



## NEC3 Supply Contract (SC3)

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

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

**for THE SUPPLY, AND DELIVERY OF HV SELF-CONTAINED LOW-PRESSURE NEW (UNUSED) CABLE OIL FOR USE IN SINGLE CORE AND THREE-CORE OIL-FILLED CABLES FOR SYSTEMS WITH NOMINAL VOLTAGES OF 44 KV, 66 KV, 88 KV AND 132 KV FOR ON AN, AS AND WHEN REQUIRED BASIS FOR 3 YEARS.**

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

## **PART C1:        AGREEMENTS & CONTRACT DATA**

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## C1.1 Form of Offer & Acceptance

### Offer

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

**The supply, and delivery of hv self-contained low-pressure new (unused) cable oil for use in single core and three-core oil-filled cables for systems with nominal voltages of 44 KV, 66 KV, 88 KV and 132 KV for on an, as and when required basis for 3 years.**

The tenderer, identified in the Offer signature block, has

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

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

|  |                                                                      |                            |
|--|----------------------------------------------------------------------|----------------------------|
|  | The offered total of the Prices exclusive of VAT is                  | <b>Rate-based Contract</b> |
|  | Value Added Tax @ 15% is                                             | <b>Rate-based Contract</b> |
|  | The offered total of the amount due inclusive of VAT is <sup>1</sup> | <b>Rate-based Contract</b> |

This Offer may be accepted by the Purchaser by signing the Acceptance part of this Form of Offer and Acceptance and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Supplier* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s)

Capacity

**For the  
tenderer:**

(Insert name and address of organisation)

Name &  
signature of  
witness

Date

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

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## Acceptance

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

The terms of the contract, are contained in:

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

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

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

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

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

Signature(s)

Name(s)

Capacity

**for the  
Purchaser**

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

*(Insert name and address of organisation)*

Name &  
signature of  
witness

Date

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

THE SUPPLY, AND DELIVERY OF HV SELF-CONTAINED LOW-PRESSURE NEW (UNUSED) CABLE OIL FOR USE IN SINGLE CORE AND THREE-CORE OIL-FILLED CABLES FOR SYSTEMS WITH NOMINAL VOLTAGES OF 44 KV, 66 KV, 88 KV AND 132 KV FOR ON AN, AS AND WHEN REQUIRED BASIS FOR 3 YEARS.

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

Note:

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

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

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

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

#### For the tenderer:

#### For the Purchaser

Signature

Name

Capacity

On behalf  
of

(Insert name and address of organisation)

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

Name &  
signature  
of witness

Date

## C1.2 SC3 Contract Data

### Part one - Data provided by the *Purchaser*

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

| Clause   | Statement                                                                          | Data                                                                                                                                                                                     |
|----------|------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1        | <b>General</b>                                                                     |                                                                                                                                                                                          |
|          | The <i>conditions of contract</i> are the core clauses and the clauses for Options |                                                                                                                                                                                          |
|          |                                                                                    | <b>X1: Price adjustment for inflation</b>                                                                                                                                                |
|          |                                                                                    | <b>X2: Changes in the law</b>                                                                                                                                                            |
|          |                                                                                    | <b>X3: Multiple currencies</b>                                                                                                                                                           |
|          |                                                                                    | <b>X7: Delay damages</b>                                                                                                                                                                 |
|          |                                                                                    | <b>X13: Performance bond</b>                                                                                                                                                             |
|          |                                                                                    | <b>X17: Low-performance damages</b>                                                                                                                                                      |
|          |                                                                                    | <b>Z: Additional conditions of contract</b>                                                                                                                                              |
|          | of the NEC3 Supply Contract (April 2013) <sup>2</sup>                              | (If the December 2009 edition is to be used delete April 2013 and replace by December 2013)                                                                                              |
| 10.1     | The <i>Purchaser</i> is (name):                                                    | <b>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</b>                                  |
|          | Address                                                                            | <b>Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg</b>                                                                                                          |
| 10.1     | The <i>Supply Manager</i> is (name):                                               | <b>TBA</b>                                                                                                                                                                               |
|          | Address                                                                            | <b>TBA</b>                                                                                                                                                                               |
|          | Tel                                                                                | <b>TBA</b>                                                                                                                                                                               |
|          | Fax                                                                                | <b>TBA</b>                                                                                                                                                                               |
|          | e-mail                                                                             | <b>TBA</b>                                                                                                                                                                               |
| 11.2(13) | The <i>goods</i> are                                                               | <b>HV self-contained low-pressure new (unused) cable oil for use in single core and three-core oil-filled cables for systems with nominal voltages of 44 KV, 66 KV, 88 KV and 132 KV</b> |
| 11.2(14) | The following matters will be included in the Risk Register                        | <b>None</b>                                                                                                                                                                              |

<sup>2</sup> Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902, [www.ecs.co.za](http://www.ecs.co.za).

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|          |                                                                                                                        |                                                                                                                                                                                          |                                  |
|----------|------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|
| 11.2(15) | The Goods Information is in                                                                                            | <b>Part 3: Scope of Work and all documents and drawings to which it makes reference.</b>                                                                                                 |                                  |
| 11.2(15) | The Supply Requirements as part of the Goods Information is in                                                         | <b>Annexure A to this Contract Data</b>                                                                                                                                                  |                                  |
| 12.2     | The <i>law of the contract</i> is the law of                                                                           | <b>the Republic of South Africa</b>                                                                                                                                                      |                                  |
| 13.1     | The <i>language of this contract</i> is                                                                                | <b>English</b>                                                                                                                                                                           |                                  |
| 13.3     | The <i>period for reply</i> is                                                                                         | <b>One (1) week</b>                                                                                                                                                                      |                                  |
| 2        | <b>The Supplier's main responsibilities</b>                                                                            | <b>Data required by this section of the core clauses is provided by the Supplier in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.</b> |                                  |
| 3        | <b>Time</b>                                                                                                            |                                                                                                                                                                                          |                                  |
| 30.1     | The <i>starting date</i> is.                                                                                           | <b>TBA</b>                                                                                                                                                                               |                                  |
| 30.1     | The <i>delivery date</i> of the <i>goods and services</i> is:                                                          | <b>goods and services</b>                                                                                                                                                                | <b>delivery date</b>             |
|          |                                                                                                                        | 1 New (unused) insulating oil for cables                                                                                                                                                 | To be indicated on each purchase |
| 30.2     | The <i>Supplier</i> does not bring the <i>goods</i> to the Delivery Place more than one week before the Delivery Date. |                                                                                                                                                                                          |                                  |
| 31.1     | The <i>Supplier</i> is to submit a first programme for acceptance within                                               | <b>Two (2) weeks of the Contract Date.</b>                                                                                                                                               |                                  |
| 32.2     | The <i>Supplier</i> submits revised programmes at intervals no longer than                                             | <b>Four (4) weeks.</b>                                                                                                                                                                   |                                  |
| 4        | <b>Testing and defects</b>                                                                                             |                                                                                                                                                                                          |                                  |
| 42       | The <i>defects date</i> is                                                                                             | <b>52 weeks after Delivery.</b>                                                                                                                                                          |                                  |
| 43.2     | The <i>defect correction period</i> is                                                                                 | <b>2 weeks</b>                                                                                                                                                                           |                                  |
|          | except that the <i>defect correction period</i> for                                                                    | <b>Not applicable</b>                                                                                                                                                                    |                                  |
|          | and the <i>defect correction period</i> for                                                                            | <b>Not applicable</b>                                                                                                                                                                    |                                  |
| 42.2     | The <i>defects access period</i> is                                                                                    | <b>7 days</b>                                                                                                                                                                            |                                  |
|          | except that the <i>defect access period</i> for                                                                        | <b>Not applicable</b>                                                                                                                                                                    |                                  |
|          | and the <i>defect access period</i> for                                                                                | <b>Not applicable</b>                                                                                                                                                                    |                                  |
| 5        | <b>Payment</b>                                                                                                         |                                                                                                                                                                                          |                                  |
| 50.1     | The <i>assessment interval</i> is                                                                                      | <b>will be as per signed delivery note of each batch delivered</b>                                                                                                                       |                                  |
| 51.1     | The <i>currency of this contract</i> is the                                                                            | <b>South African Rand</b>                                                                                                                                                                |                                  |
| 51.2     | The period within which payments are                                                                                   | <b>For contracts valued below R50 000 000 (Fifty</b>                                                                                                                                     |                                  |

|      |                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                               |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      | made is                                                                                                                                                  | <p>Million Rand) including VAT, Eskom is committed to paying Suppliers within 30 days of submission of a tax compliant invoice with a GR number to Eskom Financial Shared Services.</p> <p>For contracts valued above R50 000 000 (Fifty Million Rand) including VAT, Eskom is committed to paying suppliers within 60 days of submission of a tax compliant invoice with a GR number to Eskom Financial Shared Services.</p> |
| 51.4 | The <i>interest rate</i> 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.                                                                                                                     |
| 6    | <b>Compensation events</b>                                                                                                                               | 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    | <b>Title</b>                                                                                                                                             | 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    | <b>Risks, liabilities, indemnities and insurance</b>                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 80.1 | These are additional <i>Purchaser's</i> risks                                                                                                            | <b>1. None</b>                                                                                                                                                                                                                                                                                                                                                                                                                |
| 88.1 | The <i>Supplier's</i> liability to the <i>Purchaser</i> for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to | <b>R0.0 (zero Rand)</b>                                                                                                                                                                                                                                                                                                                                                                                                       |
| 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><b>(1) for the <i>Purchaser's</i> existing and surrounding property in the care, custody and control of the <i>Supplier</i> the amount of the deductible (first amount payable) relevant to the event and</b></p> <p><b>(2) for all other existing <i>Purchaser's</i> property the applicable deductible as at contract date</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:                  | <b>The total of the Prices</b>                                                                                                                                                                                                                                                                                                                                                                                                |
| 88.4 | The <i>Supplier's</i> total liability to the <i>Purchaser</i> , for all matters arising under or                                                         | <b>The total of the Prices</b>                                                                                                                                                                                                                                                                                                                                                                                                |

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in connection with this contract, other than the excluded matters, is limited to

88.5 The *end of liability date* is **One (1) year after Delivery of the whole of the goods and services.**

## 9 Termination and dispute resolution

94.1 The *Adjudicator* 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](http://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).

94.2(3) The *Adjudicator nominating body* 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](http://www.ice-sa.org.za))

94.4(2) The *tribunal* is: Arbitration

94.4(5) The *arbitration procedure* 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 Midrand South Africa

The person or organisation who will choose an arbitrator

- if the Parties cannot agree a choice or
- if the arbitration procedure does not state who selects an arbitrator, is

the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.

## 10 Data for Option clauses

### X1 Price adjustment for inflation

X1.1 The *base date* for indices is One month before Tender closing.

The proportions used to calculate the Price Adjustment Factor are:

| Proportion | linked to index for | Index prepared by |
|------------|---------------------|-------------------|
| 0.         | [•]                 | [•]               |
| 0.         | [•]                 | [•]               |
| 0.         | [•]                 | [•]               |
| 0.         | [•]                 | [•]               |
| 0.         | [•]                 | [•]               |
| 0.15       | non-adjustable      |                   |
| 1.00       |                     |                   |

### X2 Changes in the law

THE SUPPLY, AND DELIVERY OF HV SELF-CONTAINED LOW-PRESSURE NEW (UNUSED) CABLE OIL FOR USE IN SINGLE CORE AND THREE-CORE OIL-FILLED CABLES FOR SYSTEMS WITH NOMINAL VOLTAGES OF 44 KV, 66 KV, 88 KV AND 132 KV FOR ON AN, AS AND WHEN REQUIRED BASIS FOR 3 YEARS.

|       |                                                                        |                                                                                                                                                                                                                                                                                         |                                                                                                   |                                       |
|-------|------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|---------------------------------------|
| X2.1  | A change in the law of                                                 |                                                                                                                                                                                                                                                                                         | Republic of South Africa is a compensation event if it occurs after the Contract Date             |                                       |
| X3    | Multiple currencies                                                    |                                                                                                                                                                                                                                                                                         |                                                                                                   |                                       |
| X3.1  | The <i>Purchaser</i> will pay for these items in the currencies stated | Items                                                                                                                                                                                                                                                                                   | Other currency                                                                                    | Total maximum payment in the currency |
|       |                                                                        | [•]                                                                                                                                                                                                                                                                                     |                                                                                                   |                                       |
|       |                                                                        | [•]                                                                                                                                                                                                                                                                                     |                                                                                                   |                                       |
|       |                                                                        | [•]                                                                                                                                                                                                                                                                                     |                                                                                                   |                                       |
| X3.1  | The <i>exchange rates</i> are those published in                       | [•] on [•] (date)                                                                                                                                                                                                                                                                       |                                                                                                   |                                       |
|       |                                                                        | The items will be paid in the other currency<br>- to a foreign Bank account nominated by the <i>Supplier</i><br>- to a valid SARB approved CFC account in South Africa<br>- in accordance with an alternative payment method agreed with the <i>Purchaser</i> before the Contract Date. |                                                                                                   |                                       |
|       |                                                                        | (select one of the three methods as agreed with the successful tenderer prior to contract award and delete the others and this note)                                                                                                                                                    |                                                                                                   |                                       |
| X7    | Delay damages                                                          |                                                                                                                                                                                                                                                                                         |                                                                                                   |                                       |
| X7.1  | Delay damages for Delivery are                                         | Delivery of                                                                                                                                                                                                                                                                             | amount per day                                                                                    |                                       |
|       |                                                                        | New (unused) insulating oil for cables                                                                                                                                                                                                                                                  | Minimum of 1% per day of the task order value limited to a maximum of 10% of the task order value |                                       |
| X13   | Performance bond                                                       |                                                                                                                                                                                                                                                                                         |                                                                                                   |                                       |
| X13.1 | The amount of the performance bond is                                  | To be determined by Finance Department during tender evaluations (if applicable)                                                                                                                                                                                                        |                                                                                                   |                                       |
| Z     | The <i>additional conditions of contract</i> are                       |                                                                                                                                                                                                                                                                                         | Z1 to Z15 always apply for Eskom                                                                  |                                       |

## **Z1 Cession delegation and assignment**

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

## **Z2 Joint ventures**

- Z2.1 If the *Supplier* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Purchaser* for the performance of this contract.
- Z2.2 Unless already notified to the *Purchaser*, the persons or organisations notify the *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Supplier* on their behalf.
- Z2.3 The *Supplier* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Purchaser* having been given to the *Supplier* in writing.

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

- Z3.1 Where a change in the *Supplier's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Supplier's* B-BBEE status, the *Supplier* notifies the *Purchaser* within seven days of the change.
- Z3.2 The *Supplier* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Supply Manager* within thirty days of the notification or as otherwise instructed by the *Supply Manager*.
- Z3.3 Where, as a result, the *Supplier's* B-BBEE status has decreased since the Contract Date the *Purchaser* may either re-negotiate this contract or alternatively, terminate the *Supplier's* obligation to Provide the Goods and Services.
- Z3.4 Failure by the *Supplier* to notify the *Purchaser* of a change in its B-BBEE status may constitute a reason for termination. If the *Purchaser* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

### **Z4 Confidentiality**

- Z4.1 The *Supplier* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Supplier*, enters the public domain or to information which was already in the possession of the *Supplier* at the time of disclosure (evidenced by written records in existence at that time). Should the *Supplier* disclose information to Others in terms of clause 23.1, the *Supplier* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Supplier* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*.
- Z4.3 In the event that the *Supplier* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Supplier*, to the extent permitted by law prior to disclosure, notifies the *Purchaser* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Supplier* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *goods* or any portion thereof, in the course of Providing the Goods and Services and after Delivery, requires the prior written consent of the *Supply Manager*. All rights in and to all such images vests exclusively in the *Purchaser*.
- Z4.5 The *Supplier* ensures that all his subcontractors abide by the undertakings in this clause.

**Z5 Waiver and estoppel: Add to core clause 12.3:**

- Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Supply Manager* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

**Z6 Health, safety and the environment: Add to core clause 25.4**

- Z6.1 The *Supplier* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the provision of the *goods* and execution of the *services*.

Without limitation the *Supplier*:

- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of supply and
- undertakes, in and about the execution of the supply, to comply with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Supplier's* direction and control, likewise observe and comply with the foregoing.

- Z6.2 The *Supplier*, in and about the execution of the supply, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Supplier's* direction and control, likewise observe and comply with the foregoing.

**Z7 Provision of a Tax Invoice and interest. Add to core clause 51**

- Z7.1 Within one week of receiving a payment certificate from the *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser's* procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z7.2 If the *Supplier* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Purchaser* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Purchaser* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
- Z7.3 The *Supplier* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Purchaser's* VAT number 4740101508 on each invoice he submits for payment.

**Z8 Notifying compensation events**

- Z8.1 Delete from the last sentence in core clause 61.3 the words, "unless the event arises from the *Supply Manager* giving an instruction, changing an earlier decision or correcting an assumption".

**Z9 Purchaser's limitation of liability**

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

Z9.2 The *Supplier's* entitlement under the indemnity in 83.1 is provided for in 60.1(12) and the *Purchaser's* liability under the indemnity is limited.

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

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

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

Z11.1 If the amount due for the *Supplier's* payment of delay damages reaches the limits stated in this Contract Data for Option X7, the *Purchaser* may terminate the *Supplier's* obligation to Provide the Goods and Services using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

**Z12 Ethics**

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

**Affected Party** means, as the context requires, any party, irrespective of whether it is the *Supplier* 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 *Supplier*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,

**Corrupt Action** means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,

**Fraudulent 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 *Purchaser* may terminate the *Supplier's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Supplier* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Purchaser* has. It is not required that the Committing Party had to have been found guilty, in

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court or in any other similar process, of such Prohibited Action before the *Purchaser* can terminate the *Supplier's* obligation to Provide the Services for this reason.

Z12.3 If the *Purchaser* terminates the *Supplier's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.

Z12.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Purchaser* does not have a contractual bond with the Committing Party, the *Supplier* ensures that the Committing Party co-operates fully with an investigation.

## Z13Insurance

### 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 *Supplier* provides the insurances stated in the Insurance Table A for events which are at the *Supplier's* risk from the *starting date* until the last *defects date* or a termination certificate has been issued.

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**INSURANCE TABLE A**

| <b>Insurance against</b>                                                                                                                                                                                                                                        | <b>Minimum amount of cover or minimum limit of indemnity</b>                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Loss of or damage to the <i>goods</i> , plant and materials                                                                                                                                                                                                     | The replacement cost where not covered by the <i>Purchaser's</i> insurance.<br><br>The <i>Purchaser's</i> policy deductible as at Contract Date, where covered by the <i>Purchaser's</i> insurance.                                                                                                                                                                                                                                        |
| Liability for 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 | <b><u>Loss of or damage to property</u></b><br><i>Purchaser's</i> property<br>The replacement cost where not covered by the <i>Purchaser's</i> insurance.<br><br>The <i>Purchaser's</i> policy deductible as at Contract Date, where covered by the <i>Purchaser's</i> insurance.<br><br><b><u>Other property</u></b><br>The replacement cost<br><br><b><u>Death of or bodily injury</u></b><br>The amount required by the applicable law. |
| Liability for 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                                                                                               | The amount required by the applicable law                                                                                                                                                                                                                                                                                                                                                                                                  |

**Z 13.2 Replace core clause 87 with the following:****Insurance by  
the *Purchaser***

87

87.1 The *Purchaser* provides the insurances stated in the Insurance Table B**INSURANCE TABLE B**

| <b>Insurance against or name of policy</b> | <b>Minimum amount of cover or minimum of indemnity</b> |
|--------------------------------------------|--------------------------------------------------------|
| 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                | Per the insurance policy document                      |

|                                      |                                   |
|--------------------------------------|-----------------------------------|
| Business Interruption                |                                   |
| Nuclear Material Damage<br>Terrorism | Per the insurance policy document |

## Z14 Nuclear Liability

- Z14.1 The *Purchaser* 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 *Purchaser* is solely responsible for and indemnifies the *Supplier* or any other person against any and all liabilities which the *Supplier* 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 *Supplier* or any other person or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.
- Z14.3 Subject to clause Z14.4 below, the *Purchaser* 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 *Supplier* or any other person, or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.
- Z14.4 The *Purchaser* 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:

|                              |                                                                                                                                                                                                                                                                                                              |
|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>AAIA</b>                  | means approved asbestos inspection authority.                                                                                                                                                                                                                                                                |
| <b>ACM</b>                   | means asbestos containing materials.                                                                                                                                                                                                                                                                         |
| <b>AL</b>                    | 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.                                                     |
| <b>Ambient Air</b>           | 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.                                                                                                                             |
| <b>Compliance Monitoring</b> | 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. |
| <b>OEL</b>                   | means occupational exposure limit.                                                                                                                                                                                                                                                                           |
| <b>Parallel</b>              | means measurements performed in parallel, yet separately, to existing                                                                                                                                                                                                                                        |

|                     |                                                                                                                                                                                                                        |
|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Measurements</b> | measurements to verify validity of results.                                                                                                                                                                            |
| <b>Safe Levels</b>  | 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. |
| <b>Standard</b>     | means the <i>Purchaser'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.               |
| <b>SANAS</b>        | means the South African National Accreditation System.                                                                                                                                                                 |
| <b>TWA</b>          | 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 *Purchaser* ensures that the Ambient Air in the area where the *Supplier* 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 OESSM.
- Z15.2 Upon written request by the *Supplier*, the *Purchaser* 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 *Supplier* may perform Parallel Measurements and related control measures at the *Supplier'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 *Purchaser* 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 *Supplier'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 *Supplier* 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.
- Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Purchaser* at the *Purchaser's* expense, and conducted in line with South African legislation.

## Annexure A: Supply Requirements

[Notes: The example given in the NEC3 Supply Contract Guidance Notes pages 15 to 20 inclusive is based on Incoterms 2000. However users will probably wish to use Incoterms 2010 which the details below are based on. Users may need to adjust the information to comply with actual requirements. First decide

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*whether Incoterms will be used or not, then delete the arrangement below which does not apply and delete these notes]*

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

The *Supplier* supplies the *goods* in accordance with INCOTERMS 2010<sup>3</sup> as follows:

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

| Group | Category | Term | Delivery Place                           |
|-------|----------|------|------------------------------------------|
| D     | arrival  | DDP  | Eskom Distribution Rosherville Warehouse |

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

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

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

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

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

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

<sup>3</sup> International Chamber of Commerce, Incoterms 2010, Paris, January 2011

## C1.2 Contract Data

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

#### Notes to a tendering supplier:

1. Please read both the NEC3 Supply Contract (SC3)<sup>4</sup> and the relevant parts of its Guidance Notes (SC3-GN)<sup>5</sup> in order to understand the implications of this Data which the tenderer is required to complete.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data
3. Where a form field like this [ ] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise complete by hand and in ink.

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

| Clause                    | Statement                                                                                                    | Data                                                                                                                                                                                 |                           |                      |   |     |   |     |   |     |
|---------------------------|--------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|----------------------|---|-----|---|-----|---|-----|
| 10.1                      | The <i>Supplier</i> is (Name):<br><br>Address<br><br>Tel No.<br><br>Fax No.                                  |                                                                                                                                                                                      |                           |                      |   |     |   |     |   |     |
| 11.2(8)                   | The Goods Information for the <i>Supplier's</i> design is in:                                                |                                                                                                                                                                                      |                           |                      |   |     |   |     |   |     |
| 11.2(11)                  | The tendered total of the Prices is                                                                          | R ,<br>(in words)                                                                                                                                                                    |                           |                      |   |     |   |     |   |     |
| 11.2(12)                  | The <i>price schedule</i> is in:                                                                             |                                                                                                                                                                                      |                           |                      |   |     |   |     |   |     |
| 11.2(14)                  | The following matters will be included in the Risk Register                                                  |                                                                                                                                                                                      |                           |                      |   |     |   |     |   |     |
| 25.2                      | The restrictions to access for the <i>Supply Manager</i> and Others to work being done for this contract are |                                                                                                                                                                                      |                           |                      |   |     |   |     |   |     |
| 30.1                      | The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is:                                         | <table><tr><th><i>goods and services</i></th><th><i>delivery date</i></th></tr><tr><td>1</td><td>[•]</td></tr><tr><td>2</td><td>[•]</td></tr><tr><td>3</td><td>[•]</td></tr></table> | <i>goods and services</i> | <i>delivery date</i> | 1 | [•] | 2 | [•] | 3 | [•] |
| <i>goods and services</i> | <i>delivery date</i>                                                                                         |                                                                                                                                                                                      |                           |                      |   |     |   |     |   |     |
| 1                         | [•]                                                                                                          |                                                                                                                                                                                      |                           |                      |   |     |   |     |   |     |
| 2                         | [•]                                                                                                          |                                                                                                                                                                                      |                           |                      |   |     |   |     |   |     |
| 3                         | [•]                                                                                                          |                                                                                                                                                                                      |                           |                      |   |     |   |     |   |     |
| 31.1                      | The programme identified in the Contract Data is contained in:                                               |                                                                                                                                                                                      |                           |                      |   |     |   |     |   |     |

<sup>4</sup> Either April 2013 or December 2009 Edition as stated by *Purchaser* in Contract Data part 1.

<sup>5</sup> Available from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902, or [www.ecs.co.za](http://www.ecs.co.za)

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63.2

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

%

PART 2: PRICING DATA

NEC3 Supply Contract

| Document reference | Title                     | No of pages |
|--------------------|---------------------------|-------------|
| C2.1               | Pricing assumptions       | 2           |
| C2.2               | The <i>price schedule</i> | 1           |

## C2.1 Pricing assumptions

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

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

|                                     |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|-------------------------------------|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Identified and defined terms</b> | 11   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|                                     | 11.2 | (11) The Prices are the amounts stated in the price column of the Price Schedule. Where a quantity is stated for an item in the Price Schedule, the Price is calculated by multiplying the quantity by the rate.                                                                                                                                                                                                                                                                                                                                                                                |
|                                     |      | (12) The Price Schedule is the <i>price schedule</i> unless later changed in accordance with this contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Assessing the amount due</b>     | 50.2 | The amount due is                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|                                     |      | <ul style="list-style-type: none"> <li>the Price for each lump sum item in the Price Schedule which the <i>Supplier</i> has completed,</li> <li>where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the <i>Supplier</i> has completed by the rate,</li> <li>plus other amounts to be paid to the <i>Supplier</i>,</li> <li>less amounts to be paid by or retained from the <i>Supplier</i>.</li> </ul> <p>Any tax which the law requires the <i>Purchaser</i> to pay to the <i>Supplier</i> is included in the amount due.</p> |

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

### Function of the Price Schedule

Clause 53.1 states: "Information in the Price Schedule is not Goods Information". This confirms that instructions to do work or how it is to be done are not included in the Price Schedule but in the Goods Information. This is further confirmed by Clause 20.1 which states, "The *Supplier* Provides the Goods and Services in accordance with the Goods Information". Hence the *Supplier* does **not** Provide the Goods and Services in accordance with the Price Schedule. The Price Schedule is only a pricing document.

### Preparing the *price schedule*

Items in the *price schedule* may have been inserted by the *Purchaser* and the tendering supplier should insert any additional items which he considers necessary. Whichever party provides the items in the *price schedule* the total of the Prices is assumed to be fully inclusive of everything necessary to Provide the Goods and Services as described at the time of entering into this contract.

It will be assumed that the tendering supplier has

- Read Pages 8, 11, 12 and Appendix 5 of the SC3 Guidance Notes before preparing the *price schedule*;
- Included in his Prices and rates for correction of Defects (core clause 43.1) as there is no compensation event for this unless the Defect is due to a *Supplier's* risk;

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- Spread the cost of doing work he chooses not to list as separate items in the *price schedule* across other Prices and rates in order to fulfil the obligation to Provide the Goods and Services for the tendered total of the Prices;
- Understood that there is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item later turns out to be different to that which the *Supplier* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event per clause 60.1;
- Understood that the *Supplier* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event.

### **Format of the *price schedule***

Entries in the first four columns in the *price schedule* in section C2.2 are made either by the *Purchaser* or the tendering supplier.

If the *Supplier* is to be paid an amount for the item which is not adjusted if the quantity of work in the item changes, the tendering supplier enters the amount in the Price column only, the Unit, Quantity and Rate columns being left blank.

If the *Supplier* is to be paid an amount for the item which is the rate for the item multiplied by the quantity completed, the tendering *Supplier* enters the rate which is then multiplied by the Quantity to produce the Price, which is also entered.

If the *Supplier* is to be paid an amount for an item proportional to the length of time for which the *goods* and *services* are provided, a unit of time is stated in the Unit column and the length of time (as a quantity of the stated units of time) is stated in the Quantity column.

C2.2 the *price schedule*

| Item nr | Description                                   | Unit | Quantity | Rate | Price |
|---------|-----------------------------------------------|------|----------|------|-------|
| 1.0     | OIL, ELECTRIC HV CABLE 210L<br>CONTAINER DRUM | L    | 1.0      |      |       |

The total of the Prices

## PART 3: SCOPE OF WORK

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

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

### Contents

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

The Eskom Distribution Division requires new (unused) cable oil for the maintenance of the installed base of high-voltage, low-pressure, self-contained, oil-filled cable systems.

The failure of any component of a high-voltage cable installation generally results in significant repair cost and disruption to the power system. In order to minimise the risk of this occurring and to ensure the optimum life of oil-filled cable systems, the Distribution Division has undertaken to purchase only cable oil in accordance with the specification.

## Specification and description of the *goods*

This specification covers the Distribution Division's requirements for new (unused) cable oil intended for use in single-core and three-core oil-filled cables for systems with nominal voltages of 44 kV, 66 kV, 88 kV and 132 kV.

### Purchaser's design



SCOPE OF WORK.pdf

The embedded document contains the Purchaser's specification.

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

Refer to the following specifications attached under number the Purchaser's specification:

SPECIFICATION FOR NEW (UNUSED) INSULATING OIL FOR CABLES; UNIQUE IDENTIFIER: **240-56062751**

### Other requirements of the *Supplier's* design

Refer to the following specifications attached under number the Purchaser's specification:

SPECIFICATION FOR NEW (UNUSED) INSULATING OIL FOR CABLES; UNIQUE IDENTIFIER: **240-56062751**

### Use of *Supplier's* design

Refer to the following specifications attached under number the Purchaser's specification:

SPECIFICATION FOR NEW (UNUSED) INSULATING OIL FOR CABLES; UNIQUE IDENTIFIER: **240-56062751**

## Manufacture & fabrication

THE SUPPLY, AND DELIVERY OF HV SELF-CONTAINED LOW-PRESSURE NEW (UNUSED) CABLE OIL FOR USE IN SINGLE CORE AND THREE-CORE OIL-FILLED CABLES FOR SYSTEMS WITH NOMINAL VOLTAGES OF 44 KV, 66 KV, 88 KV AND 132 KV FOR ON AN, AS AND WHEN REQUIRED BASIS FOR 3 YEARS

The *Purchaser* does not usually prescribe how the goods are to be manufactured and fabricated, however the *Supplier* is advised to adhere to the provided specification for the goods required.

### **Factory acceptance testing (FAT)**

Refer to the following specifications attached under number the Purchaser's specification:

SPECIFICATION FOR NEW (UNUSED) INSULATING OIL FOR CABLES; UNIQUE IDENTIFIER: **240-56062751**

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

Refer to the following specifications attached under number the Purchaser's specification:

SPECIFICATION FOR NEW (UNUSED) INSULATING OIL FOR CABLES; UNIQUE IDENTIFIER: **240-56062751**

### **Operating manuals and maintenance schedules**

Refer to the following specifications attached under number the Purchaser's specification:

SPECIFICATION FOR NEW (UNUSED) INSULATING OIL FOR CABLES; UNIQUE IDENTIFIER: **240-56062751**

## **Supply Requirements**

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

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

The *Supplier* shall provide training to the Purchaser's staff on the use of the goods on the Purchaser's property.

## **Constraints on how the *Supplier* Provides the Goods**

### **Programming constraints**

Regular production meetings will be held to discuss manufacture and delivery to obtain Supplier feedback.

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

Refer to the following specifications attached under number the Purchaser's specification:

SPECIFICATION FOR NEW (UNUSED) INSULATING OIL FOR CABLES; UNIQUE IDENTIFIER: **240-56062751**

### **Marking the goods**

Refer to the following specifications attached under number the Purchaser's specification:

SPECIFICATION FOR NEW (UNUSED) INSULATING OIL FOR CABLES; UNIQUE IDENTIFIER: **240-56062751**

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

- The delivery place, the hours of access to the delivery place and other information to be provided by the *Supplier* at the time of Delivery such as the delivery note, which notifies the actual delivery date.
- The delivery place is Eskom Gauteng Cluster, Rosherville Warehouse, Lower Germiston Road, Rosherville.

**Cooperating with Others**

Not applicable

**Services & other things to be provided by the *Purchaser* or *Supplier***

Refer to the following specifications attached under number the Purchaser's specification:

SPECIFICATION FOR NEW (UNUSED) INSULATING OIL FOR CABLES; UNIQUE IDENTIFIER: **240-56062751**

**Management meetings**

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

| Title and purpose                      | Approximate time & interval | Location | Attendance by:                                            |
|----------------------------------------|-----------------------------|----------|-----------------------------------------------------------|
| Risk register and compensation events  | As required                 | MS Teams | All stakeholders                                          |
| Overall contract progress and feedback | As required                 | MS Teams | <i>Purchaser, Supplier,</i><br>and all other stakeholders |

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

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

**Documentation control**

All contractual communications will be in the form of properly compiled letters or forms attached to emails and not as a message in the email itself. All communication from the Supplier must be addressed to the Purchaser, where relevant and distributed to all other stakeholders.

Escalation protocols from either party must also be stated and agreed at the kick off meeting.

**Health and safety risk management**

The *Supplier* to adhere and comply to applicable legislative requirements Occupational Health and Safety Act No. 85 of 1993 - general duties of employers, transporting of hazardous chemicals. The *Supplier* to comply with Eskom Standards and procedures, The Specification for New (Unused) Insulating Oil for Cables 34-1495. Incident Management, Emergency Preparedness Plan and Life Saving Rules, EMA - Spill kits. Contract and Contractor OHS Management 32-726.

THE SUPPLY, AND DELIVERY OF HV SELF-CONTAINED LOW-PRESSURE NEW (UNUSED) CABLE OIL FOR USE IN SINGLE CORE AND THREE-CORE OIL-FILLED CABLES FOR SYSTEMS WITH NOMINAL VOLTAGES OF 44 KV, 66 KV, 88 KV AND 132 KV FOR ON AN, AS AND WHEN REQUIRED BASIS FOR 3 YEARS

## Environmental constraints and management

The *Supplier* shall comply with the environmental criteria and constraints in line with the Environmental Legislation and by-laws.

The *Supplier* to adhere to the National Environmental Management Act 107 of 1998 and all other Environmental legislation, Eskom's Environmental specifications, Standards and Procedures. A commitment to prevent pollution by complying to Eskom SHEQ Policy and with all the relevant Environmental Legislation.

The *Supplier* to comply with applicable environmental legislation including the transportation requirements and refer to the Tender returnable for additional environmental requirements.

## Quality

The *Supplier* to be ISO-9001 compliant and to comply with the Eskom's Supplier Quality Management Specification, 240-105658000.

## Invoicing and payment

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

The *Supplier* shall address the tax invoice to *Purchaser* and include on each invoice the following information:

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

Procedure for Invoice Submission and Payment (Electronic Payment Instructions):

|                                                                                                                                                                                                                                                                                                                      |          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| <b>General Information</b>                                                                                                                                                                                                                                                                                           | <b>X</b> |
| - No Pro-forma Invoice                                                                                                                                                                                                                                                                                               |          |
| - Check Vendor number against the Address and name on Tax invoice                                                                                                                                                                                                                                                    |          |
| - Insert the Vendor number on Tax invoice (Top right-hand corner)                                                                                                                                                                                                                                                    |          |
| - Bank details must be on the invoice or on a attach sheet, but it does not require a bank stamp just a letter)                                                                                                                                                                                                      |          |
| - Check banking details on invoice against SAP system. If more than one banking account check bank account against banking details on invoice. If banking details not on invoice, write the bank code next to the vendor account (bank code 0002)                                                                    |          |
| - Check Vendor VAT number against the vendor master. (FK03) If VAT number not on master records, prepare a list and forward to Vendor Management to check and update the vendor master records                                                                                                                       |          |
| - No fax copies of Tax invoices allowed                                                                                                                                                                                                                                                                              |          |
| - No copies of Tax invoices allowed unless originally printed by the Vendor if a photocopy tax invoice, it must be an original "certified copy" (i.e., not a copy of a "certified copy" invoice) from the vendor and check in system if not previously be paid. Put stamp "not previously paid" on invoice and sign. |          |
| - Ensure that date received stamp is clear on invoice                                                                                                                                                                                                                                                                |          |
| - Stamp all Invoices with the Vat stamp, complete and sign (only when VAT is applicable)                                                                                                                                                                                                                             |          |
| - The stamp should not be stamped over any written information                                                                                                                                                                                                                                                       |          |
| - When scanning invoice, check the quality before linking in SAP (inboxes)                                                                                                                                                                                                                                           |          |
| <b>With Reference Invoices</b>                                                                                                                                                                                                                                                                                       | <b>X</b> |
| - Goods receipt must be done (payment with reference)                                                                                                                                                                                                                                                                |          |
| - Ensure that the SAP purchase order number is clear and correct on the invoice                                                                                                                                                                                                                                      |          |
| - GR number to be written on the Invoices                                                                                                                                                                                                                                                                            |          |
| - If multiple lines on invoice write the line number of the order against the line to ensure that the processors match the correct lines (to ensure that 191100 is matched correctly)                                                                                                                                |          |

## Insurance provided by the *Purchaser*

As stated in the General ACAR Confirmation Insurance



1. Eskom Group  
Confirmation of Insurance

## Contract change management

### Use of standard forms

- The *Supplier* and the *Purchaser* to give an early warning by notifying the other as soon as either becomes aware of any matter which could increase the total of the Prices, interfere with the timing of the delivery of the goods and impair the effectiveness of the delivery.
- The *Supplier* may give an early warning by notifying the *Purchaser* of any other matter which could increase the total cost.
- The *Supplier* enters early warning matters in the Risk Register.

Early warning of a matter for which a compensation event has previously been notified is not required

## 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 *Supplier* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

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

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

The *Supplier* is required to keep any records of Defined Cost. Include any other constraint which may be required in regard to format and filing of the records, and whether access for the *Supply Manager* shall be provided in hard copy or electronically.

## Procurement

### Subcontracting

#### Preferred subcontractors

Not applicable

#### Limitations on subcontracting

Mandatory Subcontracting as condition of award

Tenderers shall subcontract a minimum of 15% of the contract value to the following designated groups:

- an EME or QSE which is 51% owned by black people living in rural or underdeveloped area or townships.

NOTE 1: Tenderers shall submit the following mandatory returnable for Subcontracting:

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- Subcontracting agreement signed by both with subcontractors' company registration documents (CK and B-BBEE certificate or sworn affidavit) or
- Copies of sub-contracting contracts (agreements) or copies of letters from the tenderer to the sub-contractors, stating the intent to sub-contract. The Tenderer should sign both documents and the Sub-contractor(s) earmarked.

Potential scope to be subcontracted and/or outsourced (but not limited):

- Personal Protective Equipment
- Truck mechanical services
- Tyre replacements
- Truck washing services

Subcontracting, in this instance, will be treated as a condition for contract award. A supplier awarded a contract may not subcontract more than 25% of the value of the contract to any other entity that does not have an equal or higher B-BBEE status level of a contributor than the supplier concerned unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

### Spares and consumables

Not applicable

### Other requirements related to procurement

The *Supplier* complies with and fulfils the *Supplier's* obligations in respect of the SDL&I in accordance with and as provided for in the *Supplier's* SDL&I Compliance Schedule stated below:

**Tenderers who complete and submit the undertaking as required, but who do not meet Eskom's targets, will not be disqualified. SD&L undertakings do not form part of scoring but commitments will form part of contractual obligations**

#### 1. Transformation – BBBEE Improvement or Retention Plan:

Transformation remains an area of focus, where Eskom continuously strives to align itself with national transformation imperatives to unlock growth, drive industrialization, create employment and contribute to skills development.

Eskom encourages its suppliers to constantly strive to improve their B-BBEE rating. Whereas Tenderer/s will be allocated points in terms of a preference point system based on specific goals, Eskom also requests that tenderer/s submits their B-BBEE improvement or retention plan within 30 days of signing the contract.

Tenderer/s are therefore requested to indicate the extent to which they will maintain (only if the respondent is a Level 1) or may improve/maintain their B-BBEE status over the contract period if their B-BBEE status is level 2 or 3. Tenderer/s with a B-BBEE status level 4 at the time of contract award, shall migrate and achieve as a non-negotiable a milestone of B-BBEE Level 3 by the end of the first year of the contract and thereafter improve their B-BBEE status level or migrate by one level higher.

Tenderer/s with a B-BBEE recognition status of Level 5 to Level 8 or non-compliant at the time of contract award, shall migrate and achieve as a non-negotiable a milestone of Level 4 by the end of the first year of the contract and thereafter improve at least one B-BBEE Level higher of each year from the second year of the contract.

Tenderer/s are requested to submit their B-BBEE Improvement Plan as an essential document within 30 days of signing the contract and to submit the following documents as a condition for contract award:

- Proof of ownership / shareholding (preferably CIPC documentation) inclusive of shareholding breakdown
- Certified ID copies of shareholder(s)
- Proof of Disability (where applicable)

NB: A valid B-BBEE certificate or Sworn Affidavit is a condition for contract award, if your company's annual Total Revenue is R10 Million or less you qualify as an Exempted Micro

Enterprise therefore you can submit Sworn Affidavit. If your annual Total Revenue is R50 Million or less, you qualify as Qualifying Small Enterprise and must comply with all of the elements of QSE score card relevant to your sector unless an entity is at least 51% Black owned you are required to obtain a Sworn affidavit. If your Annual Total Revenue is above R50m you need to submit a Valid B-BBEE certificate

## 2. Local Procurement Content

"Local Procurement Content" refers to value added in South Africa by South African resources. Where a single contract involves a combination of local and imported goods and/or services, the tender response must be separated into its components as per the Price Schedule included with the tender documents. Local procurement content is total spending minus the imported component. **Maintenance and support constitute the local procurement spend by Eskom.**

Tenderers are required to submit their proposals in the table below.

| Local Procurement Content | Eskom target | Tenderer Proposal |
|---------------------------|--------------|-------------------|
|                           | 100%         |                   |

## 3. Jobs

Tenderers are required to submit proposals for the type and number of jobs that will be created and retained in South Africa as a direct result of being awarded a contract.

| Type of Jobs to be created | Number of Jobs to be created |
|----------------------------|------------------------------|
|                            |                              |

| Type of Jobs to be retained | Number of Jobs to be retained |
|-----------------------------|-------------------------------|
|                             |                               |

## 4. Skills Development

Tenderers are required to submit proposals in the table below for developing the skills of unemployed candidates in the country. Skills development is intended to address Eskom's core, scarce and critical skills and the Mict SETA scarce and critical skills for every R 5m spend by Eskom. These skills are also included in a 2020 list of occupations in high demand as stipulated in the Government Gazette 43937. Candidates shall be from all provinces in the country, and their composition shall be representative of the population demographics of South Africa

| Skill type / Occupation | Eskom target | Proposed Number of Candidates |
|-------------------------|--------------|-------------------------------|
| Technician              | 1x R5 spend  |                               |
| Safety officer          | 1x R5 spend  |                               |
|                         |              |                               |

The process of developing these skills shall involve the participation by tenderers directly and through their supply network. In certain cases, the SETA's accredited training providers can be approached to participate in developing critical and scarce skills.

Note: Tenderers are required to take full responsibility for the total cost of developing the requisite skills, and Eskom shall not make any financial contribution towards the fulfilment of this obligation. Tenderers also are advised to approach their relevant SETAs to access grants, subsidies and incentives as well as South African Revenue Services for tax rebates that are earmarked for skills development initiatives.

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The *Supplier* shall keep accurate records and provide the *Purchaser* with reports on the *Supplier's* actual delivery against the above stated SDL&I criteria.

### Reporting and Monitoring:

The suppliers shall on a quarterly basis submit a report to Eskom in accordance with Data Collection Template on their compliance with the SDL&I obligations described above.

Eskom shall review the SDL&I reports submitted by the suppliers within 30 (Thirty) days of receipt of the reports and notify the suppliers in writing if their SDL&I obligations have not been met.

Upon notification by Eskom that the suppliers have not met their SDL&I obligations, the suppliers shall be required to implement corrective measures to meet those SDL&I obligations before the commencement of the following report, failing which Retention clauses shall be invoked.

Every contract shall be accompanied by the SDL&I Implementation Schedule which must be completed by the suppliers and returned to SDL&I representative for acceptance 28 days after contract award.

The *Supplier's* failure to comply with his SDL&I obligations constitutes substantial failure on the part of the *Supplier* to comply with his obligations under this contract.

### SDL&I Penalty and Performance Security

Eskom will apply a penalty of 2.5% of the Contract Value for failure to meet SDL&I obligations.

For the duration of the contract, Eskom will retain 2.5% of every invoice (excluding VAT) as security for the fulfilment of all SDL&I Obligations. The retained amounts shall only be released to the Contractor upon:

- Eskom receiving the SDL&I progress report/s from the Supplier,
- Fulfilment of all SDL&I obligations at the end of the contract, and
- Submission of an approved compliance report by SDL&I Department

### Cataloguing requirements by the *Supplier*

Not applicable

## List of drawings

### Drawings issued by the *Purchaser*

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

| Drawing number | Revision | Title |
|----------------|----------|-------|
|                |          |       |
|                |          |       |
|                |          |       |
|                |          |       |
|                |          |       |
|                |          |       |

## C3.2 SUPPLIER'S GOODS INFORMATION

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

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

This section could also be compiled as a separate file.

---