

C1.2 SC3 Contract Data

Part one - Data provided by the *Purchaser*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for Options	
		X1: Price adjustment for inflation X2: Changes in the law X7: Delay damages Z: Additional conditions of contract
	of the NEC3 Supply Contract (December 2009) ¹	
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
10.1	The <i>Supply Manager</i> is (name):	Khaya Gumede
	Address	Eskom Holdings SOC Ltd Majuba Power Station Private Bag 9001 Volksrust 2470
	Tel	017 799 3447
	e-mail	DlaminKa@eskom.co.za
11.2(13)	The <i>goods</i> are	The supply and delivery of Milling Plant Steel Spares
11.2(14)	The following matters will be included in the Risk Register	A Risk Register is to be maintained throughout the contract period
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	Annexure A to this Contract Data
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 011 803 3009, www.ecs.co.za.

13.1	The <i>language of this contract</i> is	English	
13.3	The <i>period for reply</i> is	Two [2] weeks	
2	The <i>Supplier's</i> main responsibilities		
3	Time		
30.1	The <i>starting date</i> is.	01 December 2021 for a period of 60 months, extending to 30 November 2026	
30.1	The <i>delivery date</i> of the <i>goods and services</i> is:	<i>goods and services</i>	<i>delivery date</i>
		1	All
			As per the price list
30.2	The <i>Supplier</i> does not bring the <i>goods</i> to the Delivery Place more than one week before the Delivery Date.		
4	Testing and defects		
42	The <i>defects date</i> is	1 weeks after Delivery.	
43.2	The <i>defect correction period</i> is	4 weeks	
42.2	The <i>defects access period</i> is	1 days	
5	Payment		
50.1	The <i>assessment interval</i> is	between the 25th day of each successive month.	
51.1	The <i>currency of this contract</i> is the	South African Rand	
51.2	The period within which payments are made is	Four [4] weeks.	
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</p>	

		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	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	1. None
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
	1. Insurance against	Loss of or damage to the <i>goods</i>, plant and materials.
	Cover / indemnity is	Overseas shipment / transit insurance (only) to cover events at the <i>Supplier's</i> risk (if any) after the <i>goods</i> have left the <i>Supplier's</i> overseas premises. See notes in Annexure B
		If this contract includes the supervision of installation, testing, commissioning or building work at the <i>Purchaser's</i> premises, the <i>Purchaser</i> also provides cover for physical loss of or damage to the <i>Purchaser's</i> surrounding property including any temporary work required to complete the Delivery.
	The deductibles are	See notes in data for clause 88.2 below and Annexure B
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:	Eskom will not provide "free issue" plant or materials for this contract
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

		<p>thousand Rand) for exposure to Transmission Division property and;</p> <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" insurance policy available on 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> <ul style="list-style-type: none"> • R15 million (fifteen million Rand) for Generation Division property; • R7.5 million (seven million five hundred thousand Rand) for Transmission Division property and; • R1 million (one million Rand) for Distribution Division and all other <i>Purchaser's</i> property <p>See notes in Annexure B</p>
88.3	The <i>Supplier's</i> liability for Defects due to his design which are not notified before the last <i>defects date</i> is limited to:	See notes in Annexure B
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	Eskom will not provide "free issue" plant or materials for this contract
88.5	The <i>end of liability date</i> is	See notes in Annexure B

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	Johannesburg, South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	the Chairman for the time being or his nominee
	- if the arbitration procedure does not state who selects an arbitrator, is	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 tendered date	
	The proportions used to calculate the Annual Price Adjustment Factor are:	proportion	linked to index for
		0.70	Material SEIFSA: Table G 1 (Mechanical engineering materials)
		0.20	Transport PPI : Table 1 : Diesel Fuel
		0.10	non-adjustable
		1.00	

X2 Changes in the law

X2.1 A change in the law of

X7 Delay damages are in the Scope of work

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.

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 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.

The Supply Requirements for this contract are as follows:

1. The requirements for the supply are	Stated in the Scope of work	
2. The requirements for transport are	Stated in the Scope of work	
3. The delivery place is	Delivery to Eskom Holdings SOC Ltd, Majuba Power Station, Stores	
4. Actions of the Parties during supply	Action	Party which does it
	Giving notice of Delivery	Supplier
	Checking packing and marking before dispatch	Supplier
	Contracting for transport	N/A
	Pay costs of transport	Included
	Arrange access to delivery place	Purchaser
	Loading the <i>goods</i>	Supplier
	Unloading the <i>goods</i>	Supplier/Purchaser
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 <i>goods</i>	
	Delivery Note	
	Test results and maintenance manuals	

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;
- 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

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