

 Eskom	<b>NON-FERROUS METAL NATIONAL CONTRACT DISPOSAL AGREEMENT</b>	<b>INVESTMENT RECOVERY</b>
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Title: **Eskom National Contract for the collection and disposal of non-ferrous scrap metal for a period of 5 years.** Unique Identifier: **240-54424038**

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DISCLOSURE**

<b>Contract No:</b> _____	<b>Entered into by and between:</b> <b>ESKOM HOLDINGS SOC LTD</b>	<b>And:</b>
	Represented by:	Represented by:
	Name: _____	Name: _____
<b>Signed at:</b> _____	Signature _____	Signature: _____
	Name:	Represented by:
	Signature: _____	Name: _____
	Date: _____	Signature: _____
		Date: _____

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# **NON-FERROUS METAL DISPOSAL AGREEMENT ESKOM NATIONAL CONTRACT**

ENTERED INTO AND BETWEEN

**ESKOM HOLDINGS SOC LTD**

REGISTRATION NUMBER 2002/015527/30

AND

REGISTRATION NUMBER

VAT REGISTRATION NUMBER

**(Hereinafter referred to as “the Parties”)**

## **1. INTRODUCTION**

- 1.1 Eskom is the owner of certain non-ferrous scrap metal, either comprising of the Eskom Power Line Network or located at the various Eskom business units or other facilities, for instance substations.
- 1.2 Eskom has expressed the desire to dispose of its scrap non-ferrous metal from time to time, subject to the terms and conditions of this contract.
- 1.3 It is an integral part of the overall transaction that any marked scrap aluminium resulting from conductor which was manufactured for Eskom by Eskom's suppliers shall be sold by these suppliers to .....(the "Purchaser") on an exclusive basis. The Purchaser shall be informed of the names of the various suppliers so that the necessary arrangements can be made, subject however, that the Purchaser shall be obliged to purchase all the scrap aluminium from the suppliers concerned, at the prices agreed to in terms of the price schedule of this Agreement. The sale of scrap aluminium from the suppliers concerned to the Purchaser shall otherwise be mutatis mutandis subject to the same terms and conditions of this Agreement, provided that the reference to Eskom shall be substituted with a reference to the supplier(s) concerned.
- 1.4 Subject to the Purchaser meeting all the requirements set out herein, Eskom agrees to dispose of its scrap material (excluding useable material) to the Purchaser in their existing condition.
- 1.5 Now therefore the Parties wish to enter into a disposal agreement on the terms and conditions recorded below.

## **2. DEFINITIONS AND INTERPRETATION**

- 2.1 In this Agreement, the following words and expressions shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words and expressions) shall bear corresponding meanings:
  - 2.1.1 "Agreement" means this Agreement concluded between Eskom and the Purchaser which will include the obligation to purchase the material from the Eskom suppliers at the prices tendered, negotiated and agreed to by the Purchaser, recorded in the price schedule and the schedule of transport charges as set out in clause 1.3 together with all appendices hereto.
  - 2.1.2 "baling" means the process of cutting and sorting of the non-ferrous metal components from the material during the pre-processing into bundles and/or compressing the non-ferrous metal components of the material into blocks;
  - 2.1.3 "The Purchaser" means ..., registration number...., a company incorporated in accordance with the company law of the Republic South Africa, with its registered office situated at: .....

- 2.1.4 "cable" means any combination of scrap telephone cable, scrap power cable and scrap instrument cable which contains non-ferrous metals;
- 2.1.5 "the commencement date" shall have the meaning ascribed to it in clause 3;
- 2.1.6 "conductor" means any overhead or underground electrical power conductor which contain non-ferrous metals and which forms part of the Eskom Power Line Network or such other facility as may be indicated by Eskom to the Purchaser in writing;
- 2.1.7 "delivery" means delivery or a deemed delivery of the material by Eskom to the Purchaser on the basis that the Purchaser shall be liable for all costs incurred in the delivery process; and "Deliver" shall have a corresponding meaning. For the avoidance of doubt, delivery shall mean the following;
- 2.1.7.1 in the case of project related disposal activities as fully defined under Categories B and C of the Scope of Work, delivery is deemed to be the disconnection and dismantling of the fittings and conductor by Eskom or its nominated subcontractor from the Eskom Power Line Network or facility concerned, whilst delivery in the case of the disconnection and dismantling of the fittings and conductor by the Purchaser, will be deemed to be the date and time as indicated by Eskom in the Collection Request that the material should be disconnected, dismantled and removed from the site. Although the subsequent uplifting, loading and removal of the material by the Purchaser from the site on the delivery date shall be effected at its own cost, it does not form part of the deemed delivery in the case of project related disposal activities, should it not take place on the time and date as indicated in the Collection Request by Eskom dealing with the disconnection, dismantling and removal of the material as delivery is deemed to take place on the time and date as indicated; or
- 2.1.7.2 in the case of non-project related disposal activities as fully defined under Category A of the Scope of Work, delivery means the uplifting, loading and removal of the material by the Purchaser from the site at its cost ex the Eskom site;
- 2.1.8 "delivery certificate" means-
- 2.1.8.1 in the case of project related disposal activities, the weighbridge certificate issued by Eskom or the Purchaser (as confirmed in writing by Eskom) indicating the type, grade, quantity, date and mass of material of which took delivery; or
- 2.1.8.2 in the case of non-project related disposal activities, the certificate issued by Eskom detailing and confirming the information set out in the weighbridge certificate issued at source, certifying the type, grade, quantity, date and mass of the material delivered by Eskom to the Purchaser;
- 2.1.9 "delivery date" means the date and times stipulated in the Collection Request and/or as stipulated on the delivery certificate incorporating the date on the weighbridge certificate issued at source on which date the Purchaser is / or was obliged to take delivery of the material;

- 2.1.10 "delivery schedule" means the schedule of the quantity of material and the delivery dates as set out in the Collection Request/s by Eskom;
- 2.1.11 "Eskom" Eskom Holdings SOC LTD, Registration No 2002/015527/3, a company incorporated in accordance with the company law of the Republic South Africa, with its registered office situated at Megawatt Park, 1 Maxwell Drive, Sandton, Johannesburg;
- 2.1.12 "Eskom Power Line Network" means the Eskom overhead and underground electrical power transmission, distribution and reticulation line network situated throughout the Republic of South Africa;
- 2.1.13 "Eskom's supplier's" means manufacturers of non-ferrous materials
- 2.1.14 "fittings" means the line hardware used to clamp the conductor to the insulator or to join conductor;
- 2.1.15 "LME" means the London Metal Exchange or its successor body;
- 2.1.16 "the material/ scrap material " means the conductor, cable and fittings and related items as identified in terms of the Price Schedule and owned by Eskom which may contain non-ferrous metals;
- 2.1.17 "non-ferrous metal" includes any one of, or combination of, but is not limited to aluminium , lead and bronze metals and which may be a component of the material;
- 2.1.18 "non-project related disposal activities" means the upliftment of the material (Category A of the scope of work) from an Eskom store/warehouse yard or depot;
- 2.1.19 "pre-processed" means the separation of the non-ferrous metals from the material and the Baling of it;
- 2.1.20 "the price schedule" means the document indicating the % of the LME price payable for the material by the Purchaser to Eskom minus the charges allowed in tables 2 to 5 of the price schedule, plus value added tax;
- 2.1.21 "processed" means the smelting of the non-ferrous metals into ingot form, or their granulation into particles of not more than 10 mm in size;
- 2.1.22 "Collection Request" means periodic instructions in writing together with the respective schedule as supplied by Eskom to the contractor from time to time (which shall be subject to the terms of this Agreement), indicating the site, delivery date and approximate quantity of material to be delivered by Eskom to the Purchaser (without being bound to it). Each Collection Request shall constitute a separate independent disposal Agreement incorporating the terms of this Agreement;

- 2.1.23 "project related disposal activities" means the upliftment of the material (Category B and Category C of the scope of work) from an Eskom site where Eskom, or its nominated contractor, or the Purchaser dismantles the material from the Eskom Power Line Network;
- 2.1.24 "the purchase price" means the purchase price payable by the Purchaser to Eskom (or the supplier as in clause 1.3) pursuant to the delivery of material in terms of the contract and as confirmed by the delivery certificate (plus value-added tax) less those charges set out in tables 2, 3, 4 and 5 as applicable in the price schedule and transport charges; annexed hereto;
- 2.1.25 "Rand" means the legal currency of the Republic of South Africa;
- 2.1.26 "Scope of work" means the duties and/or works to be performed by the Purchaser as fully recorded under clause 12 of this Agreement;
- 2.1.27 "the site" means the locality designated by Eskom in terms of the Collection Request within the Republic of South Africa where either the relevant portion of the Eskom Power Line Network or any other facility is located and where the material will be delivered or deemed to be delivered by Eskom to the Purchaser or as reflected in the Collection Request and confirmed in the delivery certificate or, in other cases, where the material will be delivered by Eskom to the Purchaser;
- 2.1.28 "site agent" means the person nominated by Eskom in writing as the site agent either in the Collection Request or at the site, where the Purchaser takes delivery of the material;
- 2.1.29 "sole discretion" means, in relation to Eskom, a decision taken by Eskom in its sole and absolute discretion which will not be subject to any challenge whatsoever by the Purchaser even though Eskom may not have had all the facts at its disposal when exercising the discretion;
- 2.1.30 "source/ Weighbridge" means the weighbridge at or near the site as confirmed and agreed to in writing by the site agent;
- 2.1.31 "transport charges" means those charges in respect of the transportation of the material to be deducted from the Purchase Price payable for the material by the Purchaser, in terms of the schedule of transport charges annexed hereto which has been accepted by Eskom;
- 2.1.32 "unprocessed" means the form, state and composition of the material upon delivery as at the delivery date until pre-processed and/or processed;
- 2.1.33 "uplifting, loading and removal" means the collection of the material by the Purchaser from the site as set out in the Collection Request, at its own cost and expense, provided that the Purchaser and its employees shall at all times act according to the instructions of Eskom or the owner of the property concerned when on the site.
- 2.1.34 "weighbridge certificate" means the document issued by the Purchaser and provided to Eskom and Eskom approves of the weighbridge certificate in writing indicating the different material types, grades, quantity, date and mass of material weighed;

- 2.1.35 "Useable material" means material suitable for electrification and which has been identified as such by Eskom's duly authorised representatives.
- 2.1.36 "Signature Date" means the date on which this Agreement has been signed by both Parties hereto and if signed on different dates, the date of signature of the Party signing last in time;
- 2.1.37 "Business Day" means a day other than a Saturday, Sunday or gazetted public holiday in the Republic of South Africa; and
- 2.1.38 "VAT" means value added tax levied from time to time in terms of the Value Added Tax Act, No. 89 of 1991 or any similar tax levied on the supply of goods imposed in terms of any law passed in substitution of the Value Added Tax Act, No. 89 of 1991 and for which tax a purchaser of such goods will be liable in terms of such substituting law.
- 2.2 In this Agreement:
- 2.2.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 2.2.2 notwithstanding anything to the contrary contained herein, all reference to legislation shall include a reference to such legislation as amended or replaced from time to time;
- 2.2.3 words importing the masculine gender include the feminine and neuter genders and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;
- 2.2.4 references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 2.2.5 Any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears. If there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement or paragraph of any Annexe, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement;
- 2.2.6 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day and shall refer to calendar days unless specifically stated otherwise;
- 2.2.7 any provision in this Agreement which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. pro non scripto) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement;
- 2.2.8 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;

- 2.2.9 each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement (i.e. the contra proferentem rule), shall not apply.

### **3. COMMENCEMENT AND DURATION**

#### **3.1 Commencement of Delivery**

Notwithstanding the Signature Date, this Agreement shall commence on 01 July 2026 ("the Commencement Date") or later thereafter as is reasonably possible.

#### **3.2 Duration**

- 3.2.1 The term of this Agreement shall be for a period commencing on the Commencement Date and expiring on 31 June 2031, which period ("the Contract Period") is a Contract Period of 5 (five) years, unless extended or earlier terminated in accordance with the terms of this Agreement.
- 3.2.2 Eskom shall be entitled to cancel the Agreement on 30 (thirty) "days" written notice during the Contract Period, subject at all times to any party's right to terminate the Agreement in the event of breach of this Agreement.

### **4. TERMS OF REFERENCE**

#### **4.1 SALE**

- 4.1.1 Eskom hereby agrees to sell its scrap material (excluding useable material) to the Purchaser and the Purchaser agrees to purchase from Eskom and/ or Eskom's supplier's, as the case may be, the quantities of material in the grade, type and mass as set out and confirmed in a delivery certificate and/or Collection Request from time to time, it being specifically recorded that;
- 4.1.1.1 Eskom shall not be obliged to sell useable material and/or material suitable for electrification to the Purchaser.
- 4.1.1.2 Eskom may from time to time instruct the Purchaser of the availability of material throughout the Republic of South Africa, which the Purchaser has to collect within seven(7) days upon the receipt of the Collection Request from Eskom.



## 5. QUANTITY

- 5.1.1 The Purchaser shall purchase all the scrap material made available by Eskom in terms of this Agreement and as specified from time to time in a Collection Request.
- 5.1.2 Eskom does not guarantee any minimum quantity of scrap material for the Contract Period.
- 5.1.3 Although an indication will be given by Eskom in a Collection Request, of actual type, mass, grade and quantity of material to be sold and delivered by Eskom to the Purchaser, it will be determined by Agreement between the parties at the latest on the delivery date having regard to the delivery schedule. Should the Purchaser identify discrepancies between the Collection Request and the actual material at an Eskom site, then the Purchaser shall not be entitled to load and remove the material from site, until the discrepancy is cleared by agreement between the Parties. Once agreed, Eskom shall issue a revised Collection Request.
- 5.1.4 Eskom does not guarantee any minimum or maximum grade, type, mass or quantity of material to be made available, sold or delivered to the Purchaser from time to time including:
  - 5.1.4.1 the site where the material will be made available;
  - 5.1.4.2 the mixture of non-ferrous metals;
  - 5.1.4.3 the quantity of non-ferrous metal in the material;
  - 5.1.4.4 The quality and / or standard of material and the mass of any non-ferrous metal in any material.
  - 5.1.4.5 The quantity of material delivered to the Purchaser by Eskom in terms of this Agreement shall be recorded by both Eskom and the Purchaser on a daily basis. The Purchaser shall furnish Eskom, on a weekly basis with its written quantity of material delivered.
- 5.1.5 The Purchaser shall supply a written delivery schedule to Eskom on a bi-weekly basis indicating the previous week's deliveries which will be the quantities as set out in the relevant Collection Requests and/or delivery certificates issued by the site agents and/or the weighbridge certificates from source. The Eskom delivery certificate and weighbridge certificate shall under all circumstances be signed or countersigned by Eskom's representative or the site agent, failing which a delivery certificate shall not be used by the Purchaser in support of any quantity of material delivered. In the absence of documentary confirmation, the site agent's advice shall be prima facie proof of quantities of material delivered to the contractor.
- 5.1.6 Delivery shall be effected on such days and during such hours as may be instructed by Eskom in writing, and shall at all times take place under Eskom's supervision. In the case of project related disposal activities where the contractor does not physically remove the material from site on the date in question alternatively does not dismantle and/or disconnect the fittings and conductor, it shall be deemed that delivery has not taken place at the time and date recorded in the Collection Request.

- 5.1.7 It is specifically recorded that the Purchaser shall not pre-process or process any of the material unless a delivery certificate and weighbridge certificate have been issued and undersigned by Eskom and the Purchaser. The Purchaser shall be obliged to keep such material separate from other material until such time as the certificates in question have been issued or agreement in writing has been reached between the parties as to the quantity and nature of the material delivered.
- 5.1.8 Eskom shall be entitled to object to any employee, agent and/or representative taking delivery at any particular site for and on behalf of the Purchaser without Eskom having to furnish any a reason therefore and the Purchaser shall immediately upon notice of such objection by Eskom and prior to further deliveries at the site appoint another employee, agent and/or representative to accept delivery at the particular site.
- 5.1.9 The Purchaser shall take delivery of the material at the site as and when instructed by Eskom, and shall where practical and at its own discretion render reasonable assistance in this regard. The Purchaser shall be responsible for the upliftment, loading and removal of all material from the site at its own cost, as fully as described in scope of work under clause 12 of this Agreement.
- 5.2 For project related disposal activities the following shall apply:
- 5.2.1 The Eskom site agent or representative shall inform the Purchaser of the date, type, grade and approximate mass and quantity of the material available for delivery and the Purchaser or its duly authorised representatives shall take delivery of the same within 72 hours (3 days) of such notice.
- 5.2.2 Should Eskom or its nominated subcontractor effect delivery of the material to the Purchaser, the quantity delivered to the Purchaser shall be equal to the quantity as set out in the delivery certificate. In all other cases the material shall be weighed by the Purchaser immediately upon arrival of a load of material at such place as may be agreed to in writing by the site agent, on the basis that a weighbridge certificate and a delivery certificate shall be furnished to Eskom within 72 (seventy two) hours from the time of delivery of that specific load of material. The weighbridge certificate and delivery certificate will only be accepted upon Agreement with the site agent, failing which a dispute may be declared by Eskom and the provisions of 5.1.7 shall apply.
- 5.2.3 Eskom's authorised senior storeman and/or site agent and/or Security Investigation representative as nominated by Eskom and recorded on each Collection Request shall accompany each material load to the Weighbridge or source. Such load shall be differentiated at source by the Purchaser into separate loads of the different types of material and each separated load shall be weighed and the date, type, grade, quantity and mass of each differentiated load stipulated on the delivery certificate and signed by the Purchaser and the authorised senior storeman and/or Security Division representative. Eskom shall issue the aforesaid delivery certificate to the Purchaser in respect of each separated load.
- 5.2.4 Only in cases where no weighbridge exists at or near the site and upon written confirmation from the authorised senior storeman and/or site agent and/or Security Division representative in writing to the Purchaser, the Purchaser shall immediately upon arrival of the material load

at its own premises and before offloading the load, issue a weighbridge certificate stating the date, type, grade, quantity and mass of each separate load and shall furnish Eskom with an original copy of the weighbridge certificate and delivery certificate within 72 hours from time of delivery. Such weighbridge certificate will only be accepted upon agreement in writing with by the site agent, failing which a dispute may be declared and the provisions of clause 5.1.7 shall apply. In the case of it not being possible to weight the material at site, the Purchaser shall not be entitled to leave the site unless accompanied by an Eskom representative, authorised senior storeman and/or Security Division representative to the weighbridge.

- 5.2.5 Should the Purchaser accept responsibility for the disconnection and dismantling of the material from the Eskom's Power Line Network or any related facility, delivery shall be deemed to have been effected once access has been given to the Purchaser to enable the Purchaser to disconnect and drop the conductor and fittings from Eskom's Power Line Network or related facility or the time and date stipulated in the Collection Request.
- 5.2.6 The Purchaser shall ensure that its authorised representatives is present during any of the activities undertaken by Eskom in terms of the project-related disposal activities, in instances where Eskom or its nominated contractor undertaking the dropping of the conductor. Notwithstanding .....The Purchaser remains accountable and responsible for collection of material.
- 5.2.7 Delivery shall be deemed to have taken place at the time and date as indicated by Eskom in the Collection Request (provided that access has been given to the Purchaser to enable them to disconnect and remove the conductor) even though the Purchaser may not have physically disconnected and dismantled the fittings and conductor nor have uplifted, loaded or removed the material from site on the time and date as indicated by Eskom.
- 5.2.8 For all non-project-related disposal activities, the following provisions shall apply:
  - 5.2.8.1 The Purchaser shall (only where required by Eskom and subject to Eskom making the material available for delivery) accept any delivery at any site specified by Eskom.
    - 5.2.8.1.1 The Eskom site agent or representative shall notify the Purchaser of the approximate and/or estimated type, grade, mass and quantity of the material available for delivery and the Purchaser or their duly authorised representatives shall take delivery of the same within **7 days (seven) days for area A, B and C, and 10 days for area D and E of the area map** of such notice.
  - 5.2.8.2 Prior to delivery, Eskom shall advise the Purchaser of the estimated load sizes. Such advice shall be for guidance only, subject to possible variation from actual load sizes and subject to the provisions of paragraph 5.1.1 and 5.1.3, and without prejudice to any of Eskom's rights in terms of this Agreement, the Purchaser shall in any event be liable to accept delivery within the time period involved and the onus is upon the Purchaser to inspect the material beforehand.
  - 5.2.8.3 An authorised senior storeman and/or site agent and/or Group Security representative shall accompany each material load to the Weighbridge. Such load shall be differentiated at source by the Purchaser into separate loads of the different types of material and each separated load

shall be weighed and the date, type, grade, quantity and mass of each differentiated load stipulated on the delivery certificate and signed by the Purchaser and the authorised senior storeman and/or Group Security representative. Eskom shall issue the aforesaid delivery certificate to the contractor in respect of each separate load.

- Only in cases where no weighbridge exists within 20 km radius or near the site and upon written confirmation from the authorised senior storeman and/or site agent and/or Group Security representative, the Purchaser shall immediately upon arrival of the material load at its own premises and before offloading the load, issue a weighbridge certificate stating the date, type, grade, quantity and mass of each separate load and shall furnish Eskom with an original copy of the weighbridge certificate, picture of the materials and delivery certificate within 72 hours from time of delivery. Such weighbridge certificate will only be accepted upon Agreement in writing with the site agent, failing which a dispute may be declared and the provisions of 5.1.7 shall apply. In the case of it not being possible to weight the material at site, the Purchaser shall not be entitled to leave the site unless accompanied by an Eskom representative, authorised senior storeman and/or Group Security representative.

## **6. PURCHASE PRICE**

- 6.1.1 The Purchase Price payable shall be paid in Rands free of the cost of transfer of money and without deduction and/or set-off or any further foreign exchange adjustments whatsoever, subject to the provisions of 6.1.8, 6.1.9, 6.1.10 and 6.1.11 (provided that any VAT shall be added to the Purchase Price). Should the Purchaser dispute the payment of any price, payment shall in any event be made by the Purchaser on the basis that Eskom shall repay such amount within 14 (fourteen) days (without interest) after the dispute has been finally decided against Eskom.
- 6.1.2 The Purchase Price payable by the Purchaser to Eskom for the material delivered in terms of the weighbridge certificate in respect of both project and non-project related disposal activities shall be according to the rates set out in the price schedule and schedule of transport charges annexed hereto.
- 6.1.3 The Purchase Price of the material and/or their non-ferrous metal components shall be exclusive of the prescribed rate of tax payable in terms of the VAT Act No. 89 of 1991.
- 6.1.4 The mass of material and/or their constituent components of non-ferrous metals delivered to the Purchaser shall be determined by the ratio of material to non-ferrous metal components by the latest on the delivery date. If no agreement can be reached between Eskom and the Purchaser the onus shall be on the Purchaser to separate the various components at its cost in order for it to be weighed separately. The actual mass (weighed or agreed upon) should be set out in the delivery certificate. The Purchaser is not entitled to take delivery unless agreement has been reached.
- 6.1.5 The LME prices and RAND/US DOLLAR exchange rate will be obtained from the national press and forwarded to the Purchaser on a weekly basis on the first business day of each week.
- 6.1.6 The Purchaser shall confirm such price and rate within 2 (two) days from date of receipt thereof, failing which Eskom shall deem acceptance thereof by the Purchaser.

- 6.1.7 Any dispute between the parties in relation to either the LME price of non-ferrous metals or the Rand / US Dollar exchange rate shall be submitted to the Treasury Manager of a mutually agreed South African bank for determination. Such Treasury Manager shall act as an expert and not as an arbitrator and whose decision is to be final and binding on the Parties.
- 6.1.8 The transport charges to be deducted from the Purchase Price in respect of the transportation of the material from the site to the premises of the Purchaser, will be calculated according to the schedule of transport charges appended hereto under the Pricing Schedule. In the event of statutory increases/decreases in transport costs, Eskom will consider an adjustment to the transport charges based on the SEIFSA indices, such adjustments will only take place on a quarterly basis by mutual agreement of both Parties. In the event that mutual agreement cannot be reached by the Parties, Eskom will in its discretion decide on the adjustment to the transport cost. Eskom's decision will be final and binding on both Parties.
- 6.1.9 Prices quoted in Price Schedule (read together with the Item Description under this Agreement are quoted as a percentage of the London Metals Exchange Cash Price, the final Rand price being calculated according to the provisions of 6.1.10.
- 6.1.10 For each occasion where delivery takes place or is deemed to have taken place (whether project-related or non-project related), the final Rand price for the material will be calculated by multiplying the quoted percentage of the LME price as per Price Schedules Table 1 annexed hereto, by the average LME price for the week concerned, it being recorded that all deliveries which take place or are deemed to have taken place in the case of project related disposal activities during the week concerned shall be governed by such LME price.
- 6.1.11 For the purposes of 6.1.10 the LME price shall be the average buyer's and seller's cash price multiplied by the RAND/US DOLLAR exchange rate on the delivery date or deemed delivery date as effected on the delivery minus the deductions allowed for in Tables 2,3,4 and 5 and the schedule of transport charges annexed hereto as applicable for the particular delivery of the relevant material on the LME for the week during which delivery actually took place or is deemed to have taken place in the case of project related disposal activities as finally determined, in the case of dispute, in the manner contemplated in 6.1.7.

## **7. TERMS OF PAYMENT**

- 7.1.1 Eskom shall invoice the Purchaser on a weekly basis or monthly basis. Payment of the Purchase Price so invoiced shall be made by the Purchaser within 21 (twenty one) calendar days from the date of such invoice, irrespective of whether or not any invoice is disputed by the Purchaser.
- 7.1.2 All payments due and payable to Eskom shall be made by Electronic Fund Transfer and in Rands to Eskom at the Eskom's bank account stipulated on each Value Added Tax invoice received from Eskom. Interest at 2% (two per centum) above the prime overdraft rate levied by Eskom's bankers shall be levied in respect of late payments from the due date of payment to the actual date of receipt of the amount in question by Eskom. Eskom shall furthermore have the right to allocate any payment by the Purchaser in its sole and absolute discretion on the

basis that any payment need not necessarily be allocated to the oldest debt. In addition, any payment shall first be appropriated to interest before any capital debt is reduced.

## **8. OWNERSHIP**

Ownership of the material shall remain vested in Eskom and shall pass to the Purchaser against receipt of payment of the full Purchase Price payable to Eskom. Notwithstanding delivery, it is the intention of the Parties that the material will not accede to any other property and shall be deemed to be principal items.

## **9. RISK**

- 9.1.1 The risk in and to the material shall pass to the Purchaser immediately upon delivery of the material to the Purchaser, for non-project related activities.
- 9.1.2 In the event of the Purchaser not accepting the volume of material delivered by Eskom on the delivery date and after countersigning the delivery certificate and weighbridge certificate, then the Purchaser shall declare a dispute by written notice to Eskom. Such dispute notification shall be delivered or sent to Eskom within 2 (two) days of the delivery date, failing which it shall be deemed that the correct volume and mass as indicated in the delivery certificate has been delivered and Eskom shall have no liability in this regard.
- 9.1.3 The Purchaser shall not be entitled to pre-process or process any material in respect of which a dispute exists until such time as the dispute has been finally resolved and in this regard such material shall be kept separate from any other material. The Parties shall resolve disputes within 14 days of such dispute arising. Should the material be pre-processed or processed by the Purchaser, it shall be deemed that it has accepted the information pertaining the material as supplied by Eskom.
- 9.1.4 The risk in and to the material shall pass to the Purchaser upon the date and time of deemed delivery of the material to the Purchaser in the case of project related disposal activities.
- 9.1.5 The Purchaser shall pay to Eskom the Purchase Price for the material in question within the prescribed in this Agreement as effected by a tax invoice from Eskom, reflecting the type, grade and quantity of material sold irrespective of, or not the material was damaged and/or stolen after the deemed date and time of delivery when the risk passed to the Purchaser.

## **10. WARRANTIES, UNDERTAKINGS, LEGAL COMPLIANCE AND REVIEW**

### **10.1 General**

- 10.1.1 The warranties contained in this Agreement shall be deemed to be representations and undertakings, material to the entering into of this Agreement, by the Supplier in favour of Eskom and by Eskom in favour of the Supplier where applicable;

- 10.1.1.1 Each warranty shall be a separate warranty and in no way limited or restricted by reference to, or inference from, the terms of any other warranty;
- 10.1.1.2 Each warranty is given as at the Signature Date and shall endure for the duration of this Agreement; and
- 10.1.1.3 Insofar as any of the warranties are promissory or relate to a future event, they shall be deemed to have been given as at the due date for fulfilment of the promise or the happening of the event, as the case may be.
- 10.1.2 Where any warranty is qualified by the expression "the Purchaser and/or Eskom is not aware", "to the best of the Purchaser's and/or Eskom's knowledge and belief" or any similar expression, that expression shall be deemed to include an additional statement that it has been made after due enquiry.
- 10.1.3 Nothing contained in this Agreement shall relieve a Party from its obligations to make those disclosures which it is in law obliged to make but which are not recorded in this Agreement.

## **10.2 Warranties Applicable to both Parties**

Each Party hereby warrants unto and in favour of the other Party:

- 10.2.1 the Party and its representative(s), as applicable, have the requisite power, right and authority to enter into and perform the obligations to be assumed or performed by it in accordance with this Agreement and any other documents to be executed in accordance with this Agreement;
- 10.2.2 to the best of the Party's knowledge and belief, all facts and circumstances material to this transaction, or which would be material or would be reasonably likely to be material and which may affect the willingness of the Parties to enter into this Agreement or which may affect the Base Price and which are known to the Party, have been disclosed by the Party to the other Party; and
- 10.2.3 as at the Signature Date, no legal proceedings of any kind or administrative proceedings in terms of any law, and which shall prevent either Party from fulfilling its obligations in terms of this Agreement, have been instituted against such Party, and at all times during the currency of this Agreement neither Party has any obligations/duties to third parties which, if discharged, shall prevent the Party from fulfilling its obligations in terms of this Agreement.

## **10.3 Warranties by the Eskom**

Eskom hereby warrants unto and in favour of the Purchaser that it:

- 10.3.1 shall comply with all applicable legislation and regulatory requirements in respect of this Agreement;
- 10.3.2 shall use all reasonable efforts to obtain and ensure the Purchaser and/or their Eskom approved representatives will be granted unfettered access to the site for purposes of delivery.

#### 10.4 **Warranties by the Purchaser**

The Purchaser hereby warrants unto and in favour of Eskom that it:

- 10.4.1 shall comply with all applicable legislation and regulatory requirements in respect of this Agreement;
- 10.4.2 shall pre-process and process and/or dispose of or trade in the material for the Purchaser's own account in the Purchaser's own facilities and shall not subcontract, assign, cede or delegate any of its rights and obligations to do so, to any other party without prior written consent having been given by the Eskom's duly authorised representative/s;
- 10.4.3 shall make prior disclosure to Eskom of all facilities to be used to store, transport, pre-process, process and dispose of the material and of any and all proposed or new affiliations, mergers and agreements of whatever nature affecting its shareholding, structure, directorship and/or the Agreement and shall not permit the finalisation of any new or proposed affiliation, mergers and agreements aforesaid without the prior written approval of Eskom's duly authorised representative/s; and
- 10.4.4 shall process the material and resell or trade in the material only in their processed form, and in no other form whatsoever;
- 10.4.5 shall not sell, exchange, donate, distribute, lend or in any other manner transfer or alienate any of the material in their unprocessed form, without prior written consent of Eskom's duly authorised representative/s,
- 10.4.6 shall comply with all reasonable security, safety, commercial and technical requirements of Eskom at the site;
- 10.4.7 shall place at its cost and risk, suitable lockable storage bins at agreed sites;
- 10.4.8 shall comply with all legislation and regulatory requirements in respect of packing, transport, pre-processing, processing and resale of or trade in the material;
- 10.4.9 shall grant Eskom or its authorised representatives (including but not limited to Eskom Security Investigation personnel), free and unrestricted access on demand, to its



physical stockholding, premises, books of account and records of all Eskom related transactions at any time, without prior notice. Such access shall be granted to Eskom during the existence of this Agreement and for three (3) years after the termination of this Agreement (during which period all relevant documents shall be retained);

- 10.4.10 shall comply with and employ all site security measures as and when instructed by Eskom;
- 10.4.11 shall inform Eskom Security Division of any third party who makes Eskom material available to the Purchaser or is in possession of Eskom material;
- 10.4.12 shall employ all reasonable additional security mechanisms at the Purchaser premises when requested by Eskom's Security Division;
- 10.4.13 shall adhere to the provisions of Eskom acquired servitudes, permission to occupy and rights of way in respect of the site;
- 10.4.14 shall employ proven security control mechanisms to the sole satisfaction of Eskom to ensure that all Eskom related material are safely stored, pre-processed and/or processed;
- 10.4.15 shall store, pre-process and/or process all Eskom related material separately from any other material and/or non-ferrous metals and in addition, to do so at the centrally situated facility. Furthermore, The Purchaser shall advise Eskom in writing from time to time immediately after any agreement is concluded between the Purchaser and any third party or person(s) with whom it deals in Eskom related material or non-ferrous metals;
- 10.4.16 shall submit evidence in writing to the satisfaction of Eskom that (with reference to the Environmental Requirements Form), the business processes and practices are registered and accredited with the relevant environmental authorities and regulators applicable to the work to be undertaken in terms of this Agreement, including inter alia and without limitation water usage, hazardous substances, effluent disposal, emissions to the air and waste management and disposal;
- 10.4.17 shall submit evidence in writing to the satisfaction of Eskom of its environmental policy together with strategies for implementation and management thereof;
- 10.4.18 has the necessary business and technical acumen and infrastructure to take delivery of any Eskom material, within the Republic of South Africa within 24 hours of notification by Eskom. All transportation of such material shall be undertaken at the cost and risk of the Purchaser, either by the Purchaser and/or by Eskom's transport contractors exclusively, subject to the provisions of the Purchase Price;
- 10.4.19 shall not purchase items of a nature similar to the material specified in the Agreement for the duration of this Agreement from any third party unless prior written approval has been obtained from Eskom's duly authorised representative, such approval not to be unreasonably withheld;
- 10.4.20 warrants that it has the capability to process the material in whatever form it may be sold by Eskom.

10.4.21 shall not for the duration of the Agreement -

- 10.4.21.1 employ labour in any capacity whatsoever any employee with remuneration below the market related rates;
- 10.4.21.2 allow the sale of any interest in the Purchaser to anybody
- 10.4.21.3 enter into any Agreement of whatever form outside its normal cause of business;
- 10.4.21.4 shall submit evidence to the satisfaction of Eskom of its Process Control System, detailing the management and control of all activities and documentation relating to transactions in terms of the Agreement, including inter alia but not limited to, security control mechanisms, taking delivery, transportation, storing, pre-processing, and processing of the material;
- 10.4.21.5 undertakes to purchase all quantities of material sold from time to time by Eskom;
- 10.4.21.6 states that it acknowledges the effect of all terms of this Agreement and that it has entered into the Agreement on a voluntary basis;
- 10.4.21.7 shall not cause any damage to site;
- 10.4.22 The Purchaser shall ensure compliance with the provisions of the OHAS Act and all applicable regulations, by all employees of the supplier on the site. The supplier shall provide a suitable health and safety plan appropriate for the contract tendered for.
- 10.4.23 The Purchaser shall comply with all laws relating to wages and conditions generally governing the employment of labour and any applicable bargaining agreements.
- 10.4.24 If the Purchaser is an employer as defined in the Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993 ('COIDA'), the Purchaser shall furnish Eskom with proof of registration/insurance in terms of COIDA.

## 11. VOETSTOOTS

- 11.1.1 The material is sold "voetstoots" (that is to say, "as is" in the condition as it may stand at the time of its disposal to the Purchaser in terms of this Agreement) without any warranty expressed or implied (without limitation) in respect of its condition, non-ferrous metals content, state of repair, fitness for purpose, level of pureness, merchantability or products liability and shall in no event be liable for the Purchaser loss of profits or savings, loss of use, loss of contracts, loss of custom or goodwill or for any special, indirect or consequential damages howsoever arising.
- 11.1.2 Eskom shall not be liable for any defects, latent or otherwise, in the material for any loss of profits, loss of use, loss of production, loss of contracts, loss of customer and goodwill, or for any other direct, indirect or consequential damages occasioned to or suffered by the Purchaser by reason of such defects.

- 11.1.3 The Purchaser acknowledges that Eskom has given it every opportunity to inspect the material and to satisfy itself as to the suitability and condition of such goods.

## **12. SCOPE OF WORK**

The Purchaser will solely be responsible for:

### **CATEGORY A**

ITEMS 1 TO 17 (PRICE SCHEDULE TABLE 2) as annexed hereto. Collections from stores

- 12.1.1.1 The individual weighing of materials (weighing each type separately).
- 12.1.1.2 Providing labour and hand tools used to load material.
- 12.1.1.3 Loading material using own equipment.
- 12.1.1.4 Transportation of material to their premises for processing.
- 12.1.1.5 Take full responsibility for protection of material against theft and the insurance thereof once uplifted from the site.
- 12.1.1.6 Take all precautions with regard to environmental risks while loading, transporting, processing and disposing of the material and/or waste material from processed material.

Delivered to the premises of The Purchaser by Eskom or its nominated sub contractor

- 12.1.1.7 Unloading from Eskom's or its nominated contractor's vehicle.
- 12.1.1.8 Weighing per individual material type.
- 12.1.1.9 Take full accountability for the protection of the material against theft and the insurance thereof once off loaded.
- 12.1.1.10 Take all precautions and accept full responsibility with regards to environmental risks while processing and disposing of any material and / or waste material from processed material.

### **CATEGORY B (EXCLUDING TRANSMISSION POWER LINES)**

ITEM 18- 22 (TABLES 2, 3 &5) as annexed hereto;

Eskom or its re-conductoring contractor undertakes the disconnection, dismantling and dropping to the ground of the conductor from the Eskom Power Line Network (excluding Transmission Power Lines).

The collection of steel earth wire, glass or porcelain insulators, clamps etc by the Purchaser may also be required by Eskom

- 12.1.1.11 Provide labour and hand tools to load materials.
- 12.1.1.12 Loading of material making use of own equipment.
- 12.1.1.13 Transportation of material to nearest weighbridge and weigh per material type.
- 12.1.1.14 Transportation of the material to its premises for processing.
- 12.1.1.15 Take full responsibility for material against theft, once dropped to the ground by Eskom or its nominated contractor.
- 12.1.1.16 Provide suitable clothing, safety equipment as well as toilet facilities to worker's working on the project.
- 12.1.1.17 Take full responsibility for damage to veld caused by vehicle movement, claims arising from littering, theft, fires and material left on line or any other claims by the land owner or third party.
- 12.1.1.18 Take all precautions and take full responsibility with regards to environmental risks while loading, transporting, processing and disposing of the material and / or waste material from processed material.
- 12.1.1.19 If instructed, clear the entire site from earth wire, porcelain and glass insulators, steel earth wire, clamps etc and accept responsibility for claims arising from failure to do so.

## **CATEGORY C (EXCLUDING TRANSMISSION POWER LINES)**

ITEM 23 TO 27 (TABLE 2, 4 & 5) as annexed hereto

Where The Purchaser undertakes to disconnect, dismantle and drop to the ground the conductor from the Power Line Network (excluding Transmission Power Lines).

The dismantling of earth wire, glass or porcelain insulators and steel from the structures may also be required.

- 12.1.1.20 Providing a suitable, responsible person to accept working permits, arrange line outages for power line crossings, traffic department arrangements for road crossings, electrified rail crossings, attend site meetings and to oversee dismantling.
- 12.1.1.21 Trained personnel to execute dismantling.

- 12.1.1.22 Suitable protective clothing, safety equipment and hand tools to execute dismantling and loading of the material.
- 12.1.1.23 Provide suitable ladders (min 12m) and an all-terrain cherry picker with a height reach of not less than 14 metres.
- 12.1.1.24 Obtain permission from landowner to set up camp and / or provide suitable accommodation facilities for the duration of projects.
- 12.1.1.25 Loading of material using own equipment.
- 12.1.1.26 Transportation of material to nearest weighbridge and weigh per individual material type.
- 12.1.1.27 Transportation of material to The Purchaser site for processing.
- 12.1.1.28 Take full responsibility / accountability for the protection of the material against theft once the power supply is disconnected / handed over by Eskom or a permit is issued to proceed with the dismantling or as indicated in the Collection Request.
- 12.1.1.29 Take all precautions with regards to environmental risks while loading, transporting, processing and disposing of the material and / or waste material from processed material.
- 12.1.1.30 Provision of suitable protective clothing safety equipment and toilet facilities while working on the project
- 12.1.1.31 Accept full responsibility for claims arising from fire, theft and damages to veld by vehicles, littering and claims from landowner or third parties, arising from any actions from the Contractor.
- 12.1.1.32 If instructed, dismantle and clear the entire site from earth wire, glass or porcelain insulators, clamps etc. and accept responsibility for claims arising from failure to do so.
- 12.1.1.33 Take all precautions and accept full responsibility with regards to environmental risks while loading, transporting, processing and disposing of the material and/or waste material from processed material.

### **13. SUSPENSIVE CONDITIONS FOR ISSUANCE OF A PERFORMANCE GUARANTEE**

- 13.1.1 It is a suspensive condition to the operation of this Agreement that the Purchaser shall as guarantee for any payments due in terms of this Agreement provide Eskom on or before **01 July 2026**, at the cost of the Purchaser, with an irrevocable and unconditional on-demand performance bank guarantee in such form as may be acceptable to Eskom both in content and type, from a mutually agreed South African bank or Insurance company. Such guarantee shall be issued in favour of Eskom for the guaranteed sum of R3 000 000,00 (Three Million' Rand) and shall be valid for the period of this Agreement and until such time as all obligations have

been performed to Eskom in terms of this Agreement, even though the Agreement may have been terminated.

- 13.1.2 The proceeds of the performance guarantee shall be payable to the seller as compensation for any loss resulting from the purchaser's failure to complete his obligations under the contract.
- 13.1.3 The performance guarantee shall be denominated in the currency of the contract.
- 13.1.4 The performance guarantee will be discharged by Eskom and returned to the Purchaser not later than thirty (30) days following the date of completion of the Purchaser's performance obligations under the contract, as certified by Eskom.
- 13.1.5 The directors and shareholders of the Purchaser hereby bind themselves jointly and severally in their personal capacities as sureties and co-principal debtors in solidum in favour of Eskom for the due fulfilment of The Purchaser's obligations on due date in terms of this Agreement.
- 13.1.6 The Purchaser and its Directors and Shareholders expressly waives and renounces the legal benefits and exceptions non causa debit, revision of accounts, errore calculi and acknowledges that it is fully acquainted with the meaning and effect of those exceptions and the renunciations thereof.
- 13.1.7 The Purchaser is furthermore obliged to disclose to Eskom the names of all third parties with whom current Agreements are in place, and all third parties with whom Agreements are to be entered into subsequent to the conclusion of the Agreement, prior to finalisation thereof of whatever nature which relates to any material or non-ferrous metals, it being recorded that the Purchaser shall not be entitled to enter into these Agreements without prior written consent from Eskom, which consent shall not be unreasonably withheld.

#### **14. DOMICILIUM AND NOTICES**

- 14.1 The Parties choose the following addresses at which documents and notices in legal proceedings in connection with this Agreement shall be served (i.e. their domicilia citandi et executandi) and at which notices shall be received:
  - 14.1.1.1 ESKOM HOLDINGD SOC LTD: ESKOM GROUP COMMERCIAL  
Megawatt Park  
Maxwell Drive  
Sunninghill  
Sandton  
2129  
Email:  
Facsimile :086 539 0326 Attention:

Any legal or other notice shall be deemed to have been duly given:

- 14.2 on the fifth Business Days after posting (14 (fourteen) Business Days if the address is not in the Republic of South Africa), if posted by registered post (airmail, if available) to the Party's address in terms of this clause 12;

- 14.3 on delivery, if delivered to the Party's physical address in terms of this Clause 12 between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if delivered outside such hours);
- 14.4 on despatch, if sent to the Party's then fax number or e-mail address between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if despatched outside such hours) in terms of this clause 12;
- 14.5 unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.
- 14.6 A Party may change that Party's address or fax number or e-mail address for this purpose by notice in writing to the other Party, such change to be effective only on and with effect from the seventh Business Day after the giving of such notice.
- 14.7 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate service of such written notice or communication to that Party notwithstanding that it was not sent to or delivered or served at that Party's chosen domicilium citandi et executandi.

## **15. VARIATION, CANCELLATION AND WAIVER**

- 15.1 No variation, cancellation, modification or waiver of any provision of the Agreement nor consent to any departure by either party therefrom, shall in any event be of force or effect unless the same shall be confirmed in writing signed by or on behalf of the other party, and then such variation, cancellation, modification, waiver or consent shall be effective only in the specific instance, and for the purpose and to the extent for which made or given.
- 15.2 Strict and punctual compliance with each and no latitude, extension of time or other indulgence which may be given or allowed by any party to the other parties in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any party arising from this Agreement, and no single or partial exercise of any right by any party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such party or operate as a waiver or a novation of or otherwise affect any of the party's rights in terms of or arising from this Agreement or estop or preclude any such party from enforcing at any time and without notice, every provision or term hereof.

## **16. BREACH**

- 16.1 Breach of a warranty and undertakings

If a Party breaches a warranty under clauses 10 or 11 of this Agreement, and remains in breach of such warranty for 30 (thirty) Business Days after written notice to that Party requiring that Party to rectify that breach of warranty, the aggrieved Party shall be entitled, without derogating from any

of its other specific rights or remedies provided for under this Agreement or which it is entitled to in law, at its option:

16.1.1 to sue for immediate specific performance of any of the defaulting Party's obligations under this Agreement; or

16.1.2 to cancel this Agreement, in which case written notice of the cancellation must be given to the defaulting Party, and the cancellation shall take effect from the date of the notice.

16.2 Should the Purchaser not pay any amount due to Eskom on the due date and fail to remedy such breach within 7 (seven) days after receipt of written notice by Eskom calling upon the Purchaser to remedy the breach, Eskom shall, without prejudice to any of its rights in terms of the Agreement or at law, be entitled to either claim immediate specific performance or terminate the Agreement without prejudice to its rights to claim damages. In such instances Eskom shall be entitled to call the guarantee and claim in terms of the Bank Guarantee.

16.3 Notwithstanding any other provisions contained therein, Eskom shall be entitled to cancel the Agreement immediately and without prejudice to any other rights to claim damages or any other remedy provided for in terms of this Agreement and without notice on the occurrence of one or more of the following events;

16.3.1 Eskom become aware of the Purchaser or any of its directors or shareholders and or employees being convicted of illegal activities or illegal operation of whatever nature relating to non-ferrous metals;

16.3.2 The Purchaser is liquidated or placed under business rescue (whether provisionally or finally);

16.3.3 a judgement be awarded by a court against the Purchaser which is not satisfied within the period prescribed by the court

16.3.4 a write be issued against the Purchaser pursuant to a judgement granted against it;

16.3.5 any change in the present structure of or shareholding or beneficial ownership in the Purchaser;

16.3.6 any change in the present members of the Board of Directors of the Purchaser;

16.3.7 The Purchaser resells or trades in any non-ferrous metals, material in contravention of the provisions of this Agreement or of any legislation;

16.3.8 The Purchaser breaches any particular provision more than once during any 12(twelve) month period, including the failure to take delivery of the material within the time period indicated by Eskom in a Collection Request.



## **17. ARBITRATION**

- 17.1 Should any dispute or difference arise out of or in connection with this Agreement, or its interpretation, the parties shall endeavour to resolve such dispute or difference in an amicable manner. In the event that the dispute or difference is not resolved, either party may at any time by written notice inform the other that such dispute remains unresolved and request that the matter be determined by a third party (arbitrator), in terms of what is set out below, unless otherwise agreed in writing between the parties.
- 17.2 The parties shall within 30 (thirty) days of the notice referred to above agree on a person or persons to act as arbitrator in the matter.
- 17.3 In the event that the parties are unable to agree on the arbitrator within 30 (thirty) days of the date of the notice referred to above, then in such an event either party may in writing request that the President of the Arbitration Foundation of Southern Africa (AFSA) appoint a suitable arbitrator to act herein.
- 17.4 The proceedings shall be held at a venue within the area of Johannesburg or Pretoria and unless otherwise agreed by the parties, in accordance with the formalities and the procedures determined by the arbitrator.
- 17.5 Unless the parties agree on terms of reference, procedures for the arbitration and any other matter relating to the arbitration within 14 (fourteen) days of the appointment of the arbitrator, a meeting shall forthwith be convened by the arbitrator with the parties to
- 17.5.1 determine the terms of reference for the arbitration;
  - 17.5.2 determine the procedures for the conduct of the arbitration;
  - 17.5.3 determine any other matter necessary.
- 17.6 In the event that the parties fail or are unable to agree on any of the matters referred to above, the arbitrator shall be entitled to make a determination on such issues, subject to clause 17.11 below.
- 17.7 Unless otherwise agreed to by the parties, the rules of the Arbitration Foundation of Southern Africa (AFSA) shall apply to the arbitration proceedings and any other matter related thereto.
- 17.8 The Parties irrevocably agree that the decision in any such arbitration proceedings will be final and binding on them, will forthwith be put into effect and may be made an order of any court of competent jurisdiction.
- 17.9 Nothing contained in this clause 17 will preclude any Party from applying for, or obtaining, interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator on the merits of the Dispute.

## **18. FORCE MAJEURE**

### **18.1 general**

- 18.1.1 For the purposes of this Agreement, an exceptional event or circumstance:

- 18.1.1.1 which prevents or restricts either Party directly or indirectly from performing all or any of that Party's ("the Affected Party") obligations in terms of this Agreement;
- 18.1.1.2 beyond the reasonable control of the Affected Party;
- 18.1.1.3 not the direct or indirect result of a breach by the Affected Party of any of its obligations under this Agreement; and
- 18.1.1.4 could not have been (including by reasonable anticipation) avoided or overcome by the Affected Party, acting reasonably and prudently, shall constitute a "Force Majeure Event" for the purposes of this Agreement.
- 18.2 The Affected Party shall be relieved of performance of its obligations in terms of this Agreement during the period that a Force Majeure Event occurs and its consequences continue (but only to the extent it is so delayed or prevented from performing partially or at all by the Force Majeure Event), and, provided that notice has been given in terms of clause 18.3, shall not be liable for any delay or failure in the performance of any of its obligations in terms of this Agreement or losses or damages whether general, special or consequential which the other Party ("the Unaffected Party") may suffer due to or resulting from any such delay or failure.
- 18.3 The Affected Party shall give written notice to the Unaffected Party at the earliest possible opportunity in writing of the occurrence of the event constituting the Force Majeure Event, together with details thereof and a good faith estimate of the period of time for which it shall endure.
- 18.4 Upon any delay beyond a delivery period stipulated in the specification, Eskom shall, without cancelling the contract, be entitled to source alternative purchaser/s in substitution of the service in conformity with the contract, or to cancel the contract and source alternative purchaser/s as may be required to complete the contract, and without prejudice to its other rights, be entitled to claim damages from the defaulting purchaser.

## **19. INDEMNITY**

- 19.1.1 Eskom shall not be liable for, or in respect of, or in consequence of any accident or injury of loss of life to any representative, subcontractor, agent or servant of the Purchaser, Eskom's employees, representatives and / or agents of Eskom, accident or injury or loss life to a third party as well as damages to assets in addition to injury to people, except an accident or injury resulting from any intentional act or default of Eskom, in which event such damages shall be limited to direct damages only, excluding indirect, special and consequential damages.
- 19.1.2 The Purchaser indemnifies and keeps Eskom, its officers, employees and agents harmless against any liability, damage, compensation, claim, demand, proceeding, cost, charge and expense whatsoever, whether suffered by Eskom, the Purchaser representatives or any third party in respect of, or as a result of any damage to site, death or injury that may occur while the representatives of the Purchaser are inspecting any activity and/or during the dismantling, packaging, loading, weighing, pre-processing, processing, transportation and/or transit of the material or arising as a result of any illegal activities and/or illegal operations of whatever nature to which the contractor is a party to, whether knowingly or unknowingly and relating to material and/or non-ferrous metal transactions.

- 19.1.3 The Purchaser shall be liable for all damages to material and/or property of third parties and/or Eskom (including injury or loss of life to third parties) and/or Eskom's representatives after taking delivery of the material.
- 19.1.4 The Purchaser and/or its employees, agents, concessionaires, suppliers, or customers shall not have any claim of any nature against Eskom for any loss, damage, injury or death which any of them may directly or indirectly suffer, whether or not such loss, damage, injury or death is caused through the negligence of Eskom or its agents or employees.
- 19.1.5 Notwithstanding anything to the contrary contained in this Agreement, under no circumstances whatsoever, including as a result of its negligent (including grossly negligent) acts or omissions or those of its servants, agents or other persons for whom in law it may be liable, shall any party or its servants (in whose favour this constitutes a stipulatio alteri) be liable for any indirect, extrinsic, special, penal, punitive, exemplary or consequential loss or damage of any kind whatsoever (whether the loss was actually foreseen or reasonably foreseeable) sustained by the other party, its directors and/or servants, including but not limited to any loss of profits, loss of operation time, corruption or loss of information and/or loss of contracts.
- 19.1.6 The Purchaser hereby indemnifies Eskom in respect of the provisions of the Occupational Health and Safety Act, Act 85 of 1993 ('OHAS Act'), in accordance with the provisions of the OHAS Act.

## **20. INSURANCE AND LIMITATION OF LIABILITY**

- 20.1 The Purchaser will be liable for all damages they incur while executing the work

## **21. COSTS**

- 21.1 Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling and signing of this Agreement.
- 21.2 The Purchaser shall bear the costs of any taxes and duties levied in respect of this Agreement and as a result of its implementation.

## **22. APPLICABLE LAW**

This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

## **23. JURISDICTION OF SOUTH AFRICAN COURTS**

The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, for any proceedings arising out of or in connection with this Agreement.

## **24. SEVERABILITY OF PROVISIONS**

Each clause or part thereof in this agreement is separate and can be severed from the rest of the agreement. Should any clause or part thereof be unenforceable, it will not affect the enforceability of the rest of the agreement

## **25. WHOLE AGREEMENT.**

- 25.1 This Agreement shall contain all the provisions agreed to by the parties relating to the subject matter of the Agreement and the parties waive the right to rely on any alleged provision or representation not contained in this Agreement.
- 25.2 This Agreement shall supersede any other Agreement whether written, oral or tacit, entered into by the parties and relating to the same or similar subject- matter, unless and except to the extent that the Agreement or provisions therein are specifically stated in the Agreement to be incorporated therein.

## **26. SIGNATURE IN COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same agreement.

## **27. SUPPORT.**

The parties record that their relationship is based on the utmost good faith and the parties shall undertake to do all such things, perform all such acts and take all such steps and to procure the doing of all such things, the performance of all such acts and the taking of all such acts as may be necessary, incidental or conducive to give effect to the terms, conditions and/or import of this Agreement.

## **28. CONFIDENTIALITY**

The parties acknowledges that the details of this Agreement and any communication between the parties arising out of or in connection with this Agreement are strictly confidential, and they therefore undertake not to disclose such details to any third party without the prior written consent of the other party first having been obtained.

## **29. RECORDAL**

The Purchaser tender in response to this enquiry (E2311NMWPDIS), constituted an offer, which was accepted by Eskom on the terms and conditions set out in this Agreement. To the extent that any conflict arises between the said tender document and this Agreement, this Agreement shall take precedence.

## **30. GENERAL**

### **30.1 VALUE ADDED TAX (VAT)**

For the purpose of the introduction of Value Added Tax (VAT) and in accordance with VAT Practice Note: No 3, Dated 25 September 1991 , the prices quoted by the Purchaser shall be exclusive of VAT. The tax rate and/or tax amount shall be stated separately. In respect of all services executed during the Contract Period by the Purchaser, "VAT Tax invoices" which comply fully with the provisions of the Value Added Tax Act No. 89 of 1991 as amended will be submitted by Eskom to the Purchaser.

### **30.2 CESSION**

- 30.2.1 Neither party may cede and delegate any of its rights and obligations (including liabilities) under this Agreement to any person without the written consent of the other party.
- 30.2.2 Notwithstanding the above, Eskom may on written notice to the Purchaser cede its rights and delegate its obligations under this Agreement 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 electrical supply industry and the Electricity distribution Industry.