

Kusile Power Station supply and delivery of chemicals at Wastewater treatment plant as and when required for a period of five years”



## NEC3 Supply Contract (SC3)

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

and **[Insert at award stage]**  
(Reg No. \_\_\_\_\_ )

for **Kusile Power Station supply and delivery of chemicals at  
Wastewater treatment plant as and when required for a period  
of five years”.**

<b>Contents:</b>	<b>No of pages</b>
<b>Part C1 Agreements &amp; Contract Data</b>	<b>[•]</b>
<b>Part C2 Pricing Data</b>	<b>[•]</b>
<b>Part C3 Scope of Work</b>	<b>[•]</b>

**CONTRACT No. [Insert at award stage]**

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## PART C1: AGREEMENTS & CONTRACT DATA

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Contents:	No of pages
<b>C1.1 Form of Offer and Acceptance</b>	<b>[•]</b>
[to be inserted from Returnable Documents at award stage]	
<b>C1.2a Contract Data provided by the <i>Purchaser</i></b>	<b>[•]</b>
<b>C1.2b Contract Data provided by the <i>Supplier</i></b>	<b>[•]</b>
[to be inserted from Returnable Documents at award stage]	

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## C1.2 SC3 Contract Data

### (a) Part one - Data provided by the *Purchaser*

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

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
2. Some SC3 options are always selected by Eskom Holdings SOC Ltd. The remaining SC3 options are identified by shading in the left hand column. In the event that the option is not required select and delete the whole row. Where the following symbol is used “[●]” - data is required to be inserted relevant to the specific option selected.]

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for Options	
		X1: Price adjustment for inflation
		X2: Changes in the law
		X7: Delay damages
		X17: Low performance damages
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Supply Contract (April 2013) <sup>1</sup>	(If the December 2009 edition is to be used delete April 2013 and replace by December 2013)
10.1	The <i>Purchaser</i> is (name):	<b>Kusile Power Station</b>
	Address	<b>Kusile Power Station, R545 Kendal/Balmoral road Emalahleni South Africa 1035</b>
	Tel No.	

<sup>1</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902, [www.ecs.co.za](http://www.ecs.co.za).

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	Fax No.	[•]
10.1	The <i>Supply Manager</i> is (name):	[•]
	Address	[•]
	Tel	[•]
	Fax	[•]
	e-mail	[•]
11.2(13)	The <i>goods</i> are	[•] Kusile Power Station Wastewater Treatment Plant Chemicals supply and delivery for a period of five years..
11.2(14)	The following matters will be included in the Risk Register	[•] Unavailability of Chemicals Late deliveries Non-conformance to specification Supply interruption in the event of industrial action Additional risk will be managed by both parties as they arise during the contract period
11.2(15)	The Goods Information is in	Part 3: Scope of Work (URS) and all documents and drawings to which it makes reference.
11.2(15)	The Supply Requirements as part of the Goods Information is in	Annexure A to this Contract Data
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
13.1	The <i>language of this contract</i> is	English
13.3	The <i>period for reply</i> is	[•] Two working days
2	<b>The Supplier's main responsibilities</b>	Data required by this section of the core clauses is provided by the Supplier in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.
3	<b>Time</b>	
30.1	The <i>starting date</i> is.	[•] Contract signature date
30.1	The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is:	
		AS per Purchase Order
		Purchase Order agreed date
30.2	The <i>Supplier</i> does not bring the <i>goods</i> to the Delivery Place more than one week	[no data required]

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	before the Delivery Date.

#### 4 Testing and defects

42	The <i>defects date</i> is	<b>[•] 52 weeks after delivery.</b>
43.2	The <i>defect correction period</i> is	<b>[•] Four weeks after delivery after purchaser's notification of a defect</b>
42.2	The <i>defects access period</i> is	<b>[•] 7 days after the defects date</b>

#### 5 Payment

50.1	The <i>assessment interval</i> is	<b>Between the 20<sup>th</sup> of each successive month.</b>
51.1	The <i>currency of this contract</i> is the	<b>South African Rand</b>
51.2	The period within which payments are made is	<b>30 days from invoice date.</b>
51.4	The <i>interest rate</i> is	<b>the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the south African reserve bank (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.</b>

6	<b>Compensation events</b>	<b>To be applied as per the NEC contract.</b>
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#### 7 Title

#### 8 Risks, liabilities, indemnities and insurance

80.1	These are additional <i>Purchaser's</i> risks	<b>None</b>
88.1	The <i>Supplier's</i> liability to the <i>Purchaser</i> for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to	<b>General: R 25 000 000 The Contractor's total liability for any damaged caused to the Employer's property, equipment, material, and plant shall be limited to a Task Order issued by the Employer as of the Task Order date and shall be capped at 25% of the damages caused per incident or to a deductible value of R500 000.00 whichever is the lesser.</b>

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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	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.		
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:	Amount of deductible relevant to the event.		
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	Will be equivalent to the total value of the contract		
88.5	The <i>end of liability date</i> is	[•] Two 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 Panel of Adjudicators listed in Annexure C to this Contract Data by the Party intending to refer a dispute to him		
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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> )		
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	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.		
	1. if the Parties cannot agree a choice or 2. if the arbitration procedure does not state who selects an arbitrator, is			
X1	Price adjustment for inflation			
X1.1	The <i>base date</i> for indices is	[•] will be determined at time of contracting The price will be fixed for the first year and subject to escalation after end of the first 16 months.		
	The proportions used to calculate the Price Adjustment Factor are:	proportion	linked to index for	Index prepared by

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			[•]	[•]
		0.	[•]	[•]
		0.	[•]	[•]
		[•]0.15	non-adjustable	
		1.00		
X2	Changes in the law			
X2.1	A change in the law of	The Republic of South Africa		
X7	Delay damages			
X7.1	Delay damages for Delivery are  1% of the Purchase order value to maximum of 10% of the total purchase order value.			
X17	Low performance damages			
X17.1	The amounts for low performance damages are:	50% value of the defected product will be paid by the supplier or deducted from the supplier purchase order		
Z	The additional conditions of contract are  Z1 to Z12 always apply for Eskom			

## **Z1 Cession delegation and assignment**

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

## **Z2 Joint ventures**

- Z2.1 If the *Supplier* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Purchaser* for the performance of this contract.
- Z2.2 Unless already notified to the *Purchaser*, the persons or organisations notify the *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Supplier* on their behalf.

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- 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.



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**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*:

1. 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
2. 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":**

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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:

<b>Affected Party</b>	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,
<b>Coercive Action</b>	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,
<b>Collusive Action</b>	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,
<b>Committing Party</b>	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,
<b>Corrupt Action</b>	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,
<b>Fraudulent Action</b>	means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,
<b>Obstructive Action</b>	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
<b>Prohibited Action</b>	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.

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## Annexure A: Supply Requirements

[Notes: The example given in the NEC3 Supply Contract Guidance Notes pages 15 to 20 inclusive is based on Incoterms 2000. However, users will probably wish to use Incoterms 2010 which the details below are based on. Users may need to adjust the information to comply with actual requirements. First decide whether Incoterms will be used or not, then delete the arrangement below which does not apply and delete these notes]

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

The *Supplier* supplies the *goods* in accordance with INCOTERMS 2010<sup>2</sup> as follows:

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

Group	Category	Term	Delivery Place
E	departure	EXW	Suppliers place
D	arrival	DAT, DAP, DDP	Kusile Power Station

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

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

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

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

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

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

<sup>2</sup> International Chamber of Commerce, Incoterms 2010, Paris, January 2011

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

[Use these when INCOTERMS do not apply].

<b>1. The requirements for the supply are</b>	Refer to C3.1 Purchasers goods information	
<b>2. The requirements for transport are</b>	Refer to C3.1 Purchasers goods information	
<b>3. The delivery place is</b>	Kusile Power Station Stores building	
<b>4. Actions of the Parties during supply</b>	<b>Action</b>	<b>Party which does it</b>
	Giving notice of Delivery	<i>Purchaser</i>
	Checking packing and marking before dispatch	<i>Supplier</i>
	Contracting for transport	<i>Supplier</i>
	Pay costs of transport	<i>Supplier</i>
	Arrange access to delivery place	<i>Purchaser</i>
	Loading the <i>goods</i>	<i>Supplier</i>
	Unloading the <i>goods</i>	<i>Supplier</i>
<b>For international procurement</b>	Undertake export requirements	N/A
	Undertake import requirements	N/A
<b>5. Information to be provided by the Supplier</b>	<b>Title of document</b>	
	SDS	
	Copy of invoice for the <i>goods</i>	
	Delivery Note	
	Test results (Certificate of analysis)	
<b>For international procurement</b>	Licences, authorisations and other formalities associated with export of the <i>goods</i>	
	Air Waybill or Bill of Lading with associated landing, delivery and forwarding order	
	The Bill of Entry endorsed by the importation authority	
	Customs work sheets, showing tax, duties and surcharges which the law of the country into which the <i>goods</i> are being imported requires the importer to pay	
	Invoice from the importation clearing agent showing airline fees, landing charges, wharfage and dock dues as applicable	
	Specify other import documents required by authorised officials.	

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

**Annexure B: Insurance provided by the Purchaser**

*These notes are provided as guidance to tendering suppliers and the Supplier about the insurance provided by the Purchaser. These notes are not part of this contract.*

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

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

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

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

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

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

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

**All other insurance**

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

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

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

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

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

[http://www.eskom.co.za/live/content.php?Item\\_ID=9248](http://www.eskom.co.za/live/content.php?Item_ID=9248)

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### Annexure C: The *Purchaser's* Panel of Adjudicators

The following persons listed in alphabetical order of their surname have indicated their willingness to be included in the *Purchaser's* Panel of Adjudicators. Their CV's may be obtained by using the contact details provided.

Name	Location	Contact details (phone & e mail)
Nigel ANDREWS	Gauteng	+27 11 836-6760 nigela@quoin.net
Andrew BAIRD	Gauteng	+27 11 803 3008 <a href="mailto:andrewbaird@ecsconsult.co.za">andrewbaird@ecsconsult.co.za</a>
Christopher BINNINGTON	Gauteng	+27 11 888-6141 <a href="mailto:cdb@bca.co.za">cdb@bca.co.za</a>
Peter HIGGINS	UK	+44 1293 873 868 peterhiggins@pdconsult.co.uk
Adv. Bruce LEECH	Gauteng	+27 11 290 4000 leech@counsel.co.za
Nigel NILEN	Gauteng	+27 11 465 3601; nilences@global.co.za
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Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management, by contacting Leighton Itholeng (Tel.: +27 (0)11 800 4031) (Fax :+27 (0)86 668 0419) E-mail: [Leighton.Itholeng@eskom.co.za](mailto:Leighton.Itholeng@eskom.co.za)

Kusile Power Station supply and delivery of chemicals at Wastewater treatment plant as and when required for a period of five years”

## C1.2 Contract Data

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

#### Notes to a tendering supplier:

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

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

	b. Statement	c. 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:	Scope of work (URS)
11.2(11)	The tendered total of the Prices is	R , (in words)
11.2(12)	The <i>price schedule</i> is in:	Part 2 ; Pricing data
11.2(14)	The following matters will be included in the Risk Register	Matters will be included in the risk register as they arise during the contract period
25.2	The restrictions to access for the <i>Supply Manager</i> and Others to work being done for this contract are	None
30.1	The <i>delivery date</i> of the goods and services is:	Three days (72 hour) upon receipt of the Purchase order
31.1	The programme identified in the Contract Data is contained in:	N/A

<sup>3</sup> Either April 2013 or December 2009 Edition as stated by *Purchaser* in Contract Data part 1.

<sup>4</sup> Available from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902, or [www.ecs.co.za](http://www.ecs.co.za)

Kusile Power Station supply and delivery of chemicals at Wastewater treatment plant as and when required for a period of five years”

63.2 The *percentage for overheads and profit*  
added to the Defined Cost is %

## 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> (refer to excel workbook)	8
C2.3	Other pricing data	3



Kusile Power Station supply and delivery of chemicals at Wastewater treatment plant as and when required for a period of five years”

## • C2.1 Pricing assumptions

### 9 The conditions of contract

#### a. How goods and services are priced and assessed for payment

Clause 11 in NEC3 Supply Contract, December 2009 (SC3) core clauses states:

<b>Identified and defined terms</b>	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.
<b>Assessing the amount due</b>	50.2	The amount due is
		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> .
		Any tax which the law requires the <i>Purchaser</i> to pay to the <i>Supplier</i> is included in the amount due.

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

#### b. 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.

#### c. Preparing the *price schedule*

It will be assumed that the tendering supplier has read Pages 11 and 12 and Appendix 5 of the SC3 Guidance Notes before 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.

1 As the *Supplier* has an obligation to correct Defects (core clause 43.1) and there is no compensation event for this unless the Defect was due to a *Supplier's* risk, the lump sum Prices and rates must also include for the correction of Defects.

**Kusile Power Station supply and delivery of chemicals at Wastewater treatment plant as and when required for a period of five years”**

2 If the *Supplier* has decided not to identify a particular item in the *price schedule* at the time of tender the cost to the *Supplier* of doing the work is assumed to be included in, or spread across, the other Prices and rates in the *price schedule* in order to fulfil the obligation to Provide the Goods and Services for the tendered total of the Prices.

3 There is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item of *goods* or *services* 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. See Clause 60.1.

4 Hence the Prices and rates tendered by the *Supplier* in the *price schedule* are inclusive of everything necessary and incidental to Providing the Goods and Services in accordance with the Goods Information, as it was at the time of tender, as well as correct any Defects not caused by a *Purchaser's* risk.

5 The *Supplier* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event. It should be noted that the list of compensation events includes those arising as a result of a *Purchaser's* risk event listed in core clause 80.1.

#### **d. Format of the *price schedule***

(From Appendix 5 on page 78 of the SC3 Guidance Notes)

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.

**Kusile Power Station supply and delivery of chemicals at Wastewater treatment plant as and when required for a period of five years**

## • C2.2 The *price schedule*

**PROJECT: Kusile Power Station supply and delivery of chemicals at Wastewater treatment plant as and when required for a period of five years**

ITEM NO.	DESCRIPTION	UNIT	QTY	RATE	AMOUNT
	<b>ITEM 1</b>				
<b>1</b>	<b>PRELIMINARIES AND GENERAL</b>				
	-				
1.1	Chemical Resistant PPE	Sum	40.00		
1.2	Safety file	Sum	1.00		
1.3	Medicals - Entry	Sum	40.00		
1.4	Medicals - Exit	Sum	8.00		
1.5	Police Clearance Certification	Sum	40.00		
1.6	Delivery to Site (1 x Lime Chemical Tanker), (1 x Soda Ash Chemical Tanker)	Per Day	240.00		
1.7	Delivery to Site (1 x Caustic Chemical Tanker), (1 x Sulphuric Acid Chemical Tanker)	Per Day	163.00		
1.8	Delivery to Site (1 x Semi Bulk Chemical Tanker)	Per Day	120.00		
	-				
	<b>Total Item 1 (Preliminaries and General) Carried to Final Summary</b>				
	<b>ITEM 2</b>				
<b>2</b>	<b>CHEMICAL SUPPLIES</b>				
	-				
2.1	Ferric Chloride (FeCl <sub>3</sub> 40%), Storage: Tote (1000L), Density (kg/m <sup>3</sup> ): 1400	KG	120 450.00		
2.2	Soda Ash (Dense) 99.5 %, Storage: Silo (186m <sup>3</sup> ), Density (kg/m <sup>3</sup> ): 960	KG	8 160 000.00		
2.3	Polymer (100%), Storage: Silo Tote (1000L), Density (kg/m <sup>3</sup> ):1100	KG	15 000.00		
2.4	Sulphuric Acid (98%), Storage: Bulk Storage(15m <sup>3</sup> ), Density (kg/m <sup>3</sup> ):1820	KG	218 500.00		
2.5	Calcium Sulphate, Storage: Bags (25 kg), Density (kg/m <sup>3</sup> ):2320	KG	379 500.00		
2.6	Sodium Sulphate(anhydrous), Storage: Bags (25 kg), Density (kg/m <sup>3</sup> ):1400	KG	4 162 740.00		
2.7	Scale Inhibitor (100 %), Storage: Tote (1000L), Density (kg/m <sup>3</sup> ): 1000	KG	53 000.00		
2.8	Antifoam (100 %), Storage: Tote (1000L), Density (kg/m <sup>3</sup> ): 1000	KG	98 300.00		
2.9	Caustic (50%), Storage: Bulk Storage(15m <sup>3</sup> ), Density (kg/m <sup>3</sup> ):1530	KG	1 108 150.00		
2.10	Caustic (50%), Storage: Tote (1000L), Density (kg/m <sup>3</sup> ): 1000	KG	40 000.00		
	<b>Total Item 2 (Chemical Supplies) Carried to Final Summary</b>				
	<b>FINAL SUMMARY</b>				
ITEM 1	PRELIMINARIES AND GENERAL				
ITEM 2	CHEMICAL SUPPLIES				
	<b>Final Summary Total (Excl VAT)</b>				

**Kusile Power Station supply and delivery of chemicals at Wastewater treatment plant as and when required for a period of five years**

- **C2.3 Other pricing data**

**SEE “FINANCIAL TENDER RETURNABLES” C2.3 of tender documentation**

## PART 3: SCOPE OF WORK

Document reference	Title: Kusile Power Station supply and delivery of chemicals at Waste water treatment plant as and when required for a period of five years”.	No of pages
	This cover page	1
C3.1	<i>Purchaser’s</i> Goods Information	
C3.2	<i>Supplier’s</i> Goods Information	
	Total number of pages	

**Kusile Power Station supply and delivery of chemicals at Wastewater treatment plant as and when required for a period of five years**

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

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**Kusile Power Station supply and delivery of chemicals at Wastewater treatment plant as and when required for a period of five years**

## 1 Overview and purpose of the *goods and services*

The Supply and delivery of wastewater treatment plant chemicals as and when required for a period of five (5) years.

## 2 Specification and description of the *goods*

### Kusile Chemical Services list of Chemicals required

NB: The chemicals should be pure grade with no additives as this might compromise the integrity of the system. Please also refer to KUS-20240725 Kusile Power Station Wastewater Treatment Plant SOW for Chemical Supply and Deliver for a period of five years Rev 1

Chemical	Storage	Density (kg/m <sup>3</sup> )	Quantity 5years (Kg)
Ferric Chloride (FeCl <sub>3</sub> 40%)	Tote (1000L)	1400	120 450
Soda Ash (Dense) 99.5 %	Silo (186m <sup>3</sup> )	960	8 160 000
Polymer (100%)	Tote (1000L)	1100	15 000
Sulphuric Acid (98%)	Bulk Storage(15m <sup>3</sup> )	1820	218 500
Calcium Sulphate	Bags (25 kg)	2320	379 500
Sodium Sulphate(anhydrous)	Bags (25 kg)	1400	4 162 740
Scale Inhibitor (100 %)	Tote (1000L)	1000	53 000
Antifoam (100 %)	Tote (1000L)	1000	98 300
Caustic (50%)	Bulk Storage(15m <sup>3</sup> )	1530	1 108 150
Caustic (50%)	Tote (1000L)	1000	40 000

## 3 Procedure for submission and acceptance of *Supplier's design*

GHS labelling and SDS should be used for all chemicals listed in the price schedule section.

In addition to the above, please refer to KUS-20240725 Kusile Power Station Wastewater Treatment Plant SOW for Chemical Supply and Deliver for a period of five years Rev 1 and Quality spec

## 4 Manufacture & fabrication

Chemicals and consumables should be manufactured under ISO 9001 systems compliance.

Also refer to KUS-20240725 Kusile Power Station Wastewater Treatment Plant SOW for Chemical Supply and Deliver for a period of five years Rev 1

## 5 Factory acceptance testing (FAT)



**Kusile Power Station supply and delivery of chemicals at Wastewater treatment plant as and when required for a period of five years**

Should it be necessary for tests to be done, the Supply Manager or a testing agency of the Purchaser's nomination will witness the tests. Note, Supplier may not restrict Supply Manager's right to witness tests per clause 25.2

In addition to the above, please refer to KUS-20240725 Kusile Power Station Wastewater Treatment Plant SOW for Chemical Supply and Deliver for a period of five years Rev 1

**6 Other tests and inspections and commissioning in place of use**

Chemicals will be tested by the Eskom laboratory technicians for routine and quality control.

please refer to Quality spec and KUS-20240725 Kusile Power Station Wastewater Treatment Plant SOW for Chemical Supply and Deliver for a period of five years Rev 1

Refer to core clause 4 of NEC

**7 Operating manuals and maintenance schedules**

- [1] Safety data sheets and Compliance certificates for chemicals and consumables should be applied when making deliveries.
- [2] KUS-20240725 Kusile Power Station Wastewater Treatment Plant SOW for Chemical Supply and Deliver for a period of five years Rev 1

**8 Supply Requirements**

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

**9 Specification of the services to be provided**

Supplier should train their staff on how to handle chemicals with different toxicity levels and declare them competent.

Refer to Quality spec requirements

KUS-20240725 Kusile Power Station Wastewater Treatment Plant SOW for Chemical Supply and Deliver for a period of five years Rev 1

**10 Work to be done by the Delivery Date**

The delivery should be done at Kusile Power station wastewater treatment plant and the delivery note should be signed by both supplier and Eskom. In case of bulk chemicals, the truck should be weight at Eskom weight bridge before and after offloading and the weight slip will be used for assessment and payment. The chemicals should be sampled before offloading and analysed by Eskom personnel. The supplier and the Eskom employee will both do execute the offloading of the chemical as per Eskom offloading procedures.

In addition to the above, please refer to KUS-20240725 Kusile Power Station Wastewater Treatment Plant SOW for Chemical Supply and Deliver for a period of five years Rev 1

**11 Marking the goods**

The good should be clearly Marked by the original manufacturer and no repackaging will be allowed. GHS labelling should be used for all chemicals.

In addition to the above, please refer to KUS-20240725 Kusile Power Station Wastewater Treatment Plant SOW for Chemical Supply and Deliver for a period of five years Rev 1

**12 Constraints at the delivery place and place of use**

Deliveries of chemicals should be done by competent personnel from the supplier and be received by a competent personnel on behalf of Eskom

### **Kusile Power Station supply and delivery of chemicals at Wastewater treatment plant as and when required for a period of five years**

In addition to the above, please refer to KUS-20240725 Kusile Power Station Wastewater Treatment Plant SOW for Chemical Supply and Deliver for a period of five years Rev 1 and KUS-20251207 Kusile PS OHS Specification for Supply and Delivery of Chemicals at Wastewater Treatment Plant as and When Required for a Period of Five Years at Kusile Power Station Rev 1

## **13 Management meetings**

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

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	As and when required	MS Teams/Kusile Power Station	<i>Purchaser and Supplier</i>
Kick off meeting	Before the start of the meeting	MS Teams/Kusile Power Station	<i>Purchaser and Supplier</i>
Overall contract progress and feedback	Monthly on Wednesdays_ at 14:00	MS Teams/Kusile Power Station	<i>Purchaser and Supplier</i>
Toolbox talks and task based risk assessment	During delivery of chemicals	Kusile Power Station	<i>Purchaser and Supplier</i>

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

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

## **14 Documentation control**

All contractual communications will be in the form of properly compiled letters or forms attached to emails and not as a message in the email itself.

The standard NEC forms to be used by the *Supplier* in the administration of the contract, such as early warning and compensation event notifications are to be submitted to the *Purchaser* and shall be on the NEC document format which shall be made available to the *Supplier* by the *Purchaser*

All formal contractual communication shall be in the form of properly compiled letters or forms attached to emails and not as a message not the email itself Emails shall only be used to follow up on formal contractual communication or for information purposes only.

All formal contractual communication shall have a reference number in a chronological sequence.

A formal email will be set-up for this specific contractual communication.

## **15 Health and safety risk management**

**Kusile Power Station supply and delivery of chemicals at Wastewater treatment plant as and when required for a period of five years**

The Laboratory chemicals shall comply with Global Harmonized Standard for labelling and Safety Data Sheets submitted with each delivery of the chemicals.

In addition to this, refer to SHE spec (KUS-20251207 Kusile PS OHS Specification for Supply and Delivery of Chemicals at Wastewater Treatment Plant as and When Required for a Period of Five Years at Kusile Power Station Rev 1)

**16 Environmental constraints and management**

The *Supplier* shall comply with the environmental criteria and constraints contained in ISO14001.

**17 Quality**

Laboratory chemicals and consumables supplied shall comply with ISO 9001.

In addition to this, please refer to Quality spec .

**18 Invoicing and payment**

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 showing the amount due for payment equal to that stated in the *Supply Manager's* certificate.

The *Supplier* shall address the tax invoice to **invoiceseskomlocal@eskom.co.za** and include on each invoice the following information:

- Name and address of the *Supplier* and the *Supply Manager*;
- The contract number and title;
- *Supplier's* VAT registration number;
- The *Purchaser's* VAT registration number.
- Description of *goods* and *services* provided for each item invoiced based on the Price Schedule;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- (add other as required)

**19 Provision of bonds and guarantees**

N/A

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

The *Supplier* is required to keep any records of Defined Cost and communication between the supplier and the purchaser.

Refer to clause 63.2 and 11.2.4

**21 Procurement****22 Other requirements related to procurement**

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

**Kusile Power Station supply and delivery of chemicals at Wastewater treatment plant as and when required for a period of five years**

## **C3.2 SUPPLIER'S GOODS INFORMATION**

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

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

This section could also be compiled as a separate file.

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