



NEC3 Engineering & Construction Contract

Between ESKOM HOLDINGS SOC Ltd

(Reg No. 2002/015527/30)

and [Insert at award stage]

(Reg No. _____)

Contents:

Part C1 Agreements & Contract Data

[3]

Part C2 Pricing Data

[41]

Part C3 Scope of Work

[46]

Part C4 Site Information

[71]

CONTRACT No. []

Part C1: Agreements & Contract Data

Contents:	No of pages
C1.1 Form of Offer and Acceptance	[4]
[to be inserted from Returnable Documents at award stage]	
C1.2a Contract Data provided by the <i>Employer</i>	[33]
C1.2b Contract Data provided by the <i>Contractor</i>	[10]
[to be inserted from Returnable Documents at award stage]	
C1.3 Proforma Guarantees	[36]

C1.1 Form of Offer & Acceptance

Offer

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

Manufacture, supply, and deliver the abrasiveness index instruments spares and components as and when required.

The tenderer, identified in the Offer signature block, has examined the documents listed in the Tender Data and addenda thereto and by submitting this Offer has accepted the Conditions of Tender.

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the *Contractor* 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.

Options A	The offered total of the Prices exclusive of VAT is	R
	Sub total	R
	Value Added Tax @ 15% is	R
	The offered total of the amount due inclusive of VAT is ¹	R
	(in words) [●]	

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

This Offer may be accepted by the Employer 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 *Contractor* 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

Tenderer's CIDB registration number (if
applicable)

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Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor 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 Employer 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: Works Information

Part C4 Site Information

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 Employer 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 Employer'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 signed between them of this document, including the Schedule of Deviations (if any).

Unless the tenderer (now *Contractor*) within five working days of the date of such receipt notifies the Employer in writing of any reason why he cannot accept the contents of this agreement, this agreement shall constitute a binding contract between the Parties.

Signature(s)

Name(s)

Capacity

**for the
Employer**

(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.

Schedule of Deviations to be completed by the *Employer* 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 Employer 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 Employer 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 Employer during this process of Offer and Acceptance.

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

For the tenderer:

For the Employer

Signature

Name

Capacity

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

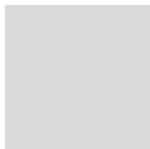

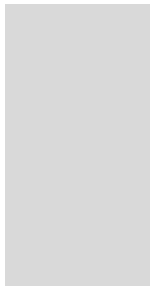
(Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sandton, Johannesburg 2199)

Name &
signature
of
witness

Date

C1.2 ECC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
		A: Priced contract with activity schedule
	dispute resolution Option	W1: Dispute resolution procedure
	and secondary Options	
		X1: Price adjustment for inflation
		X2 Changes in the law
		X7: Delay damages
		X13: Performance Bond
		X17: Low performance damages
		X18: Limitation of liability
		Z: Additional conditions of contract
	of the NEC3 Engineering and Construction Contract, April 2013 (ECC3)	

10.1	The <i>Employer</i> is (Name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
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Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
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10.1	The <i>Project Manager</i> is: (Name)
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Address

Tel

Fax

e-mail

10.1	The <i>Supervisor</i> is: (Name)
------	----------------------------------

Address

Tel No.

Fax No.

e-mail

11.2(13)	The <i>works</i> are	Manufacture, supply, and deliver the abrasiveness index instruments spares and components as and when required.
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11.2(14)	The following matters will be included in the Risk Register	Reliance on the single supplier SHE incidents Travelling
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11.2(15)	The <i>boundaries of the site</i> are	Eskom coal fired power stations, supplying coal mines and commercial/contracted coal laboratories.	
11.2(16)	The Site Information is in	Part 4: Site Information	
11.2(19)	The Works Information is in	Part 3: Scope of Work and all documents and drawings to which it makes reference.	
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	Five (5) working days for normal service and two (2) days for urgent service.	
2	The <i>Contractor's</i> main responsibilities	Data required by this section of the core clauses is provided by the <i>Contractor</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.	
3	Time		
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	14 days after receiving a task order for manufacturing of spares and 2 days for service/maintenance.	
11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	key date
		1	
		2	
		3	

30.1	The <i>access dates</i> are:	Part of the Site	Date
		1	
		2	
		3	
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	Five (5) working days of the Contract Date.	
31.2	The <i>starting date</i> is	TBC	
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	Two (2) weeks.	
35.1	The <i>Employer</i> is not willing to take over the <i>works</i> before the Completion Date.	[No data needed if this statement is included]	
4	Testing and Defects		
42.2	The <i>defects date</i> is	Five (5) working days after completion of the whole of the <i>works</i>.	
43.2	The <i>defect correction period</i> is	Five (5) working days	
	except that the <i>defect correction period</i> for		
	and the <i>defect correction period</i> for	Manufactured products is ten (10) working days	
5	Payment		

50.1 The *assessment interval* is **between the 15th day of each successive month.**

51.1 The *currency of this contract* is the **South African Rand.**

51.2 The period within which payments are made is **Thirty (30) days after receipt of an undisputed tax invoice.**

51.4 The *interest rate* is **the publicly quoted prime rate of interest (calculated on a 365-day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and**

(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 *mutatis mutandis* 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.

6 Compensation events

60.1(13) The place where weather is to be recorded is:

The *weather measurements* to be recorded for each calendar month are,

the cumulative rainfall (mm)

the number of days with rainfall more than 10 mm

the number of days with minimum air temperature less than 0 degrees Celsius

the number of days with snow lying at 09:00 hours South African Time

and these measurements:

The *weather measurements* are supplied by

The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at:

and which are available from:

the South African Weather Bureau and included in Annexure A to this Contract Data provided by the *Employer*

60.1(13)	Assumed values for the ten year return <i>weather data</i> for each <i>weather measurement</i> for each calendar month are:	<p>As stated in Annexure A to this Contract Data provided by the <i>Employer</i>.</p> <p>Note: If this arrangement is used, delete the rows above for 60.1(13) and delete this note.</p>
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 and insurance	
80.1	These are additional <i>Employer's</i> risks	<p>1. Any act or omission by the employer or any person employed by or contracted to him except the supplier.</p> <p>2. Any breach of contract by the employer.</p>
9	Termination	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.
10	Data for main Option clause	
A	Priced contract with activity schedule	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.

Data for Option W1

11

W1.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
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Address

Tel No.

Fax No.

e-mail

W1.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the London Institution of Civil Engineers. (See www.ice-sa.org.za) or its successor body.
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W1.4(2)	The <i>tribunal</i> is:	arbitration.
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W1.4(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.
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	<p>The place where arbitration is to be held is</p> <p>The person or organisation who will choose an arbitrator</p> <ul style="list-style-type: none"> - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is 	<p>Gauteng, South Africa</p> <p>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.</p>
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12 Data for secondary Option clauses

X1	Price adjustment for inflation			
X1.1(a)	The <i>base date</i> for indices is	<p>30 August 2024</p> <p>Prices will be fixed for 12 months.</p> <p>Price escalation will be as the proportions used to calculate the price adjustment factor which are linked to the SEIFSA tables.</p>		
X1.1(c)	The proportions used to calculate the Price Adjustment Factor are:	<p>proportion</p> <p>0. [•]</p> <p>0. [•]</p> <p>0. [•]</p> <p>0. [•]</p> <p>0. [•]</p>	<p>linked to index for</p>	<p>Index prepared by</p>

			non-adjustable
		Total	1.00
X2	Changes in the law	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.	
X7	Delay damages (but not if Option X5 is also used)		
X7.1	Delay damages for Completion of the whole of the <i>works</i> are	10% of the task order value	
X13	Performance bond		
X13.1	The amount of the performance bond is	5% of the contract value	
X17	Low performance damages		
X17.1	The amounts for low performance damages are:	Amount	Performance level
		10% of the task order value.	Per delay
X18	Limitation of liability		
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:	R0.0 (zero Rand)	

X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to:	the amount of the deductibles relevant to the event
X18.3	The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to	The greater of <ul style="list-style-type: none"> • the total of the Prices at the Contract Date and • the amounts excluded and unrecoverable from the <i>Employer's</i> assets policy for correcting the Defect (other than the resulting physical damage which is not excluded) plus the applicable deductible as at contract date.
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than excluded matters, is limited to:	the total of the Prices other than for the additional excluded matters. The <i>Contractor's</i> total liability for the additional excluded matters is not limited. The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for <ul style="list-style-type: none"> • Defects due to his design which arise before the Defects Certificate is issued, • Defects due to manufacture and fabrication outside the Site, • loss of or damage to property (other than the <i>works</i>, Plant and Materials), • death of or injury to a person and • infringement of an intellectual property right.

X18.5 The *end of liability date* is (i) **Twelve (12) months after the *defects date* for latent Defects and**

(ii) the date on which the liability in question prescribes in accordance with the Prescription Act No. 68 of 1969 (as amended or in terms of any replacement legislation) for any other matter.

A latent Defect is a Defect which would not have been discovered on reasonable inspection by the *Employer* or the *Supervisor* before the *defects date*, without requiring any inspection not ordinarily carried out by the *Employer* or the *Supervisor* during that period.

If the *Employer* or the *Supervisor* do undertake any inspection over and above the reasonable inspection, this does not place a greater responsibility on the *Employer* or the *Supervisor* to have discovered the Defect.

Z The ***Additional conditions of contract*** are

Z1 to Z15 always apply.

Z1 Cession delegation and assignment

Z1.1 The *Contractor* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Employer*.

- Z1.2 Notwithstanding the above, the *Employer* may on written notice to the *Contractor* 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 *Contractor* 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 *Employer* for the performance of this contract.
- Z2.2 Unless already notified to the *Employer*, the persons or organisations notify the *Project Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Contractor* on their behalf.
- Z2.3 The *Contractor* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Employer* having been given to the *Contractor* in writing.

Z3 Change of Broad Based Black Economic Empowerment (B-BBEE) status

- Z3.1 Where a change in the *Contractor's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Contractor's* B-BBEE status, the *Contractor* notifies the *Employer* within seven days of the change.
- Z3.2 The *Contractor* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Project Manager* within thirty days of the notification or as otherwise instructed by the *Project Manager*.
- Z3.3 Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor's* obligation to Provide the Works.

Z3.4 Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* 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 *Contractor* 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 *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.

Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Project Manager*.

Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* 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 *Contractor* 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.

Z4.5 The *Contractor* 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 *Project Manager*, the *Supervisor*, or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

Z6 Health, safety and the environment: Add to core clause 27.4

Z6.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *works*. Without limitation the *Contractor*:

- accepts that the *Employer* may appoint him as the “Principal Contractor” (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) (“the Construction Regulations”) for the Site;
- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, 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 *works*; and
- undertakes, in and about the execution of the *works*, to comply with the Construction Regulations and 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 *Contractor’s* direction and control, likewise observe and comply with the foregoing.

Z6.2 The *Contractor*, in and about the execution of the *works*, 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 *Contractor’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 *Project Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in

accordance with the *Employer's* procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.

Z7.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* 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 *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z7.3 The *Contractor* (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 *Employer'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, "unless the *Project Manager* should have notified the event to the *Contractor* but did not".

Z9 *Employer's* limitation of liability

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

Z9.2 The *Contractor's* entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the *Employer's* liability under the indemnity is limited.

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

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

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

Z11.1 If the amount due for the *Contractor's* payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Employer* may terminate the *Contractor's* obligation to Provide the Works using the

same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

Z12 Ethics

For the purposes of this Z-clause, the following definitions apply:

Affected Party	means, as the context requires, any party, irrespective of whether it is the <i>Contractor</i> or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,
Coercive Action	means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,
Collusive Action	means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,
Committing Party	means, as the context requires, the <i>Contractor</i> , or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractor or the Subcontractor's employees,
Corrupt Action	means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,
Fraudulent Action	means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,
Obstructive Action	means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and
Prohibited Action	means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

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

Z12.2 The *Employer* may terminate the *Contractor's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* 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 *Employer* can terminate the *Contractor's* obligation to Provide the Services for this reason.

Z12.3 If the *Employer* terminates the *Contractor'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 *Employer* does not have a contractual bond with the Committing Party, the *Contractor* ensures that the Committing Party co-operates fully with an investigation.

Z13 Insurance

Z 13.1 Replace core clause 84 with the following:

Insurance cover 84

- 84.1** When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
- 84.2** The *Contractor* provides the insurances stated in the Insurance Table A.
- 84.3** The insurances provide cover for events which are at the *Contractor's* risk from the *starting date* until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage to the <i>works</i> , Plant and Materials	<p>The replacement cost where not covered by the <i>Employer's</i> insurance</p> <p>The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance</p>
Loss of or damage to Equipment	The replacement cost
Liability for loss of or damage to property (except the <i>works</i> , Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) caused by activity in connection with this contract	<p><u>Loss of or damage to property</u></p> <p><u>Employer's property</u></p> <p>The replacement cost where not covered by the <i>Employer's</i> insurance</p> <p>The <i>Employer's</i> policy deductible as at Contract Date, where covered by the <i>Employer's</i> insurance</p> <p><u>Other property</u></p> <p>The replacement cost</p> <p><u>Bodily injury to or death of a person</u></p> <p>The amount required by applicable law</p>
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in	The amount required by the applicable law

the course of their employment in
connection with this contract

Z 13.2

Replace core clause 87 with the following:

The *Employer* provides the insurances stated in the Insurance Table B.

INSURANCE TABLE B

Insurance against or name of policy	Minimum amount of cover or minimum limit of indemnity
Assets All Risk	Per the insurance policy document
Contract Works insurance	Per the insurance policy document
Environmental Liability	Per the insurance policy document
General and Public Liability	Per the insurance policy document
Transportation (Marine)	Per the insurance policy document
Motor Fleet and Mobile Plant	Per the insurance policy document
Terrorism	Per the insurance policy document
Cyber Liability	Per the insurance policy document
Nuclear Material Damage and Business Interruption	Per the insurance policy document
Nuclear Material Damage Terrorism	Per the insurance policy document

Z14 Nuclear Liability

Z14.1 The *Employer* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.

Z14.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

Z14.3 Subject to clause Z14.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

Z14.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.

Z14.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z15 Asbestos

For the purposes of this Z-clause, the following definitions apply:

AAIA means approved asbestos inspection authority.

ACM means asbestos containing materials.

AL means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.

Ambient Air means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.

Compliance Monitoring	means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
OEL	means occupational exposure limit.
Parallel Measurements	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
Safe Levels	means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
Standard	means the <i>Employer's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
SANAS	means the South African National Accreditation System.
TWA	means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

Z15.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OEESM.

Z15.2 Upon written request by the *Contractor*, the *Employer* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and

Department of Employment and Labour approved AAIA. The *Contractor* may perform Parallel Measurements and related control measures at the *Contractor's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

Z15.3 The *Employer* manages asbestos and ACM according to the Standard.

Z15.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.

Z15.5 The *Contractor's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.

Z15.6 The *Contractor* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations, 2001.

Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

C1.2 Contract Data

Part two - Data provided by the *Contractor*

Notes to a tendering contractor:

1. Please read both the NEC3 Engineering and Construction Contract (April 2013) and the relevant parts of its Guidance Notes (ECC3-GN)² in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on pages 156 to 158 of the ECC3 (April 2013) Guidance Notes.
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>Contractor</i> is (Name): Address Tel No. Fax No.	
11.2(8)	The <i>direct fee percentage</i> is The <i>subcontracted fee percentage</i> is	% %

² Available from Engineering Contract Strategies Tel 011 803 3008, Fax 011 803 3009 or see www.ecs.co.za

11.2(18)	The <i>working areas</i> are the Site and	
24.1	<p>The <i>Contractor's</i> key persons are:</p> <p>1 Name:</p> <p> Job:</p> <p> Responsibilities:</p> <p> Qualifications:</p> <p> Experience:</p> <p>2 Name:</p> <p> Job</p> <p> Responsibilities:</p> <p> Qualifications:</p> <p> Experience:</p>	<p>CV's (and further key persons data including CVs) are appended to Tender Schedule entitled .</p>
11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	
11.2(14)	The following matters will be included in the Risk Register	
11.2(19)	The Works Information for the <i>Contractor's</i> design is in:	

31.1	The programme identified in the Contract Data is	
A	Priced contract with activity schedule	
11.2(20)	The <i>activity schedule</i> is in	
11.2(30)	The tendered total of the Prices is	(in figures)
		(in words), excluding VAT
	Data for Schedules of Cost Components	<i>Note “SCC” means Schedule of Cost Components starting on page 60, and “SSCC” means Shorter Schedule of Cost Components starting on page 63 of ECC3 (April 2013).</i>
A	Priced contract with activity schedule	Data for the Shorter Schedule of Cost Components

C1.3 Forms of Securities

Pro formas for Bonds & Guarantees

For use with the NEC3 Engineering & Construction Contract

The *conditions of contract* stated in the Contract Data Part 1 include the following Secondary Options:

Option X13: Performance Bond

Each of these secondary Options requires a bond or guarantee “in the form set out in the Works Information”. Pro forma documents for these bonds and guarantees are provided here for convenience but are to be treated as part of the Works Information.

The organisation providing the bond / guarantee does so by copying the pro forma document onto his letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Employer* within the time stated in the contract.

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

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

Eskom Holdings SOC Ltd

Megawatt Park

Maxwell Drive

Sandton

Johannesburg

Date:

Dear Sirs

Reference No. [●] *[Drafting Note: Bank reference number to be inserted]*

Performance Bond – Demand Guarantee: *[Drafting Note: Name of Contractor to be inserted]*

Project [] Contract Reference: *[Drafting Note: Contractor contract reference number to be inserted]*

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

1.1 “Bank” - means [●], [●] Branch, (Registration No. [●]); *[Drafting Note: Name of Bank to be inserted]*

1.2 “Bank’s Address” - means [●]; *[Drafting Note: Bank’s physical address to be inserted]*

1.3 “Contract” – means the written agreement relating to the Project, entered into between Eskom and the Contractor, on or about the [●] day of [●] 200[●] (Contract Reference No. [.] as amended, varied, restated, novated or substituted from time to time; *[Drafting*

Note: Signature Date and Contract reference number to be inserted]

- 1.4 “Contractor” – means [●] a company registered in accordance with the laws of [●] under Registration Number [●]. [Drafting Note: Name and details of Contractor to be inserted]
- 1.5 “Eskom” - means Eskom Holdings SOC Ltd, a company registered in accordance with the laws of the Republic of South Africa under Registration Number 2002/015527/30].
- 1.6 “Expiry Date” - means the date on which the Defects Certificate is issued in terms of the Contract.
- 1.7 “Guaranteed Sum” - means the sum of R [●] ([●] Rand);
- 1.8 “Project” - means [insert if applicable.].
2. At the instance of the Contractor, we the undersigned _____ and _____, in our respective capacities as _____ and _____ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of Eskom, as security for the proper performance by the Contractor of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to Eskom, on written demand from Eskom received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.
3. A demand for payment under this guarantee shall be made in writing at the Bank’s address and shall:
- 3.1 be signed on behalf of Eskom by a Group Executive, Divisional Executive, Senior General Manager, General Manager or its delegate;
- 3.2 state the amount claimed (“the Demand Amount”);
- 3.3 state that the Demand Amount is payable to Eskom in the circumstances contemplated in the Contract.
4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank’s obligation/s to make payment:
- 4.1 is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
- 4.2 is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
5. The Bank’s obligations in terms of this Guarantee:
- 5.1 shall be restricted to the payment of money only and shall be limited to the maximum

- of the Guaranteed Sum; and
- 5.2 shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between Eskom and the Contractor.
6. Eskom shall be entitled to arrange its affairs with the Contractor in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the Contractor or any variation under or to the Contract.
7. Should Eskom cede its rights against the Contractor to a third party where such cession is permitted under the Contract, then Eskom shall be entitled to cede to such third party the rights of Eskom under this Guarantee on written notification to the Bank of such cession.
8. This Guarantee:
- 8.1 shall expire on the Expiry Date until which time it is irrevocable;
- 8.2 is, save as provided for in 7 above, personal to Eskom and is neither negotiable nor transferable;
- 8.3 shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
- 8.4 shall be regarded as a liquid document for the purpose of obtaining a court order; and
- 8.5 shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.
- 8.6 Any claim which arises or demand for payment received after expiry date will be invalid and unenforceable.
9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at _____ Date _____

For and behalf of the Bank

Bank Signatory: _____ Bank Signatory: _____

Witness: _____ Witness: _____

Bank's seal or stamp

PART 2: PRICING DATA

ECC3 Option A

Document reference	Title	No of pages
C2.1	Pricing assumptions: Option A	
C2.2	The <i>activity schedule</i>	

C2.1 Pricing assumptions: Option A

1. How work is priced and assessed for payment

Clause 11 in NEC3 Engineering and Construction Contract, (ECC3) Option A states:

Identified and 11

defined terms

11.2 (20) The Activity Schedule is the *activity schedule* unless later changed in accordance with this contract.

(27) The Price for Work Done to Date is the total of the Prices for

- each group of completed activities and
- each completed activity which is not in a group.

A completed activity is one which is without Defects which would either delay or be covered by immediately following work.

This confirms that Option A is a lump sum form of contract where the work is broken down into activities, each of which is priced by the tendering contractor as a lump sum. Only completed activities are assessed for payment at each assessment date; no part payment is made if the activity is not completed by the assessment date.

2. Function of the Activity Schedule

Clause 54.1 in Option A states: “Information in the Activity Schedule is not Works Information or Site Information”. This confirms that specifications and descriptions of the work or any constraints on how it is to be done are not included in the Activity Schedule but in the Works Information. This is further confirmed by Clause 20.1 which states, “The *Contractor* Provides the Works in accordance with the Works Information”. Hence the *Contractor* does **not** Provide the Works in accordance with the Activity Schedule. The Activity Schedule is only a pricing document.

3. Link to the programme

Clause 31.4 states that “The *Contractor* provides information which shows how each activity on the Activity Schedule relates to the operations on each programme which he submits for acceptance”. Ideally the tendering contractor will develop a high level programme first then resource each activity and thus arrive at the lump sum price for that activity both of which can be entered into the *activity schedule*.

4. Preparing the *activity schedule*

Generally it is the tendering contractor who prepares the *activity schedule* by breaking down the work described within the Works Information into suitable activities which can be well defined, shown on a programme and priced as a lump sum.

The *Employer*, in his Instructions to Tenderers or in a Tender Schedule, may have listed some items that he requires the *Contractor* to include in his *activity schedule* and be priced accordingly.

It is assumed that in preparing his *activity schedule* the *Contractor*:

- as taken account of the guidance given in the ECC3 Guidance Notes pages 19 and 20;
- Understands the function of the Activity Schedule and how work is priced and paid for;
- Is aware of the need to link the Activity Schedule to activities shown on his programme;
- Has listed and priced activities in the *activity schedule* which are inclusive of everything necessary and incidental to Providing the Works in accordance with the Works Information, as it was at the time of tender, as well as correct any Defects not caused by an *Employer's* risk;
- Has priced work he decides not to show as a separate activity within the Prices of other listed activities in order to fulfil the obligation to complete the *works* for the tendered total of the Prices.
- Understands there is no adjustment to the lump sum Activity Schedule price if the amount, or quantity, of work within that activity later turns out to be different to that which the *Contractor* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event.

C2.2 the *activity schedule*

Table 1: Estimated quantities for the required spares and components.

Item no.	Reference or Drawing number	Manufacturing or supply of the following	Estimated Quantities	Unit Price	Total Price
1	HE 1326-2	Subframe including shute	16		
2	HE 1326-2	Base plate	30		
3	HE 1326-3	Subplate grinded	15		
4	HE 1326-4	Rotor	60		
5	HE 1326-5	Abrasive pot only	15		
6	HE 1326-6	Lid	50		
7	HE 1326-7	Pot inserts (include removing the old ones, and grinding after new inserts have been pressed into the pot)	450		
8	HE 1326-98:10	Nut and stud (wing nut)	15		
9	HE 1326-9	Coupling complete with nylon brush keyway 60mm	200		
10	Not applicable	Oil seal double lip (Part number 62-42-7/8)	200		
11	HE 1326-11	Blade holder	400		
12	HE 1326-12	Legs complete with foot pieces	30		

13	HE 1326-13	Shaft	25		
14	HE 1326-14	Shaft nut	25		
15	HE 1326-15	Bearing housing	20		
16	HE 1326-16	Motor spacer	20		
17	HE 1326	Safety bracket	25		
18	HE 1326-18	Sensor bracket	50		
19	Not applicable	Bearing shaft NSK (NSK part number 3207B-2RSTN)	300		
20	Not applicable	Electric motor 4kw 4p 380v b5(Power = 4kw, Voltage = 380V, Frequency= 50Hz, Speed = between1430 and 1500 RPM)	45		
21	Not applicable	Subplate allen cap (M12x24mm)	500		
22	Not applicable	Bearing housing allen cap (M10x40mm)	1000		
23	Not applicable	Blade holder allen cap (M8x15mm)	1000		
24	Not applicable	Rotor shaft allen cap (M16x50mm)	1000		
25	Not applicable	Blade allen cap (M5x12mm)	1000		
26	Not applicable	Sensor bracket allen cap (M5x12mm)	1000		

27	Not applicable	Safety bracket allen cap (M10x30mm)	500		
28	Not applicable	Limit switch allen cap (M5x40mm)	500		
29	Not applicable	Motor spacer hex bolt (M12x110mm)	500		
30	Not applicable	Shim stock (carbon steel, stainless steel, brass or bronze)	1000		
31	HE 1326 Test Blade	Blades	65000		
32	Not applicable	Delivery cost per hour	500		
33	Not applicable	Delivery cost per kilometer	15000		

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	<i>Employer's Works Information</i>	
C3.2	<i>Contractor's Works Information</i>	
	Total number of pages	

C3.1: EMPLOYER'S WORKS INFORMATION

Contents

Part 3: Scope of Work 46

C3.1: Employer's works Information 47

1	Description of the <i>works</i>	50
1.1	Executive overview	50
1.2	<i>Employer's</i> objectives and purpose of the <i>works</i>	54
1.3	Interpretation and terminology	54
2	Management and start up.	55
2.1	Management meetings.....	55
2.2	Documentation control	56
2.3	Health and safety risk management	56
2.4	Environmental constraints and management.....	57
2.5	Quality assurance requirements	57
2.6	Programming constraints	57
2.7	<i>Contractor's</i> management, supervision and key people	57
2.8	Invoicing and payment	57
2.9	Insurance provided by the <i>Employer</i>	58
2.10	Contract change management.....	58
2.11	Provision of bonds and guarantees	58
2.12	Records of Defined Cost, payments & assessments of compensation events to be kept by the <i>Contractor</i>	59
2.13	Training workshops and technology transfer	59
3	Engineering and the <i>Contractor's</i> design	59
3.1	<i>Employer's</i> design	59
3.2	Parts of the <i>works</i> which the <i>Contractor</i> is to design	59
3.3	Procedure for submission and acceptance of <i>Contractor's</i> design.....	59
3.4	Other requirements of the <i>Contractor's</i> design	59
3.5	Use of <i>Contractor's</i> design	59
3.6	Design of Equipment.....	60
3.7	Equipment required to be included in the <i>works</i>	60
3.8	As-built drawings, operating manuals and maintenance schedules	60
4	Procurement	60
4.1	People	60
4.1.1	Minimum requirements of people employed on the Site	60
4.1.2	BBBEE and preferencing scheme	61
4.2	Subcontracting	61
4.2.1	Preferred subcontractors	61

4.2.2	Subcontract documentation, and assessment of subcontract tenders	61
4.2.3	Limitations on subcontracting	61
4.2.4	Attendance on subcontractors	61
4.3	Plant and Materials	61
4.3.1	Quality	61
4.3.2	Plant & Materials provided “free issue” by the <i>Employer</i>	62
4.3.3	<i>Contractor’s</i> procurement of Plant and Materials	62
4.3.4	Spares and consumables	62
4.4	Tests and inspections before delivery	62
4.5	Marking Plant and Materials outside the Working Areas	62
4.6	<i>Contractor’s</i> Equipment (including temporary works).	63
4.7	Cataloguing requirements by the <i>Contractor</i>	63
5	Construction	63
5.1	Temporary works, Site services & construction constraints	63
5.1.1	<i>Employer’s</i> Site entry and security control, permits, and Site regulations	63
5.1.2	Restrictions to access on Site, roads, walkways and barricades	63
5.1.3	People restrictions on Site; hours of work, conduct and records	63
5.1.4	Health and safety facilities on Site	63
5.1.5	Environmental controls, fauna & flora, dealing with objects of historical interest	64
5.1.6	Title to materials from demolition and excavation	64
5.1.7	Cooperating with and obtaining acceptance of Others	64
5.1.8	Publicity and progress photographs	64
5.1.9	<i>Contractor’s</i> Equipment	64
5.1.10	Equipment provided by the <i>Employer</i>	64
5.1.11	Site services and facilities	64
5.1.12	Facilities provided by the <i>Contractor</i>	65
5.1.13	Existing premises, inspection of adjoining properties and checking work of Others	65
5.1.14	Survey control and setting out of the <i>works</i>	65
5.1.15	Excavations and associated water control	65
5.1.16	Underground services, other existing services, cable and pipe trenches and covers	65
5.1.17	Control of noise, dust, water and waste	65
5.1.18	Sequences of construction or installation	66
5.1.19	Giving notice of work to be covered up	66
5.1.20	Hook ups to existing works	66
5.2	Completion, testing, commissioning and correction of Defects	66
5.2.1	Work to be done by the Completion Date	66
5.2.2	Use of the <i>works</i> before Completion has been certified	67
5.2.3	Materials facilities and samples for tests and inspections	67
5.2.4	Commissioning	67

5.2.5	Start-up procedures required to put the <i>works</i> into operation	67
5.2.6	Take over procedures	67
5.2.7	Access given by the <i>Employer</i> for correction of Defects	67
5.2.8	Performance tests after Completion	67
5.2.9	Training and technology transfer	67
5.2.10	Operational maintenance after Completion	68
6	Plant and Materials standards and workmanship	68
6.1	Investigation, survey and Site clearance	68
6.2	Building works	68
6.3	Civil engineering and structural works	68
6.4	Electrical & mechanical engineering works.....	68
6.5	Process control and IT works.....	68
7	List of drawings	68
7.1	Drawings issued by the <i>Employer</i>	68
C3.2	<i>Contractor's</i> Works Information	70

1 Description of the works

1.1 Executive overview

- a) Manufacture and supply the abrasiveness index instrument mechanical parts using the material approved by Eskom. (Drawings and Information to be shared in the clarification meeting)
- b) Assemble the manufactured parts to make a complete abrasiveness index instrument using the suitable electrical motors, as and when required.
- c) Delivery of the assembled abrasiveness index instrument to the site stated in the task order. Ensure safe handling and transportation of the assemblies AI instrument.
- d) Delivery of spares and components will be made to Eskom RT&D, where they will be inspected and delivered to site by the Eskom AI specialists.
- e) The complete assembled AI instrument should be painted as per the drawing specifications.
- f) Supply a certificate indicating the quality of the raw material used to manufacture the spares and components.
- g) Supply a certificate/verification report indicating the comparisons of the specified against the manufactured dimensions of the spares and components. (Difference should be within tolerances indicated in the drawings)
- h) Supply the SANAS accreditation certificate for the equipment to be used for verification of the spares and components.
- i) In the case of the new pot inserts and the old pot, the supply shall remove the old inserts and replace them with the new ones and then paint the pot green.
- j) The manufactured blades must be tested for Vickers Hardness from SANAS accredited facility and issued with a test certificate.

The supplier shall manufacture or supply the abrasiveness index instrument components or spares listed in **Table 1** according to the Eskom drawings.

Please take note of the following:

- i. The supplier undertakes to solely supply Eskom Research, Testing, and Development (RT&D) with the abrasiveness index instruments and its components and not to the third party.
- ii. The supplier must not do any modifications to the drawings unless otherwise requested by Eskom RT&D in writing.
- iii. Eskom RT&D shall be the sole supplier of the abrasiveness index instruments and their components to the third party.
- iv. The supplier must have a thorough knowledge of measurements.

Table 1: Estimated quantities for the required spares and components.

Drawing number	Item	Estimated Quantities	Unit Price	Total Price
HE 1326-2	Subframe including shute	16		
HE 1326-2	Base plate	30		
HE 1326-3	Subplate grinded	15		
HE 1326-4	Rotor	60		
HE 1326-5	Abrasive pot only	15		
HE 1326-6	Lid	50		
HE 1326-7	Pot inserts (include removing the old ones, and grinding after new inserts have been pressed into the pot)	450		
HE 1326-98:10	Nut and stud (wing nut)	15		
HE 1326-9	Coupling complete with nylon brush keyway 60mm	200		
Not applicable	Oil seal double lip (Part number 62-42-7/8)	200		
HE 1326-11	Blade holder	400		
HE 1326-12	Legs complete with foot pieces	30		
HE 1326-13	Shaft	25		
HE 1326-14	Shaft nut	25		
HE 1326-15	Bearing housing	20		
HE 1326-16	Motor spacer	20		
HE 1326	Safety bracket	25		
HE 1326-18	Sensor bracket	50		
Not applicable	Bearing shaft NSK (NSK part number 3207B-2RSTN)	300		

Not applicable	Electric motor 4kw 4p 380v b5(Power = 4kw, Voltage = 380V, Frequency= 50Hz, Speed = between1430 and 1500 RPM)	45		
Not applicable	Subplate allen cap (M12x24mm)	500		
Not applicable	Bearing housing allen cap (M10x40mm)	1000		
Not applicable	Blade holder allen cap (M8x15mm)	1000		
Not applicable	Rotor shaft allen cap (M16x50mm)	1000		
Not applicable	Blade allen cap (M5x12mm)	1000		
Not applicable	Sensor bracket allen cap (M5x12mm)	1000		
Not applicable	Safety bracket allen cap (M10x30mm)	500		
Not applicable	Limit switch allen cap (M5x40mm)	500		
Not applicable	Motor spacer hex bolt (M12x110mm)	500		
Not applicable	Shim stock (carbon steel, stainless steel, brass or bronze with a thickness of 0.075 mm)	1000		
HE 1326 Test Blade	Blades	65000		
Not applicable	Delivery cost per hour	500		
Not applicable	Delivery cost per kilometer	15000		

1.2 *Employer's objectives and purpose of the works*

Manufacturing, supply, delivery, installation, maintenance, service, and calibration of abrasiveness index (AI) instruments and their components on as and when required basis.

1.3 Interpretation and terminology

The following abbreviations are used in this Works Information:

Abbreviation	Meaning given to the abbreviation
AFC	Approved for construction
OBL	Outside battery limits
NEMA	National Electrical Manufacturers Association
AI	Abrasiveness index
SANAS	South African National Accreditation System
SHEQ	Safety, Health, Environment and Quality
mm	Millimetre
V	Volt
A	Ampere
RT&D	Research, Testing and Development

2 Management and start up.

2.1 Management meetings

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

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	The meeting will be called every Friday for the first three weeks, after that it will be as and when required.	Eskom RT&D or virtually.	<i>Employer, Contractor, Supervisor, and contract manager</i>
Overall contract progress and feedback	Quarterly or as and when required.	Eskom RT&D	<i>Employer, Contractor, Supervisor, and contract manager</i>

Meetings of a specialist nature may be convened as specified elsewhere in this Works Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the *works*. Records of these meetings shall be submitted to the *Project 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.

2.2 Documentation control

Specify how documentation will be identified with an alpha numeric which indicates source, recipient, communication number etc. Provide details of any particular format or other constraints; for example that all contractual communications will be in the form of properly compiled letters or forms attached to e mails and not as a message in the e mail itself. State any particular routing requirements but note from ECC who issues what to whom.

2.3 Health and safety risk management

In addition to the requirements of the laws governing health and safety, Eskom may have some additional requirements particular to the *works* and the Working Areas for this contract. The text below provides for these being attached as an Annexure to this Works Information. PLEASE ALSO READ CORE CLAUSE 27.4 TOGETHER WITH Z7 IN THE ADDITIONAL CONDITIONS OF CONTRACT TO MAKE SURE THAT WHATSOEVER IS INCLUDED IN THE ANNEXURE FOLLOWS ON FROM THOSE CLAUSES.

The Divisional/Regional Safety Risk Manager or his representative having jurisdiction over the *works* must provide the relevant safety, health and environmental (SHE) criteria for incorporation into this Works Information. The SHE specification / scope must be signed off by the Divisional/Regional Safety Risk Manager or his representative confirming that the applicable safety criteria have been taken into account.

The Commodity Manager / Buyer must refer the tender to the Divisional/Regional Safety Risk Manager or his representative in order to evaluate against enquiry-specific safety criteria.

The Divisional Safety Risk Managers who will be responsible for the allocation of resources to assist P&SCM with the above processes are as follows:

- Generation: Roley McIntyre
- Transmission: Tony Patterson
- Distribution: Alex Stramrood
- Enterprises: Jace Naidoo
- Corporate: Kerseri Pather

The *Contractor* shall comply with the health and safety requirements contained in Annexure _____ to this Works Information.

2.4 Environmental constraints and management

Describe or cross refer to environmental constraints applicable to the *Contractor's* design and his activities on Site and how they should be managed. Include here or cross refer to an Annexure to the Works Information.

The *Contractor* shall comply with the environmental criteria and constraints stated in Annexure _____

2.5 Quality assurance requirements

Specify minimum requirements for the *Contractor's* Quality Plan and Work Procedures or provide the *Employer's* Quality Plan if that is to be used. Make sure witness and hold points are identified generally and describe any particular requirements for QA outside the *working areas*. Indicate how the *Contractor's* QA documentation is to be submitted for acceptance and any conditions that need to be imposed relating to acceptance. State whether ISO compliance is a condition and if so which ISO standard shall apply.

2.6 Programming constraints

Describe the programming system (application) to be used if it is necessary to dictate this for project coordination purposes. Read clause 31.2 first then state the work of the *Employer* and Others to be shown on the programme per 4th bullet of clause 31.2 and what additional information (if any) is to go in the programme per the last bullet of clause 31.2. Describe any particular constraints on the order and timing of the work which the *Contractor* must take into account in his programme.

2.7 *Contractor's* management, supervision and key people

State any additional constraining requirements on *Contractor's* supervision and key people that are not already stated in other sections such as for Health and Safety. This section could be used to solicit an organogramme from the *Contractor* showing his people and their lines of authority / communication. This would be essential if the *Contractor* is a Joint Venture.

2.8 Invoicing and payment

The Z clauses make reference to invoicing procedures stated here in this Service Information. Also include a list of information which is to be shown on an invoice.

Within one week of receiving a payment certificate from the *Project Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice showing the amount due for payment equal to that stated in the *Project Manager's* payment certificate.

The *Contractor* shall address the tax invoice to Eskom Holdings SOC Ltd and include on each invoice the following information:

- Name and address of the *Contractor* and the *Project Manager*;
- The contract number and title;
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number 4740101508;
- Description of service provided for each item invoiced based on the Price List;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- (add other as required)

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

2.9 Insurance provided by the *Employer*

First read ECC3 Core Clause 87.1 and then add anything necessary for the management of insurance related issues such as a cross reference to where procedures for making claims can be found. Also provide contact details for persons capable of being able to answer any insurance related queries the *Contractor* may have, as well as to whom the information required by Marine Insurance may be addressed.

2.10 Contract change management

This section is intended to deal with any additional requirements to the compensation event clauses in section 6 of the core clauses; such as the use of standard forms. Not the same thing as documentation control.

2.11 Provision of bonds and guarantees

The form in which a bond or guarantee required by the *conditions of contract* (if any) is to be provided by the *Contractor* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

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

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

2.13 Training workshops and technology transfer

Describe type and frequency of on job training workshops, as well as any obligation for technology transfer being included as part of the contract on Completion of the *works*.

3 Engineering and the *Contractor's* design

3.1 *Employer's* design

The employer will provide drawings to the contractor, however the contractor will have to sign a non-disclosure agreement with the employer.

3.2 Parts of the *works* which the *Contractor* is to design

This is a mandatory requirement of core clause 21.1 and must be addressed in detail. Even when the contract is a traditional 'construction only' contract, the *Contractor* is probably still required to carry out workshop details from overall drawings provided by the *Employer* and to design temporary works.

3.3 Procedure for submission and acceptance of *Contractor's* design

This is a mandatory requirement of core clause 21.2 and must be addressed. Identify the extent of detail (the particulars) of the *Contractor's* design which is to be submitted to the *Project Manager* for his acceptance. This procedure may also include a design stage activity matrix or requirements for co-operation with Others on a multi party project. State requirements for drawings to be prepared by the *Contractor*.

3.4 Other requirements of the *Contractor's* design

Use this section to describe any particulars which must be taken into account by the *Contractor* in his design; for example codification (configuration management) of Plant and Materials.

3.5 Use of *Contractor's* design

Not applicable

3.6 Design of Equipment

On some complex projects requiring sophisticated temporary works, it could be in the Parties best interests that some details of the *Contractor's* design or proposed design of Equipment are shared with the *Project Manager*, not necessarily for his acceptance but as an assurance that the Equipment will be able to allow the *Contractor* to Provide the Works efficiently and without delay. For example a tunnel boring machine, or specialised shuttering for a bridge or caisson. Draft in such a way that there is no doubt that the liability for such design and use of the Equipment remains with the *Contractor*. Clause 23.1 is always available to the *Project Manager* if this section is not used.

3.7 Equipment required to be included in the works

The defined term 'Equipment' in core clause 11.2(7) makes a cross reference to the Works Information concerning any Equipment which the *Contractor* is required to include in the *works*. Complete here or if not applicable either delete the heading or retain the heading and state 'None'.

3.8 As-built drawings, operating manuals and maintenance schedules

Use this section to describe these requirements. Pay particular attention to when and in what form they are required. Consideration should be given to obtaining operating manuals and maintenance schedules before Completion of the whole of the *works* when there is still considerable financial incentive for the *Contractor* to do so.

4 Procurement

There is a cross reference from the definition of Disallowed Cost in Options C D and E to the Works Information regarding procurement procedures. This part of the Works Information MUST include any such procedures to be able to administer this procedure. Options A & B may also require constraints on procurement procedures.

4.1 People

4.1.1 Minimum requirements of people employed on the Site

Specify any constraints relating to people employed to Provide the Works; for example permits for foreigners, training (other than H & S), use of labour from designated areas and industrial relations.

4.1.2 BBBEE and preferencing scheme

Specify constraints which *Contractor* must comply with after contract award in regard to any Broad Based Black Economic Empowerment (B-BBEE) or preferencing scheme measures.

4.2 Subcontracting

4.2.1 Preferred subcontractors

ECC does not make use of nominated subcontracting, but the *Employer* may list which subcontractors or suppliers the *Contractor* is required to enter into subcontracts with. This is usually only required where Plant and Materials need to be obtained from a particular supplier or group of suppliers in order to comply with operational standards.

4.2.2 Subcontract documentation, and assessment of subcontract tenders

Specify any constraints on how the *Contractor* is to prepare subcontract documentation, whether use of the NEC system is compulsory or not (compulsory is recommended) and how subcontract tenders are to be issued, received, assessed (using a joint report?) and awarded.

4.2.3 Limitations on subcontracting

The *Employer* may require that the *Contractor* must subcontract certain specialised work, or that the *Contractor* shall not subcontract more than a specified proportion of the whole of the contract.

4.2.4 Attendance on subcontractors

State requirements for attendance on Subcontractors, if any

4.3 Plant and Materials

4.3.1 Quality

Quality is usually designed in or specified in the technical specifications referred to in section 6 of this Works Information. However to cover circumstances where quality may not be prescribed, this sub-paragraph could be used as an overarching default requirement. It could also be used to deal with how repairs are carried out after a Defect has been notified; for example can the item be fixed up or must it be replaced by a new one. See also SANS 1200A, sub-paragraph 3.1

4.3.2 Plant & Materials provided “free issue” by the *Employer*

State arrangements for collection by *Contractor* or delivery by others on behalf of the *Employer*, off loading, inspection, storage, care custody and control, return of unused Plant and Materials, etc. State whether any samples are to be provided by the *Employer* and if so how, where and when. Always include a statement to the effect that ‘all other Plant and Materials are to be provided by the *Contractor*’.

4.3.3 *Contractor’s* procurement of Plant and Materials

Specify any constraints on how the *Contractor* is to order, codify, expedite, freight, import, transport to Site and any other requirements for delivery and storage before installation. The *Employer* may require warranties from suppliers to be in favour of the *Employer* and not just to the *Contractor* during the life of the contract. Also include requirements for vendor data which the *Employer* may need after Completion of the whole of the *works*. THIS IS A VERY IMPORTANT SECTION IN PROCESS PLANT AND UTILITY PROCUREMENT CONTRACTS.

4.3.4 Spares and consumables

Some contracts may need to include provision for the supply of a minimum category of spares, fuel, oil or other feed stock and consumables which the *Employer* may need at or just after take over and that it is best the *Contractor* provide these initially as part of his Providing the Works.

4.4 Tests and inspections before delivery

Core Clauses 40 and 41 both make reference to the Works Information regarding tests and inspections. Specify any requirements here for any tests and inspections that are to be done by the *Supervisor* or Others before delivery to the Working Areas, particularly if such tests and inspections are to be carried out by agents of the *Employer* overseas.

4.5 Marking Plant and Materials outside the Working Areas

Core clauses 70.1 and 71.1 require the Works Information to state how the *Contractor* is to “mark” Plant and Materials which is outside the Working Areas if they are to be paid for before delivery to the Working Areas. Specify here how the *Contractor* is to mark the Plant and Materials.

4.6 **Contractor's Equipment (including temporary works).**

In contracts which require the *Contractor* to procure sophisticated or highly specialised Equipment that could have a major influence on the progress of the works, the *Employer* may wish to exercise constraints or include witness and hold points during manufacture, assembly or delivery of such Equipment. Include these constraints here taking care not to imply that the *Employer* or the *Project Manager* take on any liability as a result. See also section 3.6 above relating to the design phase of the *Contractor's* Equipment.

4.7 **Cataloguing requirements by the Contractor**

State whether cataloguing is applicable, if it is, reference the requirements for cataloguing that need to be satisfied by the *Contractor* (consult Procurement Instruction Number 1 of 2018 – Incorporating Cataloguing into the Procurement Environment, Unique Identifier 240-1289988974).

5 **Construction**

5.1 **Temporary works, Site services & construction constraints**

5.1.1 **Employer's Site entry and security control, permits, and Site regulations**

Works will be done at contractor's workshop. For delivery of spares, the contractor will have sign at the security and sign declaration.

5.1.2 **Restrictions to access on Site, roads, walkways and barricades**

In addition to the above there may be other restrictions once on the Site, plus rules relating to roads, walkways and the provision of barricades

5.1.3 **People restrictions on Site; hours of work, conduct and records**

Restrictions and hours of work may apply on some Sites. It is very important that the *Contractor* keeps records of his people on Site, including those of his Subcontractors which the *Project Manager* or *Supervisor* have access to at any time. These records may be needed when assessing compensation events.

5.1.4 **Health and safety facilities on Site**

Section 2.3 deals with contractual H & S requirements in addition to those of the OHSA Act. This section allows the *Employer* to state what measures are to be taken on Site against disease and epidemics and in emergencies. Also describe where First Aid facilities provided by the *Employer* are located and any other emergency arrangements. Do not use if already addressed in 2.3. The cross reference from Clause 27.4 applies.

5.1.5 Environmental controls, fauna & flora, dealing with objects of historical interest

This sub-paragraph may not be required if these matters are dealt with in the general environmental requirements referred to in paragraph 2.4 above.

5.1.6 Title to materials from demolition and excavation

Clause 73.2 states that the *Contractor* has title to materials from excavation and demolition (e. g. copper) only as stated in the Works Information. Hence state here any special arrangements regarding such title. If nothing is stated then the default position is the *Contractor* has no such title.

5.1.7 Cooperating with and obtaining acceptance of Others

This sub-paragraph could be used to deal with two issues.

- 1) The cross reference from core clause 25.1 about cooperation generally as well as details about Others with whom the *Contractor* may be required to share the working areas. See clause 11.2(10) for the definition of Others.
- 2) Requirements for liaison with and acceptance from statutory authorities or land owners.

5.1.8 Publicity and progress photographs

State requirements for notice boards, advertising rights, media relations, photography and progress photographs if required.

5.1.9 Contractor's Equipment

This sub-paragraph is intended to address how records are to be kept of Equipment on Site including whether it is owned or hired. Include any constraints about scaffolding, rigs, heavy lifts and cranes, including removal from the Working Areas. Also silencing similar to Clause 4.1 in SANS 1200 A

5.1.10 Equipment provided by the Employer

Provide details of equipment made available for use by the employer and set out conditions relating thereto.

5.1.11 Site services and facilities

This is a mandatory cross reference from clause 25.2 in ECC3. State what the *Employer* will provide in the way of power, water, waste disposal, telecomms, ablutions, fire protection, lighting etc. Give hook up locations and any constraints on how the hook up is to be done. Always conclude by stating that the *Contractor* shall provide everything else necessary for Providing the Works.

5.1.12 Facilities provided by the *Contractor*

Contractor's workshop to be used to execute the works.

5.1.13 Existing premises, inspection of adjoining properties and checking work of Others

Details under this sub-paragraph are very contract specific and may be quite extensive in some cases. State requirements for the inspection with the owners of adjacent buildings and properties and representatives of local authorities before commencing with the *works* that have the potential to damage surrounding buildings and property. State whether *Contractor* is required to inspect the work of Others to which he is required to connect and if so by when to avoid delays to his work.

5.1.14 Survey control and setting out of the *works*

Provide information on survey controls established by the *Employer*, if any, and state requirements for survey control and the setting out of the *works*.

5.1.15 Excavations and associated water control

State any particular requirements for handling deep foundations and controlling water from excavations.

5.1.16 Underground services, other existing services, cable and pipe trenches and covers

Describe known services making reference to drawings containing known services and state requirements for locating, marking and recording such services.

State requirements for the treatment of existing services i.e. their termination, diversion or continued use, either temporarily or permanently, and set out the procedures relating thereto.

State requirements, as necessary, for the use and availability of detection equipment for the location of underground services.

State responsibility for damage to services, known and unknown, and requirements for working in close proximity to services etc.

State requirements and reinstatement procedures for the notification and repair of damage to services and any penalties applicable to the damage of services.

5.1.17 Control of noise, dust, water and waste

State requirements, if any.

5.1.18 Sequences of construction or installation

Only prescribe sequences of work where absolutely necessary such as when *Contractor* has to give access to Others (without take over) and for technical reasons such as under tidal conditions and in rivers.

5.1.19 Giving notice of work to be covered up

State the procedure for notifying the *Supervisor*

5.1.20 Hook ups to existing works

State any constraints

5.2 Completion, testing, commissioning and correction of Defects**5.2.1 Work to be done by the Completion Date**

This is mandatory. Core clause 11.2(2) defines Completion as when the *Contractor* has done all the work which the Works Information states he is to do by the Completion Date. Rather than list all work to be done by the Completion Date, state that all work is to be done by the Completion Date except for [•]. For example:

On or before the Completion Date the *Contractor* shall have done everything required to Provide the Works except for the work listed below which may be done after the Completion Date but in any case before the dates stated. The *Project Manager* cannot certify Completion until all the work except that listed below has been done and is also free of Defects which would have, in his opinion, prevented the *Employer* from using the *works* and Others from doing their work.

	Item of work	To be completed by
	As built drawings of	Within days after Completion
	Performance testing of the <i>works</i> in use as specified in paragraph of this Works Information.	See performance testing requirements.

5.2.2 Use of the *works* before Completion has been certified

Clause 35.2 in ECC3 provides that the *Employer* may use any part of the *works* before Completion has been certified but if he does so he takes over the part of the *works* except if the use is for a reason stated in the Works Information. State the reason here if this applies.

5.2.3 Materials facilities and samples for tests and inspections

State what materials facilities and samples for tests and inspections the *Contractor* and the *Employer* are to provide, per core clause 40.2.

5.2.4 Commissioning

Required mainly for contracts including mechanical and electrical work. Would typically refer to detailed commissioning procedure attached as an Annexure. Confirm whether commissioning is to be done before or after Completion. If after Completion, include this item of work in the list in sub-paragraph 5.2.1 above.

5.2.5 Start-up procedures required to put the *works* into operation

In order to put the *works* into operation the *Employer* may require the *Contractor* to either do this for him or be in attendance whilst he does it, depending on who is the responsible person. State requirements of the *Contractor* here together with any special arrangements associated with operating plant and machinery.

5.2.6 Take over procedures

Take over is after or at the same time as Completion. The *Employer* may require the *Contractor* to provide assistance, security personnel on a temporary basis etc.

5.2.7 Access given by the *Employer* for correction of Defects

The correction of defects will be done at the supplier or contractor's site or workshop.

5.2.8 Performance tests after Completion

The supplier must conduct a verification checks on the manufactured parts or components to make sure that they are within the specification as stated in the drawings.

5.2.9 Training and technology transfer

Not applicable

5.2.10 Operational maintenance after Completion

The *Employer* may require the *Contractor* before the *defects date* to perform certain duties after Completion and take over which relate to maintenance of the *works*. (Not to be confused with Defect correction) For example oil and filter changes

6 Plant and Materials standards and workmanship

The material to be use is the one stated on the drawings.

6.1 Investigation, survey and Site clearance

Not applicable

6.2 Building works

Not applicable

6.3 Civil engineering and structural works

Not applicable

6.4 Electrical & mechanical engineering works

These specifications are usually project specific and developed by the *Employer* to suit his operations. Either include these specifications here, or refer to them in attached Annexure.

Check the specifications for inconsistencies in terminology and that they do not contain any provisions already dealt with in the chosen NEC *conditions of contract* or clash with them in any way.

6.5 Process control and IT works

Not applicable

7 List of drawings

7.1 Drawings issued by the *Employer*

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

Note: Some drawings may contain both Works Information and Site Information.

Drawing number	Revision	Title

C3.2 CONTRACTOR'S WORKS INFORMATION

This section of the Works Information will always be contract specific depending on the nature of the *works*.

It is most likely to be required for design and construct contracts where the tendering contractor will have proposed specifications and schedules for items of Plant and Materials and workmanship, which once accepted by the *Employer* prior to award of contract now become obligations of the *Contractor* per core clause 20.1.

Typical sub headings could be

- a) *Contractor's* design
- b) Plant and Materials specifications and schedules
- c) Other

This section could also be compiled as a separate file.

PART 4: SITE INFORMATION

Document reference	Title	No of pages
	This cover page	1
C4	Site Information	
	Total number of pages	

PART 4: SITE INFORMATION

Core clause 11.2(16) states

“Site Information is information which

- describes the Site and its surroundings and
- is in the documents which the Contract Data states it is in.”

In Contract Data, reference has been made to this Part 4 of the contract for the location of Site Information.

5. General description

The supplier/contractor will perform the works at their own site.

6. Existing buildings, structures, and plant & machinery on the Site

Not applicable

7. Subsoil information

Not applicable

8. Hidden services

Not applicable

9. Other reports and publicly available information

Not applicable
