

**SUPPLY AND DELIVERY OF WELDING EQUIPMENT ON AN AS AND WHEN
REQUIRED BASIS FOR A PERIOD OF THIRTY-SIX (36) MONTHS FOR DUVHA
POWER STATION**

CONTRACT NO.



NEC3 Supply Contract (SC3)

**Between ESKOM HOLDINGS SOC LIMITED
(Reg No. 2002/015527/06)**

and

(Reg No. _____)

**for Supply and Delivery of Welding equipment on an as
and when required basis for a period of thirty-six (36)
months for Duvha Power Station**

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PART C1: AGREEMENTS & CONTRACT DATA

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C1.1 Form of Offer & Acceptance

Offer

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

Supply and Delivery of Welding equipment on an as and when required basis for a period of thirty-six (36) months for Duvha Power Station

The tenderer, identified in the Offer signature block, has

| | |
|--------|---|
| either | 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. |
| or | 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 | N/A - Price will be determined via e-Auction |
| | Value Added Tax @ 15% is | N/A - Price will be determined via e-Auction |
| | The offered total of the amount due inclusive of VAT is ¹ | N/A - Price will be determined via e-Auction |
| | (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*.

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Acceptance

By signing this part of this Form of Offer and Acceptance, the Purchaser identified below accepts the tenderer's Offer. In consideration thereof, the Purchaser shall pay the Supplier the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer shall form an agreement between the Purchaser and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

- Part C1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
- Part C2 Pricing Data
- Part C3 Scope of Work: Goods Information including Supply Requirements

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Purchaser during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Purchaser's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)

Capacity

for the
Purchaser

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

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

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Schedule of Deviations to be completed by the *Purchaser* prior to contract award

Note:

1. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Purchaser prior to the tender closing date is limited to those permitted in terms of the Conditions of Tender.
3. A tenderer's covering letter must not be included in the final contract document. Should any matter in such letter, which constitutes a deviation as aforesaid be the subject of agreement reached during the process of Offer and Acceptance, the outcome of such agreement shall be recorded here and the final draft of the contract documents shall be revised to incorporate the effect of it.

| No. | Subject | Details |
|-----|---------|---------|
| 1 | [•] | [•] |
| 2 | [•] | [•] |
| 3 | [•] | [•] |
| 4 | [•] | [•] |
| 5 | [•] | [•] |
| 6 | [•] | [•] |
| 7 | [•] | [•] |

By the duly authorised representatives signing this Schedule of Deviations below, the Purchaser and the tenderer agree to and accept this Schedule of Deviations as the only deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules, as well as any confirmation, clarification or changes to the terms of the Offer agreed by the tenderer and the Purchaser during this process of Offer and Acceptance.

It is expressly agreed that no other matter whether in writing, oral communication or implied during the period between the issue of the tender documents and the receipt by the tenderer of a completed signed copy of this Form shall have any meaning or effect in the contract between the parties arising from this Agreement.

For the tenderer:

Signature _____

Name _____

Capacity _____

On behalf of *(Insert name and address of organisation)* _____

Name & signature of witness _____

Date _____

For the Purchaser

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

C1.2 SC3 Contract Data

Part one - Data provided by the *Purchaser*

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

| 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 X7: Delay damages Z: Additional conditions of contract |
| | of the NEC3 Supply Contract (April 2013) | |
| 10.1 | The <i>Purchaser</i> is (name): | Eskom Holdings SOC Limited (Reg No: 2002/015527/06), a juristic person 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. | +2713 690 0525 |
| | Fax No. | +27 86 539 0050 |
| 10.1 | The <i>Supply Manager</i> is (name): | Vusi Jele |
| | Address | Duvha Power Station PO Box 2199 Witbank 1035 |
| | Tel | +27 13 690 0164 |
| | Fax | |
| | e-mail | JeleJV@eskom.co.za |
| 11.2(13) | The goods are | Supply and Delivery of Welding equipment on an as and when required basis for a period of thirty-six (36) months for Duvha Power Station |
| 11.2(13) | The services are | Supply and Delivery of Welding equipment on an as and when required basis for a |

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period of thirty-six (36) months for Duvha Power Station

| | | |
|----------|--|--|
| 11.2(14) | The following matters will be included in the Risk Register | 1. Delays due to failed quality tests. 2. Delays due to civil unrests |
| 11.2(15) | The Goods Information is in | Part 3: Scope of Work and all documents and drawings to which it makes reference. |
| 11.2(15) | The Supply Requirements as part of the Goods Information is in | Part 3: Scope of work |
| 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 | Three working days |
| 2 | The Supplier's 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. | 01 May 2024 of as soon as possible thereafter | |
| 30.1 | The <i>delivery date</i> of the goods and services is: | goods and services | delivery date |
| | | 1 Supply and Delivery of Welding equipment on an as and when required basis for a period of thirty-six (36) months for Duvha Power Station | As and when required |
| 31.1 | The <i>Supplier</i> is to submit a first programme for acceptance within | Delivery schedule to be submitted one week after order placement | |
| 32.2 | The <i>Supplier</i> submits revised programmes at intervals no longer than | Five working days following the accepted revision to the original program. | |

4 Testing and defects

| | | |
|------|---|--|
| 42 | The <i>defects date</i> is | One (1) week following installation and commissioning on site. |
| 43.2 | The <i>defect correction period</i> is | Two (2) weeks (locally, SA) |
| | except that the <i>defect correction period</i> for Foreign repairs | Four (4) weeks |
| 42.2 | The <i>defects access period</i> is | Two(2) working days |
| | except that the <i>defect access period</i> for Foreign repairs | Foreign repairs are ten (10) days. |

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5 Payment

| | | |
|------|--|---|
| 50.1 | The <i>assessment interval</i> is | There will be continuous assessments upon safe delivery of materials to site and having met all the required quality standards and signed off. |
| 51.1 | The <i>currency of this contract</i> is the | South African Rands |
| 51.2 | The period within which payments are made is | Four (4) weeks after invoice received |
| 51.4 | The <i>interest rate</i> is | <p>(i) Zero percent above 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 (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 | Damage of goods on transfer of ownership |
| 84.1 | The <i>Purchaser</i> provides these insurances from the Insurance Table | See notes about <i>Purchaser</i> provided insurance in Annexure B to this Contract Data |

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| | | |
|------|--|---|
| 84.1 | The <i>Supplier</i> provides these additional insurances | See notes in Annexure B |
| 84.2 | The minimum amount of cover for loss of or damage to any plant and materials provided by the <i>Purchaser</i> is: | The price of contract value |
| 84.2 | The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the <i>goods</i> , plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Supplier</i>) caused by activity in connection with this contract for any one event is: | <p>Whatever the <i>Supplier</i> deems necessary in addition to that provided by the <i>Purchaser</i> for any one event with cross liability so that the insurance applies to the Parties separately.</p> <p>However if the <i>Supplier</i> is exposed to damage to the <i>Purchaser's</i> property the cover limit amount is not less than</p> <ul style="list-style-type: none"> • R15 million (fifteen million Rand) for exposure to Generation Division property; • R7.5 million (seven million five hundred thousand Rand) for exposure to Transmission Division property and; <ul style="list-style-type: none"> • R1 million (one million Rand) for exposure to Distribution Division and all other <i>Purchaser's</i> property <p>for any one occurrence or series of occurrences arising out of one event but unlimited during the period of insurance.</p> |
| 84.2 | The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Supplier</i> arising out of and in the course of their employment in connection with this contract for any one event is: | As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (five hundred thousand Rand). |
| 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 described in the "Format A" / "Format B" / "Format Dx" {choose the applicable format, then delete the others and this note}, insurance policy available on</p> <p>http://www.eskom.co.za/live/content.php?ItemID=9248</p> <p>and</p> <p>(2) for all other existing <i>Purchaser's</i> property the highest applicable deductible (first amount payable) namely:</p> |

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1. R15 million (fifteen million Rand) for Generation Division property;
2. R7.5 million (seven million five hundred thousand Rand) for Transmission Division property and;
3. R1 million (one million Rand) for Distribution Division and all other *Purchaser's* property

See notes in Annexure B

| | | |
|------|---|---|
| 88.3 | The <i>Supplier's</i> liability for Defects due to his design which are not notified before the last <i>defects date</i> is limited to: | Total of the Prices. |
| 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 | Total of the Prices. |
| 88.5 | The <i>end of liability date</i> is | Three (3) years after Delivery of the whole of the goods and services. |

9 Termination and dispute resolution

| | | |
|---------|--|---|
| 94.1 | The <i>Adjudicator</i> is (Name) | 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 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 The person or organisation who will choose an arbitrator - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is | South Africa 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 |

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| | | | | |
|--|--|-----|----------------|--|
| | | 0. | | |
| | | 0. | | |
| | | 0. | | |
| | | 10 | non-adjustable | |
| | | 100 | | |

| | | | | |
|-----------|--------------------------------|---|---|--|
| X2 | Changes in the law | | | |
| X2.1 | A change in the law of | South Africa is a compensation event if it occurs after the Contract Date | | |
| X7 | Delay damages | | | |
| X7.1 | Delay damages for Delivery are | Delivery of Supply and Delivery of Welding equipment on an as and when required basis for a period of thirty-six (36) months for Duvha Power Station | amount per day The supplier should deliver according to the accepted schedule. 5% of each late delivery per day to a maximum of 20% of the total task 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 and the Electricity Distribution 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 substantially 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.

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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 Ethics

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Supplier*, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Supplier*'s obligation to Provide the Goods and Services or taking any other action as appropriate against the *Supplier* (including civil or criminal action).
- Z4.2 The *Purchaser* may terminate the *Supplier*'s obligation to Provide the Goods and Services if the *Supplier* (or any member of the *Supplier* where the *Supplier* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.

Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Purchaser* or other people or organisations and including in circumstances where the *Supplier* or any such member is removed from the an approved vendor data base of the *Purchaser* as a consequence of such practice.

- Z4.3 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P3 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

Z5 Confidentiality

- Z5.1 The *Supplier* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Supplier*, enters the public domain or to information which was already in the possession of the *Supplier* at the time of disclosure (evidenced by written records in existence at that time). Should the *Supplier* disclose information to Others in terms of clause 23.1, the *Supplier* ensures that the provisions of this clause are complied with by the recipient.
- Z5.2 If the *Supplier* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*.
- Z5.3 In the event that the *Supplier* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Supplier*, to the extent permitted by law prior to disclosure, notifies the *Purchaser* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is

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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.

Z5.5 The *Supplier* ensures that all his subcontractors abide by the undertakings in this clause.

Z6 Waiver and estoppel: Add to core clause 12.3:

Z6.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Supply Manager* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z8 Provision of a Tax Invoice and interest. Add to core clause 51

Z8.1 Within one week of receiving a payment certificate from the *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser's* procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate.

Z8.2 If the *Supplier* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Purchaser* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Purchaser* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z8.3 The *Supplier* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Purchaser's* VAT number 4740101508 on each invoice he submits for payment.

Z9 Notifying compensation events

Z9.1 Delete from the last sentence in core clause 61.3, "unless the *Supply Manager* should have notified the event to the *Supplier* but did not".

Z10 Purchaser's limitation of liability

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

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

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

Z11.1 or had a judicial management order granted against it.

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

Z12.1 If the amount due for the *Supplier's* payment of delay damages reaches the limits stated in this Contract Data for Option X7, the *Purchaser* may terminate the *Supplier's* obligation to Provide the Goods and Services using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

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Annexure A: Supply Requirements

[Notes: This template is based on the examples given in the NEC3 Supply Contract Guidance Notes pages 15 to 20 inclusive. Please read the Guidance Notes before finalising the information given below. 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]

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

The *Supplier* supplies the *goods* in accordance with INCOTERMS 2000² as follows:

| Group | Category | Term | Delivery Place |
|-------|----------------------|------------------------|---------------------|
| E | departure | EXW | Duvha Power Station |
| F | main carriage unpaid | FCA, FAS, FOB | |
| C | main carriage paid | CFR, CIF, CPT, CIP | |
| D | arrival | DAF, DES, DEQ, DDU DDP | |

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

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

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

| A | The Supplier's obligations | B | The Purchaser's 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. Before doing so read SC3 Guidance Notes pages 18 to 20 as well as the cross references to INCOTERMS included in the guidance.]

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

² International Chamber of Commerce, Incoterms 2000, Paris, January 2000.

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The Supply Requirements for this contract are as follows:

[Use these when INCOTERMS do not apply].

| | | |
|--|--|----------------------------|
| 1. The requirements for the supply are | Timing as stipulated on the section 30.1 above | |
| 2. The requirements for transport are | The mode of road transport to be used | |
| 3. The delivery place is | Duvha Power Station | |
| 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 | Supplier |
| | Loading the goods | Supplier |
| | Unloading the goods | Supplier |
| For international procurement | Undertake export requirements | N/A |
| | Undertake import requirements | N/A |
| 5. Information to be provided by the Supplier | Title of document | |
| | Packing lists for cases and their contents | |
| | Copy of invoice for the goods | |
| | Delivery Note | |
| | Test results and maintenance manuals | |
| | As prescribed on the following documents | |
| | Annexure A: Works Information | |

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.

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;

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- 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

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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 andrewbaird@ecsconsult.co.za |
| Christopher BINNINGTON | Gauteng | +27 11 888-6141 cdb@bca.co.za |
| 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 |
| Peter THURLOW | Gauteng | +27 11 787 6226 info@thurlowassoc.com |

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

C1.2 Contract Data

Part two - Data provided by the *Supplier*

Notes to a tendering supplier:

1. Please read both the NEC3 Supply Contract (December 2009) and the relevant parts of its Guidance Notes (SC3-GN)³ 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</i> 's design is in: | |
| 11.2(11) | The tendered total of the Prices is | N/A - Price will be determined via e-Auction |
| 11.2(12) | The <i>price schedule</i> is in: | C2.2 Price Schedule |
| 11.2(14) | The following matters will be included in the Risk Register | 1. Delays due to failed quality tests. |
| 25.2 | The restrictions to access for the <i>Supply Manager</i> and Others to work being done for this contract are | N/A |
| 30.1 | The <i>delivery date</i> of the <i>goods and services</i> is: | <p>goods and services</p> <p>1 Supply and Delivery of Consumables on an as and when required basis for a period of thirty-six (36) months for Duvha Power Station</p> <p>delivery date</p> <p>As and when required</p> |
| 31.1 | The programme identified in the Contract Data is contained in: | |

³ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009 www.ecs.co.za

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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 | |
| C2.2 | The <i>price schedule</i> | |

C2.1 Pricing assumptions

The *conditions of contract*

How goods and services are priced and assessed for payment

Clause 11 in NEC3 Supply Contract, December 2009 (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 *price schedule* unless later changed in accordance with this contract.

Assessing the amount due 50.2 The amount due is

- the Price for each lump sum item in the Price Schedule which the *Supplier* has completed,
- where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the *Supplier* has completed by the rate,
- plus other amounts to be paid to the *Supplier*,
- less amounts to be paid by or retained from the *Supplier*.

Any tax which the law requires the *Purchaser* to pay to the *Supplier* 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.

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*

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

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include for the correction of Defects.

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.

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.

Supply and Delivery of Welding equipment on an as and when required basis for a period of thirty-six (36) months for Duvha Power Station

C2.2 the price schedule

| No. | Material Number | Description | Quantity | Unit of measure |
|-----|-----------------|---|----------|-----------------|
| 10 | 0035115 | ELECTRODE, WELDING: SIZE: 4 MM; AWS CLASS: A5.1; E7018-1 H8; MATERIAL: HYDROGEN COATED; CONTAINER: BOX 4 KG; REFERENCE NO: W075284; E7018-1; TEST CERTIFICATE TO BE SUPPLIED WITH EVERY CONSIGNMENT, DELIVERY WILL NOT BE ACCEPTED IF HAZARDOUS CHEMICAL DATA SHEET IS NOT SUPPLIED WITH EVERY DELIVERY | 56 | KG |
| 20 | 0035117 | ELECTRODE, WELDING: SIZE: 3.15 MM; AWS CLASS: A5.1-91; E6013; MATERIAL: STL; CONTAINER: BOX 5 KG; MANUF P/N: W075-003; TEST CERTIFICATE TO BE SUPPLIED WITH EVERY CONSIGNMENT, DELIVERY WILL NOT BE ACCEPTED IF HAZARDOUS CHEMICAL DATA SHEET IS NOT SUPPLIED WITH EVERY DELIVERY | 362 | KG |
| 30 | 0035118 | ELECTRODE, WELDING: SIZE: 4 MM; AWS CLASS: A5.1; E6013; MATERIAL: MS; CONTAINER: BOX 25 KG; MANUF P/N: W075-004; TEST CERTIFICATE TO BE SUPPLIED WITH EVERY CONSIGNMENT, DELIVERY WILL NOT BE ACCEPTED IF HAZARDOUS CHEMICAL DATA SHEET IS NOT SUPPLIED WITH EVERY DELIVERY | 25 | KG |
| 40 | 0035145 | HOLDER, ELECTRODE WELDING: OPERATING CURRENT: 400 A; FULLY INSULATED JAW; 249 MM LG; FIBRE | 20 | EA |
| 50 | 0035148 | ELECTRODE, WELDING: SIZE: DIA 4 X LG 305 MM; MATERIAL: CARBON; CONTAINER: BOX 5 KG; SUPPL P/N: 075/904; GOUGE, DELIVERY WILL NOT BE ACCEPTED IF HAZARDOUS CHEMICAL DATA SHEET IS NOT SUPPLIED WITH EVERY DELIVERY | 16 | KG |
| 60 | 0035226 | ELECTRODE, WELDING: SIZE: 3.25 MM; AWS CLASS: A5.4-81; E310-16; MATERIAL: NICR; CONTAINER: BOX 4 KG; SUPPL P/N: 075-733; TRANSARC 310 | 20 | KG |
| 70 | 0035294 | ELECTRODE, WELDING: SIZE: 2.5 MM; AWS CLASS: A5.1-81; E7018-1; MATERIAL: STL LOW HYDROGEN COATED; CONTAINER: BOX 4 KG; SUPPL P/N: 075-282; TEST CERTIFICATE TO BE ISSUED WITH EVERY DELIVERY, DELIVERY WILL NOT BE ACCEPTED IF HAZARDOUS CHEMICAL DATA SHEET IS NOT SUPPLIED WITH EVERY DELIVERY | 415 | KG |
| 80 | 0035295 | ELECTRODE, WELDING: SIZE: 3.15 MM; AWS CLASS: A5.1-81; E7018-1; MATERIAL: STL ALLOY; CONTAINER: BOX 4 KG; SUPPL P/N: 075-283; DELIVERY WILL NOT BE ACCEPTED IF HAZARDOUS CHEMICAL DATA SHEET IS NOT SUPPLIED WITH EVERY DELIVERY | 2 940 | KG |
| 90 | 0035296 | ELECTRODE, WELDING: SIZE: 4 MM; AWS CLASS: A5.1-81; E7018-1; MATERIAL: STL LOW HYDROGEN COATED; CONTAINER: BOX 4 KG; SUPPL P/N: 075/284; TEST CERTIFICATE TO BE SUPPLIED WITH EVERY CONSIGNMENT, DELIVERY WILL NOT BE ACCEPTED IF HAZARDOUS CHEMICAL DATA SHEET IS NOT SUPPLIED WITH EVERY DELIVERY | 348 | KG |

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| | | | | |
|-----|---------|--|-----|----|
| 100 | 0035304 | ELECTRODE, WELDING: SIZE: 2.5 MM; AWS CLASS: 309L; MATERIAL: CRNI; CONTAINER: BOX 4 KG; SUPPL P/N: 075-792; CERTIFICATE TO BE SUPPLIED WITH EVERY CONSIGNMENT, DELIVERY WILL NOT BE ACCEPTED IF HAZARDOUS CHEMICAL DATA SHEET IS NOT SUPPLIED WITH EVERY DELIVERY | 16 | KG |
| 110 | 0035305 | ELECTRODE, WELDING: SIZE: 3.25 MM; AWS CLASS: A5.4; E309L-16; MATERIAL: SS GR 309L LOW CARBON; CONTAINER: BOX 4 KG; MANUF P/N: W075-773; DELIVERY WILL NOT BE ACCEPTED IF HAZARDOUS CHEMICAL DATA SHEET IS NOT SUPPLIED WITH EVERY DELIVERY | 20 | KG |
| 120 | 0035392 | ELECTRODE, WELDING: SIZE: 4 MM; AWS CLASS: A5-1; E7024; MATERIAL: MS; CONTAINER: BOX 6 KG; SUPPL P/N: 075-204; TRANSARC IP7024, DELIVERY WILL NOT BE ACCEPTED IF HAZARDOUS CHEMICAL DATA SHEET IS NOT SUPPLIED WITH EVERY DELIVERY | 60 | KG |
| 130 | 0035421 | ELECTRODE, WELDING: SIZE: DIA 2.4 X LG 150 MM; AWS CLASS: EN26848; MATERIAL: TUNGSTEN 2 PCT THIORATED; CONTAINER: PACK 10; SUPPL P/N: W031-0 12; TIP 2POC, FOR TIG WELDING, DELIVERY WILL NOT BE ACCEPTED IF HAZARDOUS CHEMICAL DATA SHEET IS NOT SUPPLIED WITH EVERY DELIVERY | 198 | EA |
| 140 | 0035034 | NOZZLE, TORCH: TYPE: CUTTING; SIZE: 1.2 MM; MATERIAL: CU; SUPPL P/N: W005-015; 005-031; 13 MM ACETYLENE, ANM-6, SHORT PATT | 76 | EA |
| 150 | 0035035 | NOZZLE, TORCH: TYPE: CUTTING; SIZE: 1.6 MM; SUPPL P/N: W005-016; 005-032; 75 MM ACETYLENE, ANM-6, SHORT PATT | 45 | EA |
| 160 | 0035036 | NOZZLE, TORCH: TYPE: CUTTING; SIZE: 2 MM; MATERIAL: BRASS; SUPPL P/N: 005-033; W005-017; 100 MM ACETYLENE, ANM-6, SHORT PATT | 77 | EA |
| 170 | 0035033 | NOZZLE, TORCH: TYPE: CUTTING; SIZE: 0.8 MM; SUPPL P/N: 005-030; W005-014; 6 MM ACETYLENE, ANM-6, SHORT PATT | 156 | EA |
| 180 | 0079446 | HAMMER: TYPE: CHIPPING; HEAD MATERIAL: STL; HANDLE: STL; SUPPL P/N: 053-020; WELDERS, SHOCKPROOF SPRING HANDLE | 30 | EA |
| 190 | 0035116 | ELECTRODE, WELDING: SIZE: 2.5 MM; AWS CLASS: E6013; MATERIAL: MS; CONTAINER: BOX 5 KG; MANUF P/N: W075-002; TEST CERTIFICATE TO BE SUPPLIED WITH EVERY CONSIGNMENT, DELIVERY WILL NOT BE ACCEPTED IF HAZARDOUS CHEMICAL DATA SHEET IS NOT SUPPLIED WITH EVERY DELIVERY | 833 | KG |

Supply and Delivery of Welding equipment on an as and when required basis for a period of thirty-six (36) months for Duvha Power Station

PART 3: SCOPE OF WORK

Take note that the speed limit within Duvha Power Station is 40Km/h and all vehicles should be parked in reverse at designated parking areas. The following lifesaving rules also form part of mandatory requirements to anyone entering all Eskom sites.

LIFE-SAVING RULES

Eskom Life-Saving Rules are safety rules which shall not be broken under any circumstances. It must be highlighted that Eskom takes a ZERO TOLERANCE stance to violation of these rules. Life-saving Rules apply to all Eskom employees, agents, consultants, contractors and to any person entering Eskom sites.

Rule 1: Open, Isolate, test, earth, bond, and/or insulate before touch

Rule 2: Hook up at height

Rule 3: Buckle up

Rule 4: Be sober

Rule 5: Ensure you have a permit to work

Rule 6: Report all injuries

Rule 7: Wear correct PPE at all times

Safety is a priority for Eskom. You are expected to develop a clear understanding of the rules and to apply them at all times. You are required to actively subscribe to these rules. Adherence to safety rules is a condition of employment.

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

REFER TO: price schedule.