract Data part 1.

<sup>5</sup> Available from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902, or [www.ecs.co.za](http://www.ecs.co.za)

**The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..**

**The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..**

## **PART 2: PRICING DATA**

**NEC3 Supply Contract**

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
C2.1	Pricing assumptions	2
C2.2	The <i>price schedule</i>	1

## The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..

# C2.1 Pricing assumptions

## 1. How *goods* and *services* are priced and assessed for payment

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

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

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.

## 2. 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 *Supplier* Provides the Goods and Services in accordance with the Goods Information". Hence the *Supplier* does **not** Provide the Goods and Services in accordance with the Price Schedule. The Price Schedule is only a pricing document.

## 3. Preparing the *price schedule*

Items in the *price schedule* may have been inserted by the *Purchaser* and the tendering supplier 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 tendering supplier 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 *Supplier's* risk;

**The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..**

- 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 tendered 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 *Supplier* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event per clause 60.1;
- Understood that the *Supplier* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event.

**3.1 Format of the *price schedule***

Entries in the first four columns in the *price schedule* in section C2.2 are made either by the *Purchaser* or the tendering supplier.

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

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

If the *Supplier* 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 provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..**

**C2.2 the *price schedule***

Item No.	Description	Unit	Qty	Rate	Amount
1 1.1	<b><u>NEW SPARES</u></b> Raw Coal Pipes	No	40		
	<b>Subtotal</b>				
	<b>Grand Total</b>				

**PART 3: SCOPE OF WORK**

**Introduction**

The current raw coal pipes at Camden Power Station are worn out. They are currently posing risk of complete failure and can result in unit breakdown or partial load loss. The new like-for-like raw coal pipes will be manufactured and delivered to Camden Power Station to replace the existing damaged raw coal pipes. This document outlines the required scope.

**Supporting Clauses**

**Scope**

**Purpose**

This document describes the SOW and requirements for successful execution of raw coal pipes manufacturing and delivery.

**Applicability**

This document applies to Eskom Camden Power Station, specifically to Boiler Engineering, Boiler Maintenance and any contractor or supplier that will be involved in successful executing this SOW.

## The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..

### Effective date

This document shall be effective upon authorisation by engineering manager – refer to first page for authorisation date.

## Normative/Informative References

Parties using this document shall apply the most recent edition of the documents listed in the following paragraphs.

### Normative

[1] ISO 9001 Quality Management Systems

### Informative

[2] Standard for Welding Requirements on Eskom Plant: 240-106628253

## Definitions

None

## Abbreviations

Abbreviation	Explanation
P/S	Power Station
SOW	Scope of Work

## Roles and Responsibilities

- **Boiler Maintenance Manager:** Is responsible for ensuring that all contractor staff is resourced and competent to execute the SOW and manager all non-conformances.
- **Engineer:** The engineer is responsible to compile the SOW and to lists all requirements necessary for successful implementation of the scope and ensure compliance to Eskom quality standards.
- **Welding Coordinator:** Is responsible to coordinate activities related to planning and execution of the SOW for raw coal pipes. To also witness all related welding activities, enforce adherence to Eskom welding standards and welding quality control standards.
- **Quality Controller:** Is responsible to witness, monitor, signing off and approval of quality control paper work.
- **Contractor/s:** Is responsible for the supply and delivery of raw coal pipes.

## Process for Monitoring

None

## Related/Supporting Documents

None

**The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..**

**Supply and Delivery of Raw Coal Pipes SOW**

- Manufacturing and delivery of new like-for-like Raw coal pipes for replacement on all 8 Camden P/S units. The attached drawing can be used for dimension details and material specification.
- Replacement of old pipes with new raw coal pipes based on risk and available maintenance opportunities.

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
	This cover page	1
C3.1	<i>Purchaser's</i> Goods Information	1
C3.2	<i>Supplier's</i> Goods Information	
	Total number of pages	

## The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..

### C3.1: PURCHASER'S GOODS INFORMATION

- See C2.2 the price schedule (page 22).

#### 4 Constraints on how the Supplier Provides the Goods

##### 4.1 Use of standard forms

All communication to be confirmed in writing  
Standard SAP Purchase Orders will be used to place orders  
Standard NEC forms to be used

##### 4.2 Invoicing and payment

In terms of core clause 50 the *Supplier* assesses the amount due and applies to the *Purchaser* for payment.

The *Supplier* applies for payment with a tax invoice addressed to the *Purchaser* as follows:

---

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

- Invoices must be made out to: Eskom Holdings SOC Limited
- Address of Purchaser  
Camden Power Station  
Private Bag X 1002  
Nucam  
2355

Attention: Financial Accounting

- Name and address of the *Supplier*
- The contract number and title;
- *Supplier's* VAT registration number;
- The *Purchaser's* VAT registration number which is **4740101508**;
- The total of
  - The Price for each lump sum item in the Price Schedule or Purchase Order which the *Supplier* has completed;
  - Where a quantity is stated for an item in the Price Schedule or Purchase Order, an amount calculated by multiplying the quantity which the *Supplier* has completed by the rate,
- Other amounts to be paid to the *Supplier*;
- Less amounts to be paid by or retained from the *Supplier*;
- The invoiced amount - excluding VAT, the VAT and including VAT;
- Payment will be made via Electronic Funds Transfer (EFT)
- Payment will only be done once original invoices are received
- Name and Address of Purchaser

##### 4.3 Records of Defined Cost

Supplier to keep records of all costs relating to the goods.

#### 4. PROCUREMENT

##### 4.1 People

**The provision of supply and delivery of Raw Coal Pipes at Camden Power Station on a once off bases..**

**4.1.1 Minimum requirements of people employed on this site**

The *Contractor's* Site Manager shall ensure that only qualified people will be allowed to work on plant. The *Service Manager* shall be entitled to verify the qualifications of the key people.

**Note:** The *Service Manager* and the *Contract* Supervisor must verify qualifications of all people that will be used for this contract

**4.1.2 Change of Broad Based Black Economic Empowerment (B-BBEE) Status**

Where a change in the *Contractor's* legal status, ownership or any other change to his/her business composition or business dealings results in as change to the *Contractor's* B-BBEE status, the *Contractor* notifies the *Employer* within Seven Days of the change.

The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his/her B-BBEE status to the *Project Manager* within thirty days of the notification or as otherwise instructed by the *Project Manager*.

Where as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate or alternatively terminate the *Contractor's* obligation to provide the works.

Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* terminates in terms of this clause, the procedure on termination will apply.

**4.1.3 Supplier Development Localisation and Industrialization (SDL&I)**

The *Contractor* complies with the 5% subcontracting commitment as stated in the SDL&I Subcontracting Schedule below.

Enterprise Development (This ED intervention can either be separate or additional to subcontracting requirements, but duplication should be avoided) – Eskom Target -Logistics Management

The Contractor shall keep accurate records and provide the Employer with reports on actual Contractor's delivery against above/below stated criteria

The Contractor's failure to comply with his/her SDL&I Contractual obligations constitutes substantial failure on the part of the Contractor to comply with his/her obligation under this contract.

2.5% Supplier Development Localization and Industrialization (SDL&I) retention will be withheld over and above the normal contract retention. The retention money will be released once the SDL&I commitments have been achieved.

<b>Company Name:</b>	
<b>Company B-BBEE Contribution Level:</b>	
<b>Company Representative:</b>	
<b>Position within the Company:</b>	
<b>Signature:</b>	
<b>Date:</b>	
<b>Subcontracting Percentage:</b>	