

NEC3 Supply Contract (SC3)

Between **ESKOM ROTeK INDUSTRIES SOC Ltd**
(Reg No. 1990/006897/30)

and [Insert at award stage]
(Reg No. _____)

for **FOUR (4) 6x4 TRUCK TRACTOR 17 METER 4,5 (Ton)
CRANE WITH WOODEN POLE ROTATOR GRAB**

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CONTRACT No. [Insert at award stage]

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:

FOUR (4) 6x4 TRUCK TRACTOR 17 METER 4,5 (Ton) CRANE WITH WOODEN POLE ROTATOR GRAB

The tenderer, identified in the signature block below, has 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.

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	R
	Value Added Tax @ 15% is	R
	The offered total of the amount due inclusive of VAT is ¹	R
	(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

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

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

Sitsabo Kuhlase

General Manager
Logistics Services
Eskom RoteK Industries SOC Ltd
Lower Germiston Road
Rosherville, Johannesburg
2022

**for the
Purchaser**

Name &
signature of
witness

Date

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

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:

Signature _____

Name _____

Capacity _____

On behalf of _____

Name & signature of witness _____

Date _____

For the Purchaser

Sitsabo Kuhlase

General Manager

Logistics Services

Eskom Rotek Industries SOC Ltd

Lower Germiston Road

Rosherville, Johannesburg

2022

C1.2 SC3 Contract Data

Part one - Data provided by the *Purchaser*

[Instructions to the contract compiler: (delete these two notes in the final draft of a contract)]

1. Please read the relevant clauses in the conditions of contract before you enter data. 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.
2. Some SC3 options are always selected by Eskom Holdings SOC Ltd. The remaining SC3 options are identified by shading in the left hand column. In the event that the option is not required select and delete the whole row. Where the following symbol is used "[●]" - data is required to be inserted relevant to the specific option selected.]

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

Statement	Data
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
	X3: Multiple currencies
	X4: Parent company guarantee
	X7: Delay damages
	X12: Partnering
	X13: Performance bond
	X14: Advanced payment to the <i>Supplier</i>
	X17: Low performance damages
	X20: Key Performance Indicators
	Z: <i>Additional conditions of contract</i>
of the NEC3 Supply Contract (April 2013) ²	(If the December 2009 edition is to be used delete April 2013 and replace by December 2013)

The <i>Purchaser</i> is (name):	Eskom Rotek Industries SOC Ltd (Reg no: 1990/006897/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
Address	Roshland Office Park Lower Germiston Road Rosherville, Johannesburg

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

Tel No.	011 621 3002		
Fax No.	[•]		
The <i>Supply Manager</i> is (name):	Justice Mphokane		
Address	Eskom Rotek Industries Lower Germiston Road Rosherville 2022		
Tel	+27 11 629 8501 / 076 453 7494		
Fax	[•]		
e-mail	Mphokagj@eskom.co.za		
The <i>goods</i> are	FOUR (4) 6x4 TRUCK TRACTOR 17 METER 4,5 (Ton) CRANE WITH WOODEN POLE ROTATOR GRAB AS PER SCOPE OF WORK / SPECIFICATIONS		
The <i>services</i> are	N/A		
The following matters will be included in the Risk Register	Industrial protest		
The Goods Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.		
The Supply Requirements as part of the Goods Information is in	Annexure A to this Contract Data		
The <i>law of the contract</i> is the law of	the Republic of South Africa		
The <i>language of this contract</i> is	English		
The <i>period for reply</i> is	1 Day		
The <i>Supplier's</i> main responsibilities	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.		
Time			
The <i>starting date</i> is.	On contract award date		
The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is:	<i>goods and services</i>	<i>delivery date</i>	
	1	Four (4) 6x4 Truck Tractor with 17 meter 4,5 ton crane with rotating grab.	Two months from the date of contract award
	2	[•]	[•]
	3	[•]	[•]
The <i>Supplier</i> does not bring the <i>goods</i> to the Delivery Place more than one week before the Delivery Date.	Early delivery will be required		
The <i>Supplier</i> is to submit a first programme for acceptance within	1 week of the Contract Start Date.		

The *Supplier* submits revised programmes at intervals no longer than

Weekly revised progress report

Testing and defects

The <i>defects date</i> is	As per warranty provided
The <i>defect correction period</i> is	Not to exceed 1 week
except that the <i>defect correction period</i> for	Major defects is not to exceed 2 weeks
and the <i>defect correction period</i> for	N/A
The <i>defects access period</i> is	5 days
except that the <i>defect access period</i> for	[1] is [2]
and the <i>defect access period</i> for	[1] is [2]

Payment

The <i>assessment interval</i> is	between the [•] day of each successive month.
The <i>currency of this contract</i> is the	South African Rand
The period within which payments are made is	30 days.
The <i>interest rate</i> is	<p>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</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>

Compensation events

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.

Title

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.

FOUR (4) 6x4 TRUCK TRACTOR 17 METER 4,5 (Ton) CRANE WITH WOODEN POLE ROTATOR GRAB

Risks, liabilities, indemnities and insurance

These are additional *Purchaser's* risks

1. Cost exceeding total budgeted value provided.
2. Excessive lead time (Failure to meet delivery dates)
3. Vehicles not meeting the specifications per ERI requirements on scope of work.
4. Installation of the 4,5 ton with 17 meter wooden pole rotating grab

The *Supplier's* liability to the *Purchaser* for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to

R0.0 (zero Rand)

For any one event, the *Supplier's* liability to the *Purchaser* for loss of or damage to the *Purchaser's* property is limited to

The *Supplier's* liability for Defects due to his design which are not notified before the last *defects date* is limited to:

To be discuss with the successful bidder

The *Supplier's* total liability to the *Purchaser*, for all matters arising under or in connection with this contract, other than the excluded matters, is limited to

To be discuss with the successful bidder

The *end of liability date* is

As per duration of warranty

Termination and dispute resolution

The *Adjudicator* 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).			
Address	[•]		
Tel No.	[•]		
Fax No.	[•]		
e-mail	[•]		
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)		
The <i>tribunal</i> is:	arbitration		
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.		
The place where arbitration is to be held is	South Africa		
The person or organisation who will choose an arbitrator	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.		
- if the Parties cannot agree a choice or			
- if the arbitration procedure does not state who selects an arbitrator, is			
Data for Option clauses			
Price adjustment for inflation	N/A		
The <i>base date</i> for indices is	[•].		
The proportions used to calculate the Price Adjustment Factor are:	proportion	linked to index for	Index prepared by
	0.	[•]	[•]
	0.	[•]	[•]
	0.	[•]	[•]
	0.	[•]	[•]
	0.	[•]	[•]
	[•]	non-adjustable	
	1.00		
Changes in the law			
A change in the law of	[•] is a compensation event if it occurs after the Contract Date		
Multiple currencies	N/A		

The <i>Purchaser</i> will pay for these items in the currencies stated	Items	Other currency	Total maximum payment in the currency
	[•]		
	[•]		
	[•]		
The <i>exchange rates</i> are those published in	[•] on [•] (date)		
<p>The items will be paid in the other currency</p> <ul style="list-style-type: none"> - to a foreign Bank account nominated by the <i>Supplier</i> - to a valid SARB approved CFC account in South Africa - in accordance with an alternative payment method agreed with the <i>Purchaser</i> before the Contract Date. 			
(select one of the three methods as agreed with the successful tenderer prior to contract award and delete the others and this note)			
Parent company guarantee	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.		
Delay damages			
Delay damages for Delivery are	Delivery of	amount per day	
Not meeting delivery stipulated	Four (4) 6x4 Truck Tractor with 4.5 ton 17 meter crane with wooden pole rotating grab	To be populated at contract award	
Not meeting stipulated timeframes for correction of defects	Minor defects to be corrected within 1 week	To be populated at contract award	
	Major defects to be corrected within 2 weeks	To be populated at contract award	
Partnering			
The <i>Client</i> is (Name):	[•]		
Address	[•]		
Contact details	[•]		
Telephone:	[•]		
Fax	[•]		
e-mail	[•]		
The Partnering Information is in	Part 3 Scope of Work, section C3.[•]		
The <i>Client's objective</i> is:	[•]		
Performance bond			
The amount of the performance bond is	R [•]		

Advanced payment to the Supplier		N/A
The amount of the advanced payment is		N/A
An advanced payment bond		is not required.
The <i>Supplier</i> repays the instalments in assessments starting not less than		[•] weeks after the Contract Date.N/A
The instalments are		R[•] (either an amount or a percentage of the payment otherwise due)N/A
Low performance damages		
The amounts for low performance damages are:	amount	performance level
	R [•]	for [•]
	R [•]	for [•]
	R [•]	for [•]
	R [•]	for [•]
Key Performance Indicators (not used when Option X12 applies)		
The <i>incentive schedule</i> for Key Performance Indicators is in		Annexure [•] to this Contract Data
A report of performance against each Key Performance Indicator is provided at intervals of		[•] months
The additional conditions of contract are		Z1 to Z12 always apply for Eskom

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.
- 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 Confidentiality

- Z4.1 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.
- Z4.2 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*.
- Z4.3 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.
- Z4.4 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*.
- Z4.5 The *Supplier* ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

- Z5.1 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.

Z6 Health, safety and the environment: Add to core clause 25.4

- Z6.1 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.

- Z6.2 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.

Z7 Provision of a Tax Invoice and interest. Add to core clause 51

- Z7.1 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.
- Z7.2 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.
- Z7.3 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.

Z8 Notifying compensation events

- Z8.1 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".

Z9 Purchaser's limitation of liability

- Z9.1 The *Purchaser's* liability to the *Supplier* for the *Supplier's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z9.2 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.

Z10 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":

Z10.1 or had a business rescue order granted against it.

Z11 Addition to secondary Option X7 Delay damages (if applicable in this contract)

Z11.1 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.

Z12 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 *Supplier* 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 *Supplier*, 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.

Z12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z12.2 The *Purchaser* may terminate the *Supplier's* obligation to Provide the 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 Services for this reason.

Z12.3 If the *Purchaser* terminates the *Supplier's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.

Z12.4 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.

Z13 Risk and Insurance

Z 13.1 Replace core clause 84 with the following:

Insurance cover 84

- 84.1** When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
- 84.2** The *Consultant* provides the insurances stated in the Insurance Table A from the *starting date* until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

Insurance against	Minimum amount of cover	For the period following Completion of the whole of the services or earlier termination
Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the services		
Liability for death of or bodily injury to a person (not an employee of the <i>Supplier</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Supplier</i>	<p>Loss of or damage to property:</p> <p>The replacement cost where not covered by the <i>Purchaser's</i> insurance</p> <p>The <i>Purchaser's</i> policy deductible, as at Contract Date, where covered by the <i>Purchaser's</i> insurance</p> <p>Bodily injury to or death of a person:</p> <p>The amount required by the applicable law.</p>	
Liability for 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	The amount required by the applicable law	

Z 13.2 **Replace core clause 87 with the following:**

**Insurance by
the *Purchaser***

87

87.1 The *Purchaser* provides the insurances stated in the Insurance Table B

DRAFT

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 2010³ as follows:

[Select the group and then term within the group which applies and state the applicable delivery place. Delete all the other groups and this note]

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.

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:

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

[Should there be a need to amplify any of the published obligations listed above for the chosen INCOTERM, add them here.]

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

³ International Chamber of Commerce, Incoterms 2010, Paris, January 2011

The Supply Requirements for this contract are as follows:

[Use these when INCOTERMS do not apply].

1. The requirements for the supply are	as per specifications provided in the scope of work	
2. The requirements for transport are	Completed vehicles to be driven to delivery place	
3. The delivery place is	Eskom Rotek Industries SOC Ltd, Logistics Services, Lower Germiston Road, Rosherville, Johannesburg.	
4. Actions of the Parties during supply	Action	Party which does it
	Giving notice of Delivery	Supplier
	Checking packing and marking before dispatch	N/A?
	Contracting for transport	N/A
	Pay costs of transport	N/A
	Arrange access to delivery place	Supplier
	Loading the <i>goods</i>	N/A
	Unloading the <i>goods</i>	N/A
For international procurement	Undertake export requirements	N/A
	Undertake import requirements	N/A
5. Information to be provided by the Supplier	Title of document	
	Packing lists for cases and their contents	
	Copy of invoice for the <i>goods</i>	
	Delivery Note	
	Test results and maintenance manuals	
For international procurement	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

C1.2 Contract Data

Part two - Data provided by the *Supplier*

[Instructions to the contract compiler: (delete this note before issue to tenderers with an enquiry)

Whenever a cell is shaded in the left hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row.]

Notes to a tendering supplier:

1. Please read both the NEC3 Supply Contract (SC3)⁴ and the relevant parts of its Guidance Notes (SC3-GN)⁵ 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 R , (in words)													
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 goods and services is:	<table> <tr> <th></th><th><i>goods and services</i></th><th><i>delivery date</i></th></tr> <tr> <td>1</td><td>[•]</td><td>[•]</td></tr> <tr> <td>2</td><td>[•]</td><td>[•]</td></tr> <tr> <td>3</td><td>[•]</td><td>[•]</td></tr> </table>		<i>goods and services</i>	<i>delivery date</i>	1	[•]	[•]	2	[•]	[•]	3	[•]	[•]
	<i>goods and services</i>	<i>delivery date</i>												
1	[•]	[•]												
2	[•]	[•]												
3	[•]	[•]												

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

⁵ Available from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902, or www.ecs.co.za

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 %

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C1.3 Forms of Securities

Pro formas for Bonds & Guarantees

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 *Supplier*

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 its letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Purchaser* within the time stated in the contract.

Pro forma Parent Company Guarantee (for use with Option X4)

(to be reproduced exactly as shown below on the letterhead of the Supplier's Parent Company)

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

Date:

Dear Sirs,

Parent Company Guarantee for Contract No

With reference to the above numbered contract made or to be made between

**Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sandton
Johannesburg** (the *Purchaser*) and

[Insert registered name and address of the *Supplier*] (the *Supplier*), for

[Insert details of the goods and services from the Contract Data] (the *goods and services*).

I/We the undersigned

on behalf of the *Supplier's*
parent company (name)

of physical address

and duly authorised thereto do hereby unconditionally guarantee to the *Purchaser* that the *Supplier* shall Provide the Goods and Services in accordance with the above numbered Contract.

1. If for any reason the *Supplier* fails to Provide the Goods and Services, we hereby agree to cause to Provide the Goods and Services at no additional cost to the *Purchaser*.
2. If we fail to comply with the terms of this Deed of Guarantee, the *Purchaser* may itself procure such performance (whether or not the Agreement be formally determined). The *Purchaser* is to notify us and we shall indemnify the *Purchaser* for any additional cost or expense it incurs.
3. Our liability shall be as primary obligor and not merely as surety and shall not be impaired or discharged by reason of any arrangement or change in relationship made between the *Supplier* and the *Purchaser* and/or between us and *Supplier*; nor any alteration in the obligations undertaken by the *Supplier* or in the terms of the Agreement; nor any indulgence, failure, delay by you as to any matter; nor any dissolution or liquidation or such other analogous event of the *Supplier*.
4. The *Purchaser* shall not be obliged before taking steps to enforce the terms of this Deed of Guarantee to obtain judgement against the *Supplier* in any court or other tribunal, to make or file any claim in liquidation (or analogous proceedings) or to seek any remedy or proceed first against the *Supplier*.
5. This Deed of Guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa and we hereby submit to the non-exclusive jurisdiction of the High Court of South Africa.

Signed at _____ on this _____ day of _____ 20__

Signature(s)

Name(s) (printed)

Position in parent company

Signature of Witness(s)

Name(s) (printed)

DRAFT

Pro forma Performance Bond – Demand Guarantee (for use with Option X13)

(to be reproduced exactly as shown below on the letterhead of the Bank providing the Bond / Guarantee)

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Bank reference No.

Date:

Dear Sirs,

Performance Bond – Demand Guarantee for [insert name of *Supplier*] required in terms of contract [insert *Supplier's* contract reference number or title]

1. In this Guarantee the following words and expressions shall have the following meanings:-

1.1	"Bank" means	[Insert name of Bank], [●] Branch, Registration No. [●]
1.2	"Bank's Address" means	[Insert physical address of Bank]
1.3	"Contract" means	the written agreement relating to providing the <i>goods</i> and <i>services</i> , entered into between the <i>Purchaser</i> and the <i>Supplier</i> , on or about the [●] day of [●] 200[●] (Contract Reference No. [●]) as amended, varied, restated, novated or substituted from time to time;
1.4	" <i>Supplier</i> " means	[●] a company registered in accordance with the laws of [●] under Registration No [●].
1.5	" <i>Purchaser</i> " means	Eskom Holdings SOC Ltd a company registered in accordance with the laws of the Republic of South Africa under Registration Number [●]
1.6	"Expiry Date" means	the earlier of <ul style="list-style-type: none"> the date that the Bank receives a notice from the <i>Purchaser</i> stating that all amounts due from the <i>Supplier</i> as certified in terms of the contract have been received by the <i>Purchaser</i> and that the <i>Supplier</i> has fulfilled all his obligations under the Contract, or the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by the <i>Purchaser</i>.
1.7	"Guaranteed Sum" means	the sum of R[●], ([●] Rand)
1.8	" <i>goods</i> and <i>services</i> " means	[insert details from Contract Data part 1]

2. At the instance of the *Supplier*, we the undersigned _____ and _____, in our respective capacities as _____ and _____ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of the *Purchaser* as security for the proper performance by the *Supplier* of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to the *Purchaser*, on written demand from the *Purchaser* received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.

3. A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:

- be signed on behalf of the *Purchaser* by a Group Executive, Divisional Executive, Senior General Manager, General Manager or its delegate;
- state the amount claimed ("the Demand Amount");

- state that the Demand Amount is payable to the *Purchaser* in the circumstances contemplated in the Contract.
4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:
- is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
 - is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
5. The Bank's obligations in terms of this Guarantee:
- shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
 - shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between the *Purchaser* and the *Supplier*.
6. The *Purchaser* shall be entitled to arrange its affairs with the *Supplier* in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the *Supplier* or any variation under or to the Contract.
7. Should the *Purchaser* cede its rights against the *Supplier* to a third party where such cession is permitted under the Contract, then the *Purchaser* shall be entitled to cede to such third party the rights of the *Purchaser* under this Guarantee on written notification to the Bank of such cession.
8. This Guarantee:
- shall expire on the Expiry Date until which time it is irrevocable;
 - is, save as provided for in 7 above, personal to the *Purchaser* and is neither negotiable nor transferable;
 - shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
 - shall be regarded as a liquid document for the purpose of obtaining a court order; and
 - shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.
 - will be invalid and unenforceable if any claim which arises or demand for payment is received after the Expiry Date.
9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at _____ on this _____ day of _____ 20__

For and on behalf of the Bank

Bank Signatories(s)

Name(s) (printed)

Witness(s)

Bank's seal or stamp

Pro forma Advanced Payment Bond (for use with Option X14)

(to be reproduced exactly as shown below on the letterhead of the Bank providing the Bond)

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Bank ref no. [●]

Date: [●]

Dear Sirs,

Advanced Payment Bond for Contract No. [●]

With reference to the above numbered contract made or to be made between

Eskom Holdings SOC Ltd

(the *Purchaser*) and

{Insert registered name and address of the *Supplier*}

(the *Supplier*), for

{Insert details of the *goods and services* from the Contract Data}

(the *goods and services*).

I/We the undersigned [●]

on behalf of the Surety [●]

of physical address [●]

and duly authorised thereto do hereby bind ourselves as Surety and co-principal debtors in solidum for the due and proper repayment by the *Supplier* to the *Purchaser* of the advanced payment made by the *Purchaser* to the *Supplier* under the Contract, and for all losses and expenses that may be suffered or incurred by the *Purchaser* as a result of non-payment by the *Supplier*, subject to the following conditions

1. The terms *Purchaser*, *Supplier*, and the *goods and services* have the meaning as assigned to them by the *conditions of contract* listed in the Contract Data for the aforesaid Contract.
2. We renounce all benefits from the legal exceptions "Benefit of Excussion and Division", "No value received" "Revision of Accounts", "Cession of Action" and any other exceptions which might or could be pleaded against the validity of this bond, with the meaning and effect of which exceptions we declare ourselves to be fully acquainted.
3. The *Purchaser* has the absolute right to arrange his affairs with the *Supplier* in any manner which the *Purchaser* deems fit and without being advised thereof the Surety shall not have the right to claim his release on account of any conduct alleged to be prejudicial to the Surety. Without derogating from the foregoing compromise, extension of the supply period, indulgence, release or variation of the *Supplier's* obligation shall not affect the validity of this Advance Payment bond.
4. This bond expires on the date when the Surety receives a notice from the *Supply Manager* stating that the advanced payment has been repaid to the *Purchaser* in terms of the Contract, or liquidated by deductions from other payments due to the *Supplier*.
5. The amount of the bond shall be payable to the *Purchaser* upon the *Purchaser's* demand and no later than 7 days following the submission to the Surety of a certificate signed by the *Supply Manager* stating the amount of the *Purchaser's* losses, damages and expenses incurred as a result of the non-performance aforesaid. The signed certificate shall be deemed to be conclusive proof of the extent of the *Purchaser's* loss, damage and expense.

6. Our total liability hereunder shall not exceed the sum of (R) which is equal to the advance payment.
7. This Advanced Payment Bond is neither negotiable nor transferable and is governed by the laws of the Republic of South Africa.

Signed at _____ on this _____ day of _____ 200_

Signature(s)

Name(s) (printed)

Position in Surety company

Signature of Witness(s)

Name(s) (printed)

PART 2: PRICING DATA

NEC3 Supply Contract

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

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>Supplier</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>Supplier</i> has completed by the rate, plus other amounts to be paid to the <i>Supplier</i>, less amounts to be paid by or retained from the <i>Supplier</i>. <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.

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.

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;

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- 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.

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.

C2.2 the *price schedule*

[illegible]

The total of the Prices

PART 3: SCOPE OF WORK

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

C3.1: *PURCHASER'S* GOODS INFORMATION

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When the document is complete, insert a 'Table of Contents'. To do this go to: Reference, → Table of Contents. Three levels and the title (but not the subtitle) may be shown if the formats used in this template are retained. Alternatively just update the table below when the drafting of the Goods Information is complete by clicking on 'References' then 'Update Table' then 'Update entire table'

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1 Overview and purpose of the *goods and services*

**PROVIDE FOUR (4) 6x4 TRUCK TRACTOR 17 METER 4,5 (Ton) CRANE WITH
WOODEDN POLE ROTATOR GRAB**

2 Specification and description of the *goods*

As per Annexure N (Scope of Work).

2.1 *Purchaser's design*

N/A

2.2 Procedure for submission and acceptance of *Supplier's design*

N/A

2.3 Other requirements of the *Supplier's design*

N/A

2.4 Use of *Supplier's design*

. N/A

2.5 Manufacture & fabrication

As per Annexure N?

2.6 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. State whether the tests are to be witnessed by the *Supply Manager* or by a testing agency of the *Purchaser's* nomination. Note, *Supplier* may not restrict *Supply Manager's* right to witness tests per clause 25.2. The pressure will be required.

2.7 Other tests and inspections and commissioning in place of use

Describe any other tests and inspections that may be required, specifically in the place of use. If the *Supplier* is to commission the *goods* in the place of use after Delivery, describe the process here. If he is only required to witness and report on the commissioning done by others, this would be included as a service in section 4 below. Supplier to conduct the tests and inspections, to provide the pressure test certificate.

2.8 Operating manuals and maintenance schedules

Use this section to describe these requirements. Pay particular attention to when and in what form they are required. Consideration should be given to obtaining operating manuals and maintenance schedules before

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Delivery of the whole of the *goods* when there is still financial incentive for the *Supplier* to do so. Supplier to provide a maintenance plan and the schedule for the super sucker, including operating manual.. Hard copies to be provided.

3 Supply Requirements

Attached Scope of work (Annexure N)

The Supply Requirements for this contract are in an Annexure N to the Contract Data provided by the *Purchaser*.

4 Specification of the *services* to be provided

Training of employees may be requested by ERI for the 4.5 meter crane or additional equipment features

5 Constraints on how the *Supplier* Provides the Goods

5.1 Programming constraints

Read clause 31.2 first then state what additional information (if any) is to go in the programme per the last bullet of clause 31.2. Describe any particular constraints on the order and timing of the work which the *Supplier* must take into account in his programme. The delivery lead time will delay the project should they not be on delivered on time.

5.2 Work to be done by the Delivery Date

Clause 11.2(5) defines Delivery as when the *Supplier* has done all the work which the Goods Information states he is to do by the Delivery Date. The defined term "Delivery" is used in this contract to identify when a stage, or amount of work has been achieved. This may be more than the common meaning of "delivery" and could include the passing of specified tests, provision of documentation and packing and preparation for air freight or shipping to the *Purchaser's* nominated Delivery Place specified in the Supply Requirements.

Either list here what has to be done in order to constitute "Delivery", or list what may remain undone and be completed after the Delivery Date by stating that everything else must be done before Delivery.

5.3 Marking the *goods*

No advanced payment will be done.

5.4 Constraints at the delivery place and place of use

. Notify purchaser of date of delivery & Delivery to be done within working hours of 8:00am to 16:00 pm

5.5 Cooperating with Others

the *goods* needs to be discussed with Others). - N/A

5.6 Services & other things to be provided by the *Purchaser* or *Supplier*

Clause 23.2 requires that the Goods Information state what services and other things are to be provided by the Parties, each to the other as part of the supply process. This has nothing to do with the *services* identified in the Contract Data. It would include temporary services and things needed to facilitate the supply, such as cranes provided by the *Purchaser* for offloading of the *goods*. N/A

5.7 Management meetings

Weekly meetings to be conducted with the supplier to identify status updates on progress and delivery targets.

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

Title and purpose	Approximate time & interval	Location	Attendance by:
Overall contract progress and feedback	Weekly on _____ at _____ TBS_____	TBA	<i>Purchaser, & Supplier,</i>

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.

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.

5.8 Documentation control

documentation will be identified with an alpha numeric which indicates source, recipient, communication number, date etc. . Documents to be in a PDF format and sent to the ERI Logistics Services Technical, Waste and SHEQ departments. ERI representatives for communication TBA

5.9 Health and safety risk management

In addition to the requirements of the laws governing health and safety, the *Purchaser* may have some additional requirements particular to the *goods* and the location where they are to be delivered for this contract. This is a requirement of clause 25.4.

The *Supplier* shall comply with the health and safety requirements as contained in the LS SHEQ Specification for Truck Tractors and full SHEQ requirements as contained in the Annexure A- SHEQ Check Sheet which are clearly stipulated within the aforesaid SHEQ Specification for Truck Tractors.

5.10 Environmental constraints and management

Describe or cross refer to environmental constraints applicable to the *Supplier's* design of the *goods* if not already included in the *Purchaser's* URS.

The *Supplier* shall comply with the environmental criteria and constraints as stipulated in their Environmental Management plan which is one of the SHEQ requirements as contained in the Annexure A- SHEQ Check Sheet which is clearly stipulated within the aforesaid SHEQ Specification for Truck Tractors.

5.11 Quality

Specify minimum requirements for the *Supplier's* Quality Plan and Work Procedures if required and not already covered in the specifications for the *goods*. State whether ISO compliance is a condition and if so which ISO standard shall apply.

The supplier shall provide resources compliant with the requirements of ISO 9001:2015 and statutory and regulatory requirements for the effective operation of the business.

Documented information such as warranties and service history records to demonstrate the fitness of purpose must be provided.

Monitoring and measuring resources such as schedules/ maintenance plans outlining how often checks, inspections and maintenance are needed to ensure valid results and or information demonstrating traceability to national standards or any alternative basis used.

An expert will be required to evaluate if the vehicles are correctly provided and a tool must be developed that will be used to confirm that requirements have been met.

If measuring equipment is used to verify conformity to requirements to provide confidence in the validity of measurement results, the supplier must provide calibration certificates/records demonstrating the status.

The supplier must fulfil relevant requirements after the product is delivered, recognising that delivery does not necessarily end the suppliers' responsibility. The supplier shall consider known requirements such as statutory, regulatory or customer requirements and contractual agreements such as warranties or technical support considering the possibility that when the product does not perform as expected, further action could be required.

5.12 Invoicing and payment

List the information that is to be shown by the *Supplier* on his invoices. State any other requirements relating to payment. For example:

Within one week of receiving confirmation from the *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice showing the amount due for payment equal to that stated in the *contract price list*????.

The *Supplier* shall address the tax invoice to *Purchaser* and include on each invoice the following information:

- Name and address of the *Supplier* and the *Supply Manager*;
- The contract number and title;
- Contact Number (Land line and cell phone)
- Purchase Order Number
- *Supplier's* VAT registration number;
- The *Purchaser'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;
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number 4330196330

Add procedures for invoice submission and payment (e. g. electronic payment instructions)

5.13 Insurance provided by the *Purchaser*

First read SC3 Core Clause 84.1 and then add anything necessary for the management of insurance related issues such as a cross reference to where procedures for making claims can be found. Also provide contact

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details for persons capable of being able to answer any insurance related queries the *Supplier* may have, as well as to whom the information required by any Marine Insurance may be addressed.

5.14 Contract change management

Not Applicable

5.15 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 *Supplier* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

The *Purchaser* may withhold payment of amounts due to the *Supplier* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Supplier* by the *Supply Manager* to receive and accept such bond or guarantee. Such withholding of payment due to the *Supplier* does not affect the *Purchaser's* right to termination stated in this contract.

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

Read clause 63.2 and 11.2(4) and then state whether the *Supplier* 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.

6 Procurement

6.1 Subcontracting

6.1.1 Preferred subcontractors

Not Applicable

6.1.2 Limitations on subcontracting

Not Applicable

6.1.3 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 *Purchaser* may need at or just after delivery or commissioning of the *goods* and that it is best the *Supplier* provide these initially as part of his Providing the Goods and Services

6.1.4 Other requirements related to procurement

N/A

7 List of drawings

7.1 Drawings issued by the *Purchaser*

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

Drawing number	Revision	Title
Not Applicable		

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C3.2 *SUPPLIER'S* GOODS INFORMATION

This section of the Goods Information will always be contract specific depending on the nature of the *goods* and *services*.

It is most likely to be required for supply contracts where the tendering supplier will have proposed specifications and schedules for the *goods* and *services*, which once accepted by the *Purchaser* prior to award of contract now become obligations of the *Supplier* per core clause 20.1.

This section could also be compiled as a separate file.

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ('Agreement') is entered into between the Purchaser and the Supplier.

WHEREAS, the Purchaser and the Supplier (the Parties) desire to exchange certain confidential information; and consider further business dealings with each other.

WHEREAS, the parties desire to evidence their agreements governing the exchange of certain confidential information as set forth below.

Now therefore, for good and valuable consideration, including the mutual agreements hereinafter recited, the parties hereby agree as follows:

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the 'Subject Information') may include but not be limited to the parties' inventions, trade secrets, know-how, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.
2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other.
3. The parties each agree that they shall maintain in secrecy in accordance with the terms of this Agreement all of the Subject Information each party receives (the 'Receiving Party') from the other party (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.
4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.
5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.
6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes and other writings prepared by the parties, or their advisors, based on the Subject

Information of each other, shall be destroyed, and such destruction shall be certified in writing by an authorised officer supervising such destruction.

7. If a party, with the written consent of the Proprietor of Subject Information, discloses any Subject Information received from its Proprietor to any third party, it shall do so only under a secrecy agreement having a scope similar to and which is consistent with this Agreement, and the disclosing party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party
8. Each party agrees that it shall not, while and for so long as it is obligated to maintain Subject Information in secrecy, use for its own benefit, or for the benefit of others or exploit, commercialise, develop, test promote, sell, lease, market or otherwise dispose of any products or services using, incorporating or relying on Subject Information received from its Proprietor without the written consent of the Proprietor.
9. The obligations of the party receiving Subject Information pursuant to this Agreement shall be effective with respect of each item of Subject Information for a term of five (5) years from the date of submission of the Subject Information to the Receiving Party by its Proprietor, unless the Proprietor agrees otherwise in writing.
10. For purposes of this Agreement, each party shall include (to the extent applicable) the officers, directors, employees, agents, representatives, attorneys, joint ventures, partnerships, affiliates, subsidiaries, and divisions of the party, and any other entity or entities which such party controls or which controls it, and, further, shall include any transferee, successor and assign of the assets of the party.
11. This Agreement shall be construed (both as to validity and performance) and enforced in accordance with, and governed by, the laws of Republic of South Africa.
12. Neither this Agreement nor the exchange of Subject Information between the parties shall create or be relied on by either party as a basis for creating any license between the parties under any patent, or other industrial or intellectual property rights of the Proprietor of the Subject Information, or any other license between the parties in the absence of any express written license agreement between them
13. The parties agree that no contract or agreement providing for a transaction shall be deemed to exist between them unless and until a definitive agreement has been executed and delivered, the parties hereby waive, in advance, any claim (including, without limitation, breach of contract) in connection with a possible transaction with each other unless and until they shall have entered into a definitive agreement. The parties also agree that unless and until a definitive agreement between them has been executed and delivered, neither party has any legal obligation of any kind whatsoever with respect to any such transaction by virtue of this Agreement or any other written or oral expression with respect to such transaction, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this paragraph, the term 'definitive agreement'; does not include an executed letter of intent, memorandum of understanding.

IN WITNESS WHEREOF, and intending to be legally bound, this Agreement has been executed by the parties as of and effective from the date first written above.