



NEC3 Supply Contract (SC3)

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

and
(Reg No. _____)

for **Supply of various laboratory chemicals, reagents,
and other consumables on an as and when required
basis**

Contents:

**No of
pages**

Part C1 Agreements & Contract Data

Part C2 Pricing Data

Part C3 Scope of Work

CONTRACT No:

PART C1: AGREEMENTS & CONTRACT DATA

Contents:	No of pages
C1.1 Form of Offer and Acceptance	lii
C1.2a Contract Data provided by the <i>Purchaser</i>	Vi
C1.2b Contract Data provided by the <i>Supplier</i>	Xix
C1.3 Proforma Guarantees	[•]

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:

Supply of various laboratory chemicals, reagents and other consumables on an as and when required basis for a Period of five (5) Years at Eskom Research, Testing And Development In Rosherville.

The tenderer, identified in the Offer signature block, has

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

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

	The offered total of the Prices exclusive of VAT is	As per price schedule
	Value Added Tax @ 15% is	As per price schedule
	The offered total of the amount due inclusive of VAT is ¹	As per price schedule
	(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

**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:**For the Purchaser**

Signature

Name

Capacity

On behalf
of*(Insert name and address of organisation)*Name &
signature
of witness

Date

C1.2 SC3 Contract Data

Part one - Data provided by the *Purchaser*.

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for Options	
		X1: Price adjustment for inflation X2: Changes in the law 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	
10.1	The <i>Purchaser</i> is (name):	Eskom Holdings SOC Ltd (Reg No: 2002/015527/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	[•]
	Fax No.	[•]
10.1	The <i>Supply Manager</i> is (name):	Puseletso Kokhutsa
	Address	Eskom Research, Testing and Demonstration Lower Germiston Road Rosherville 2022
	Tel	011 629 5971
	Fax	N/A
	e-mail	kokhutpc@eskom.co.za

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

11.2(13)	The <i>goods</i> are	Chemicals, reagents and consumables	
11.2(13)	The <i>services</i> are	Supply of various laboratory chemicals, reagents and other consumables on an as and when required basis for a period of five (5) years at Eskom Research, Testing and Development in Rosherville.	
11.2(14)	The following matters will be included in the Risk Register	[•]	
11.2(15)	The Goods Information is in	Part 3: Scope of Work and all documents and drawings to which it refers.	
11.2(15)	The Supply Requirements as part of the Goods Information is in	Annexure A to this Contract Data	
12.2	The <i>law of the contract</i> is the law of	The Republic of South Africa	
13.1	The <i>language of this contract</i> is	English	
13.3	The <i>period for reply</i> is	[•] weeks	
2	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.	
3	Time		
30.1	The <i>starting date</i> is.	[•]	
30.1	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	[•]
		2	[•]
		3	[•]
30.2	The <i>Supplier</i> does not bring the <i>goods</i> to the Delivery Place more than one week before the Delivery Date.		
31.1	The <i>Supplier</i> is to submit a first programme for acceptance within	[•] weeks of the Contract Date.	
32.2	The <i>Supplier</i> submits revised programmes at intervals no longer than	[•] weeks.	
4	Testing and defects		
42	The <i>defects date</i> is	[•] weeks after Delivery.	
43.2	The <i>defect correction period</i> is	[•] weeks	
	except that the <i>defect correction period</i> for	[•] is [•] weeks	
	and the <i>defect correction period</i> for	[•] is [•] weeks	
42.2	The <i>defects access period</i> is	[•] days	
	except that the <i>defect access period</i> for	[•] is [•]	

	and the <i>defect access period</i> for	[•] is [•]
5	Payment	
50.1	The <i>assessment interval</i> is	between the [•] day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	[•] weeks.
51.4	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>
6	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.
7	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.
8	Risks, liabilities, indemnities and insurance	
80.1	These are additional <i>Purchaser's</i> risks	<p>1. [•]</p> <p>2. [•]</p> <p>3. [•]</p>
88.1	The <i>Supplier's</i> liability to the <i>Purchaser</i> for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to	R0.0 (zero Rand)

88.2	For any one event, the <i>Supplier's</i> liability to the <i>Purchaser</i> for loss of or damage to the <i>Purchaser's</i> property is limited to	<p>(1) for the <i>Purchaser's</i> existing and surrounding property in the care, custody and control of the <i>Supplier</i> the amount of the deductible (first amount payable) relevant to the event and</p> <p>(2) for all other existing <i>Purchaser's</i> property the applicable deductible as at contract date</p>
88.3	The <i>Supplier's</i> liability for Defects due to his design which are not notified before the last <i>defects date</i> is limited to:	R[•]
88.4	The <i>Supplier's</i> total liability to the <i>Purchaser</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	R[•]
88.5	The <i>end of liability date</i> is	[•] years after Delivery of the whole of the goods and services.

9 Termination and dispute resolution

94.1	The <i>Adjudicator</i> is	The person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
	Address	[•]
	Tel No.	[•]
	Fax No.	[•]
	e-mail	[•]
94.2(3)	The <i>Adjudicator nominating body</i> is:	The Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za)
94.4(2)	The <i>tribunal</i> is:	Arbitration
94.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
94.4(5)	The place where arbitration is to be held is	[•] South Africa
	The person or organisation who will choose an arbitrator	
	<ul style="list-style-type: none"> - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is 	The Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.

10	Data for Option clauses			
X1	Price adjustment for inflation			
X1.1	The <i>base date</i> for indices is	[•].		
	The 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				
X2	Changes in the law			
X2.1	A change in the law of	[•] is a compensation event if it occurs after the Contract Date		
X3	Multiple currencies			
X3.1	The <i>Purchaser</i> will pay for these items in the currencies stated	Items	Other currency	Total maximum payment in the currency
		[•]		
		[•]		
		[•]		
X3.1	The <i>exchange rates</i> are those published in	[•] on [•] (date)		
		The items will be paid in the other currency - 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.		
X4	Parent company guarantee	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.		
X7	Delay damages			
X7.1	Delay damages for Delivery are	Delivery of		amount per day

X12	Partnering											
X12.1(1)	The Client is (Name):	[•]										
	Address	[•]										
	Contact details	[•]										
	Telephone:	[•]										
	Fax	[•]										
	e-mail	[•]										
X12.1(4)	The Partnering Information is in	Part 3 Scope of Work, section C3.[•]										
X12.2(1)	The Client's objective is:	[•]										
X13	Performance bond											
X13.1	The amount of the performance bond is	R [•]										
X14	Advanced payment to the Supplier											
X14.1	The amount of the advanced payment is	R[•].										
X14.2	An advanced payment bond	is /is not required.										
X14.3	The Supplier repays the instalments in assessments starting not less than	[•] weeks after the Contract Date.										
X14.3	The instalments are	R[•] (either an amount or a percentage of the payment otherwise due)										
X17	Low performance damages											
X17.1	The amounts for low performance damages are:	<table><tr><td>amount</td><td>performance level</td></tr><tr><td>R [•]</td><td>for [•]</td></tr><tr><td>R [•]</td><td>for [•]</td></tr><tr><td>R [•]</td><td>for [•]</td></tr><tr><td>R [•]</td><td>for [•]</td></tr></table>	amount	performance level	R [•]	for [•]	R [•]	for [•]	R [•]	for [•]	R [•]	for [•]
amount	performance level											
R [•]	for [•]											
R [•]	for [•]											
R [•]	for [•]											
R [•]	for [•]											
X20	Key Performance Indicators (not used when Option X12 applies)											
X20.1	The incentive schedule for Key Performance Indicators is in	Annexure [•] to this Contract Data										
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	[•] months										
Z	The additional conditions of contract are											
		Z1 to Z15 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 <i>Supplier</i> or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,
Coercive Action	means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,
Collusive Action	means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,
Committing Party	means, as the context requires, the <i>Supplier</i> , or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,
Corrupt Action	means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,
Fraudulent	means any unlawfully or illegally intentional act or omission that misleads, or attempts

Action 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.

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:

Group	Category	Term	Delivery Place
E	departure	EXW	For the foreign portion

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

The Supply Requirements for this contract are as follows:

[Use these when INCOTERMS do not apply].

1. The requirements for the supply are	[State the constraints on how the <i>Supplier</i> manufactures, prototypes, tests and stores the <i>goods</i> including order and timing]
2. The requirements for transport are	[State the extent to which the <i>Supplier</i> transports the <i>goods</i> and the mode of transport] The <i>Supplier</i> to provide costing options for sea and air freight, forwarding and clearance costs etc for the imported portion for a turnkey supply solution.
3. The delivery place is	[State the location where the <i>goods</i> are to be placed by the <i>Supplier</i> , such as whether it is a dispatch department at the <i>Supplier's</i> premises, the <i>Purchaser</i> is to collect or other location the <i>Purchaser</i> may require. If the delivery place for the <i>services</i> is

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

	different to the <i>goods</i> state it here] Medupi Bags – Medupi Ppwer Station Stores Kusile Bags – Kusile Power Station Stores	
4. Actions of the Parties during supply	Action	Party which does it
	Giving notice of Delivery	Supplier
	Checking packing and marking before dispatch	Supplier
	Contracting for transport	Supplier
	Pay costs of transport	Supplier
	Arrange access to delivery place	Purchaser
	Loading the <i>goods</i>	Supplier
	Unloading the <i>goods</i>	Supplier
For international procurement	Undertake export requirements	N/A
	Undertake import requirements	Purchaser
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

Annexure B: Insurance provided by the *Purchaser*.

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

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

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

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

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

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

- R15 million for Generation Division projects,

All other insurance

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

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

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

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

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

http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_

C1.2 Contract Data

Part two - Data provided by the *Supplier*.

Notes to a tendering supplier:

1. Please read both the NEC3 Supply Contract (SC3)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:	Chemicals, reagents and consumables
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 <i>goods</i> and <i>services</i> is:	<i>goods</i> <i>delivery date</i> As per Purchase Order
31.1	The programme identified in the Contract Data is contained in:	
63.2	The <i>percentage for overheads and profit</i> added to the Defined Cost is	%

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

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;

- 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*

Group A:					
Item nr	Description	Unit price	Quantity in 5 years	Rate	Price
1.	Aluminium (Al) 1000 µg/ml ICP standard 500 ml		5		
2.	Barium (Ba) 1000 µg/ml ICP standard 500 ml		5		
3.	Beryllium (Be) 1000 µg/ml ICP standard 500 ml		5		
4.	Boron (B) 1000 µg/ml ICP standard 500 ml		5		
5.	Cadmium (Cd) 1000 µg/ml ICP standard 500 ml		5		
6.	Cobalt (Co) 1000 µg/ml ICP standard 500 ml		5		
7.	Chromium (Cr) 1000 µg/ml ICP standard 500 ml		5		
8.	Copper (Cu) 1000 µg/ml ICP standard 500 ml		5		
9.	Iron (Fe) 1000 µg/ml ICP standard 500 ml		5		
10.	Manganese (Mn) 1000 µg/ml ICP standard 500 ml		5		
11.	Lead (Pb) 1000 µg/ml ICP standard 500 ml		5		
12.	Nickel (Ni) 1000 µg/ml ICP standard 500 ml		5		
13.	Strontium (Sr) 1000 µg/ml ICP standard 500 ml		5		
14.	Zinc (Zn) 1000 µg/ml ICP standard 500 ml		5		
15.	Molybdenum (Mo) 1000 µg/ml ICP standard 500 ml		5		
16.	Phosphorus (P) 1000 µg/ml ICP standard 500 ml		5		
17.	Antimony (Sb) 1000 µg/ml ICP standard 500 ml		5		
18.	Silicon (Si) 1000 µg/ml ICP standard 500 ml		5		
19.	Vanadium (V) 1000 µg/ml ICP standard 500 ml		5		
20.	Calcium (Ca) 1000 µg/ml ICP standard 500 ml		5		
21.	Magnesium (Mg) 1000 µg/ml ICP standard 500 ml		5		
22.	Sodium (Na) 1000 µg/ml ICP standard 500 ml		5		
23.	Potassium (K) 1000 µg/ml ICP standard 500 ml		5		
24.	Arsenic (As) 1000 µg/ml ICP standard 500 ml		5		
25.	Selenium (Se) 1000 µg/ml ICP standard 500 ml		5		
26.	Mercury (Hg) 1000 µg/ml ICP standard 500 ml		5		
27.	Uranium (U) 1000 µg/ml ICP standard 500 ml		5		
28.	Yttrium (Y) 1000 µg/ml ICP standard 500 ml		5		

Group B:					
Item nr	Description	Unit price	Quantity in 5 years	Rate	Price
29.	Aluminium (Al) 1000 µg/ml ICP standard 250 ml		5		
30.	Barium (Ba) 1000 µg/ml ICP standard 250 ml		5		
31.	Beryllium (Be) 1000 µg/ml ICP standard 250 ml		5		
32.	Boron (B) 1000 µg/ml ICP standard 250 ml		5		
33.	Cadmium (Cd) 1000 µg/ml ICP standard 250 ml		5		
34.	Cobalt (Co) 1000 µg/ml ICP standard 250 ml		5		
35.	Chromium (Cr) 1000 µg/ml ICP standard 250 ml		5		
36.	Copper (Cu) 1000 µg/ml ICP standard 250 ml		5		
37.	Iron (Fe) 1000 µg/ml ICP standard 250 ml		5		
38.	Manganese (Mn) 1000 µg/ml ICP standard 250 ml		5		
39.	Lead (Pb) 1000 µg/ml ICP standard 250 ml		5		
40.	Nickel (Ni) 1000 µg/ml ICP standard 250 ml		5		
41.	Strontium (Sr) 1000 µg/ml ICP standard 250 ml		5		
42.	Zinc (Zn) 1000 µg/ml ICP standard 250 ml		5		
43.	Molybdenum (Mo) 1000 µg/ml ICP standard 250 ml		5		
44.	Phosphorus (P) 1000 µg/ml ICP standard 250 ml		5		
45.	Antimony (Sb) 1000 µg/ml ICP standard 250 ml		5		
46.	Silicon (Si) 1000 µg/ml ICP standard 250 ml		5		
47.	Vanadium (V) 1000 µg/ml ICP standard 250 ml		5		
48.	Calcium (Ca) 1000 µg/ml ICP standard 250 ml		5		
49.	Magnesium (Mg) 1000 µg/ml ICP standard 250 ml		5		
50.	Sodium (Na) 1000 µg/ml ICP standard 250 ml		5		
51.	Potassium (K) 1000 µg/ml ICP standard 250 ml		5		
52.	Arsenic (As) 1000 µg/ml ICP standard 250ml		5		
53.	Selenium (Se) 1000 µg/ml ICP standard 250ml		5		
54.	Mercury (Hg) 1000 µg/ml ICP standard 250ml		5		
55.	Uranium (U) 1000 µg/ml ICP standard 250ml		5		
56.	Yttrium (Y) 1000 µg/ml ICP standard 250 ml		5		
Group C:					
Item nr	Description	Unit	Quantity	Rate	Price

		price	in 5 years		
57.	Aluminium (Al) 1000µg/ml ICP standard AMPOULE		5		
58.	Barium (Ba) 1000µg/ml ICP standard AMPOULE		5		
59.	Cadmium (Cd) 1000µg/ml ICP standard AMPOULE		5		
60.	Cobalt (Co) 1000µg/ml ICP standard AMPOULE		5		
61.	Chromium (Cr) 1000µg/ml ICP standard AMPOULE		5		
62.	Copper (Cu) 1000µg/ml ICP standard AMPOULE		5		
63.	Iron (Fe) 1000µg/ml ICP standard AMPOULE		5		
64.	Manganese (Mn) 1000µg/ml ICP standard AMPOULE		5		
65.	Lead (Pb) 1000µg/ml ICP standard AMPOULE		5		
66.	Nickel (Ni) 1000µg/ml ICP standard AMPOULE		5		
67.	Strontium (Sr) 1000µg/ml ICP standard AMPOULE		5		
68.	Zinc (Zn) 1000µg/ml ICP standard AMPOULE		5		
69.	Molybdenum (Mo) 1000µg/ml ICP standard AMPOULE		5		
70.	Silicon (Si) 1000µg/ml ICP standard AMPOULE		5		
71.	Vanadium (V) 1000µg/ml ICP standard MPOULE		5		
72.	Calcium (Ca) 1000µg/ml ICP standard AMPOULE		5		
73.	Magnesium (Mg) 1000µg/ml ICP standard AMPOULE		5		
74.	Sodium (Na) 1000µg/ml ICP standard AMPOULE		5		
75.	Potassium (K) 1000µg/ml ICP standard AMPOULE		5		
76.	Arsenic (As) 1000µg/ml ICP standard AMPOULE		5		
77.	Selenium (Se) 1000µg/ml ICP standard AMPOULE		5		
78.	Mercury (Hg) 1000µg/ml ICP standard AMPOULE		5		
79.	Yttrium (Y) 1000µg/ml ICP standard AMPOULE		5		
Group D:					
Item nr	Description	Unit price	Quantity in 5 years	Rate	Price
80.	Sodium Fluoride AR 500g		5		
81.	Sodium Bromide AR 500g		5		
82.	Sodium Nitrite AR 500g		5		
83.	Sodium Sulphate AR 500g		5		

84.	Sodium Nitrate AR 500g		5		
85.	Phosphoric Acid 2.5L		5		
86.	Sodium Carbonate AR 500g		5		
87.	Sodium Bicarbonate AR 500g		5		
88.	Ethanol 2.5L		10		
89.	Petroleum Ether 40 – 60°C 2.5L		10		
90.	Hydrochloric Acid 32% 2.5L		10		
91.	Sulphuric Acid 99% 2.5L		10		
92.	Acetic Acid 2.5L		10		
93.	Acetone 2.5L		20		
94.	Nitric Acid 65% 2.5L		25		
95.	COD Vials		20		
96.	Phosphate Test Kit for Spectraquant		5		
97.	Cyanide Test Kit for Spectraquant		25		
98.	Ammonia Test Kit for Spectraquant		10		
99.	Trihalomethanes 0.2µg/ml mix standard 1.0 ml		20		
100.	MACHEREY-NAGEL MN 85/90 125mm pack 100		40		
101.	MACHEREY-NAGEL MN 615 125mm pack 100		40		
102.	MACHEREY-NAGEL MN 617 125mm pack 100		40		
103.	Sodium Metasilicate Nonahydrate 250g		5		
104.	L(+) Tartaric Acid 500g		5		
105.	Sodium Metasilicate Nonahydrate 500g		5		
106.	pH 7 buffer solution		10		
107.	pH 12 buffer solution		10		
108.	pH 4 buffer solution		10		
109.	pH 9 buffer solution		10		
110.	Stabcal stabilized Formazin Turbidity calibration set for 2100AN & 2100ANIS, 6 sealed vials(7500 NTU, 4000 NTU, 1000 NTU, 200 NTU, 20 NTU, <0.1 NTU		5		
111.	Cyaniver 4 Cyanide Reagent, pk/100		5		
112.	Cyaniver 3 Cyanide Reagent, pk/100 Powder		5		
113.	Sodium Metasilicate Pentahydrate 250g		5		
114.	0.1N Potassium Permanganate 2.5L		5		

115.	Potassium Chloride 500g		20		
116.	Cyaniver 4 Cyanide Reagent, pk/100		50		
117.	Cyaniver 3 Cyanide Reagent, pk/100 Powder		50		
118.	Sodium Metasilicate Pentahydrate 250g		5		
119.	0.1N Potassium Permanganate 2.5L		5		
120.	Potassium Chloride 500g		5		
		R			R

The total of the Prices