



## NEC3 Supply Contract (SC3)

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

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

**for** Supply and delivery of virgin oil at various substations in  
Transmission East Grid

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**Contents:**

**No of  
pages**

**Part C1 Agreements & Contract Data**

**[•]**

**Part C2 Pricing Data**

**[•]**

**Part C3 Scope of Work**

**[•]**

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

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## PART C1: AGREEMENTS & CONTRACT DATA

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

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## C1.1 Form of Offer & Acceptance

### Offer

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

### Supply and delivery of virgin oil at various substations in Transmission East Grid

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	R [●]
	Value Added Tax @ 15% is	R [●]
	The offered total of the amount due inclusive of VAT is <sup>1</sup>	R [●]
	(in words) [●]	

<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*.

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

## 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.

## 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*

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

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

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

Clause	Statement	Data
1	<b>General</b>	
	The <i>conditions of contract</i> are the core clauses and the clauses for Options	
		<b>X1: Price adjustment for inflation</b>
		<b>X2 Changes in the law</b>
		<b>X7: Delay damages</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>
	Tel No.	<b>[•]</b>
	Fax No.	<b>[•]</b>
10.1	The <i>Supply Manager</i> is (name):	<b>[•]</b>
	Address	<b>[•]</b>
	Tel	<b>[•]</b>
	Fax	<b>[•]</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).

	e-mail	[•]	
11.2(13)	The <i>goods</i> are	[•]	
11.2(13)	The <i>services</i> are	[•]	
11.2(14)	The following matters will be included in the Risk Register	[•]	
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>[•] weeks</b>	
2	<b>The <i>Supplier's</i> main responsibilities</b>	<b>Data required by this section of the core clauses is provided by the <i>Supplier</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.</b>	
3	<b>Time</b>		
30.1	The <i>starting date</i> is.	<b>[•]</b>	
30.1	The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is:	<b><i>goods and services</i></b>	<b><i>delivery date</i></b>
		1	[•]
		2	[•]
		3	[•]
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.	<b>[no data required]</b>	

31.1	The <i>Supplier</i> is to submit a first programme for acceptance within	[●] weeks of the Contract Date.
32.2	The <i>Supplier</i> submits revised programmes at intervals no longer than	[●] weeks.
4	<b>Testing and defects</b>	
42	The <i>defects date</i> is	[●] weeks after Delivery.
43.2	The <i>defect correction period</i> is	[●] weeks
	except that the <i>defect correction period</i> for	[●] is [●] weeks
	and the <i>defect correction period</i> for	[●] is [●] weeks
42.2	The <i>defects access period</i> is	[●] days
	except that the <i>defect access period</i> for	[●] is [●]
	and the <i>defect access period</i> for	[●] is [●]
5	<b>Payment</b>	
50.1	The <i>assessment interval</i> is	between the [●] day of each successive month.
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	[●] weeks.
51.4	The <i>interest rate</i> is	<p>the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted</p>

under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted *mutatis mutandis* every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.

6	<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	<p>1. [●]</p> <p>2. [●]</p> <p>3. [●]</p>
88.1	The <i>Supplier’s</i> liability to the <i>Purchaser</i> for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to	R0.0 (zero Rand)
88.2	For any one event, the <i>Supplier’s</i> liability to the <i>Purchaser</i> for loss of or damage to the <i>Purchaser’s</i> property is limited to	<p>(1) for the <i>Purchaser’s</i> existing and surrounding property in the care, custody and control of the <i>Supplier</i> the amount of the deductible (first amount payable) relevant to the event</p> <p>and</p>

**(2) for all other existing *Purchaser's* property the applicable deductible as at contract date**

- |      |   |  |
|------|---|--|
| 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>R[●]</b><br><br><i>[This is a commercial decision, but consider using the total of the Prices. Delete this note after inserting a Rand amount]</i>            |
| 88.4 | The <i>Supplier's</i> total liability to the <i>Purchaser</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | <b>R[●]</b><br><br><i>[This is a commercial decision, but consider using at least the total of the Prices. Delete this note after inserting the Rand amount]</i> |
| 88.5 | The <i>end of liability date</i> is   | <b>[●] years after Delivery of the whole of the <i>goods</i> and <i>services</i>.</b>  |

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## 9 Termination and dispute resolution

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- |      |                           |  |
|------|---------------------------|--|
| 94.1 | The <i>Adjudicator</i> is | <b>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 <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).</b> |
|      | Address                   | <b>[●]</b>   |
|      | Tel No.                   | <b>[●]</b>   |
|      | Fax No.                   | <b>[●]</b>   |
|      | e-mail                    | <b>[●]</b>   |
- 
- |         |  |   |
|---------|--|---|
| 94.2(3) | The <i>Adjudicator nominating body</i> is: | <b>the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a>)</b> |
|---------|--|---|

94.4(2)	The <i>tribunal</i> is:	arbitration		
94.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.		
94.4(5)	The place where arbitration is to be held is	[●] South Africa		
	The person or organisation who will choose an arbitrator			
	<div><div>- if the Parties cannot agree a choice or</div><div>- if the arbitration procedure does not state who selects an arbitrator, is</div></div>	the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.		
10	Data for Option clauses			
X1	Price adjustment for inflation			
X1.1	The <i>base date</i> for indices is	[●].		
	The proportions used to calculate the Price Adjustment Factor are:	proportion	linked to index for	Index prepared by
		0.	[●]	[●]
		0.	[●]	[●]
		0.	[●]	[●]
		0.	[●]	[●]
		0.	[●]	[●]
		[●]	non-adjustable	
		1.00		
X2	Changes in the law			

X2.1	A change in the law of [●] 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		
	- to a foreign Bank account nominated by the <i>Supplier</i>		
	- to a valid SARB approved CFC account in South Africa		
	- 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



<b>X17</b>	<b>Low performance damages</b>	
<b>X17.1</b>	The amounts for low performance damages are:	
	<b>amount</b>	<b>performance level</b>
	R [●]	for [●]
	R [●]	for [●]
	R [●]	for [●]
	R [●]	for [●]
<b>Z</b>	<b>The <i>additional conditions of contract</i> are</b>  <b>Z1 to Z15 always apply for Eskom</b>	

## **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 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.

## **Z13 Insurance**

### **Z 13.1 Replace core clause 84 with the following:**

<b>Insurance cover</b>	<b>84</b>	
	<b>84.1</b>	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.
	<b>84.2</b>	The <i>Supplier</i> provides the insurances stated in the Insurance Table A for events which are at the <i>Supplier's</i> risk from the <i>starting date</i> until the last <i>defects date</i> or a termination certificate has been issued.

**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	<p>The replacement cost where not covered by the <i>Purchaser's</i> insurance.</p> <p>The <i>Purchaser's</i> policy deductible as at Contract Date, where covered by the <i>Purchaser's</i> insurance.</p>
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	<p><b><u>Loss of or damage to property</u></b></p> <p><u><i>Purchaser's</i> property</u></p> <p>The replacement cost where not covered by the <i>Purchaser's</i> insurance.</p> <p>The <i>Purchaser's</i> policy deductible as at Contract Date, where covered by the <i>Purchaser's</i> insurance.</p> <p><u>Other property</u></p> <p>The replacement cost</p> <p><b><u>Death of or bodily injury</u></b></p> <p>The amount required by the applicable law.</p>
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 Business Interruption	Per the insurance policy document
Nuclear Material Damage 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 Measurements</b>	means measurements performed in parallel, yet separately, to existing 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 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
E	departure	EXW	
F	main carriage unpaid	FCA, FAS, FOB	

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

C	main carriage paid	CFR, CIF, CPT, CIP	
D	arrival	DAT, DAP, DDP	

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

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

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

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

## The Supply Requirements for this contract are as follows:

[Use these when INCOTERMS do not apply].

<p><b>1. The requirements for the supply are</b></p>	<p>Supply of goods shall be limited to the following days and times:</p> <ol style="list-style-type: none"> <li>1. Between 08h00 and 16h00 on the day stipulated by the requestor i.e. the date on the relevant purchase order</li> <li>2. In the case of Emergency and weekends, the relevant CLN supervisor must be contacted and arrangements made for delivery and access. Delivery time for emergencies is 8 hours.</li> <li>3. White drums is the colour of choice as black is known to have a reflectance value of Zero (0) and absorbs all light and heat</li> <li>4. The batch of oil drums shall be accompanied by a delivery note.</li> <li>5. The oil supplier shall guarantee that, at the point of loading into certified clean supplier/Eskom tankers, the oil conforms to the requirements of "new oil" as per Eskom Specification 240-75661431. This must be in the form of a batch certificate which must accompany the delivery note.</li> <li>6. The oil supplier shall guarantee that new oil delivered complies with the "zero count PCB" requirement. This guarantee shall be in the form of a certificate and records thereof shall be kept for auditing purposes.</li> <li>7. The bulk containerization is controlled largely by the current road regulations and need to be adhered to. See SANS 10229.</li> </ol> <p>Virgin oil that is tested with a dielectric strength greater than 70kV/2.5mm and which complies with Eskom Specification 240-75661431</p>	
<p><b>2. The requirements for transport are</b></p>	<p>10 ton truck with crane or similar</p>	
<p><b>3. The delivery place is</b></p>	<p>All substations in Transmission KZN East Grid</p>	
<p><b>4. Actions of the Parties during supply</b></p>	<p><b>Action</b></p>	<p><b>Party which does it</b></p>
	<p>Giving notice of Delivery</p>	<p>contractor</p>
	<p>Checking packing and marking before dispatch</p>	<p>N/A</p>

	Contracting for transport	N/A
	Pay costs of transport	N/A
	Arrange access to delivery place	Contractor/Eskom
	Loading the <i>goods</i>	N/A
	Unloading the <i>goods</i>	Contractor
<b>For international procurement</b>	Undertake export requirements	
	Undertake import requirements	
<b>5. Information to be provided by the <i>Supplier</i></b>	<b>Batch certificate</b>	
	Packing lists for cases and their contents	
	Copy of invoice for the <i>goods</i>	
	Delivery Note	
	Test results	
<b>For international procurement</b>	Licences, authorisations and other formalities associated with export of the <i>goods</i>	
	Air Waybill or Bill of Lading with associated landing, delivery and forwarding order	
	The Bill of Entry endorsed by the importation authority	
	Customs work sheets, showing tax, duties and surcharges which the law of the country into which the <i>goods</i> are being imported requires the importer to pay	
	Invoice from the importation clearing agent showing airline fees, landing charges, wharfage and dock dues as applicable	
	Specify other import documents required by authorised officials.	

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



## C1.2 Contract Data

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

[Instructions to the contract compiler: (delete this note before issue to tenderers with an enquiry)]

Whenever a cell is shaded in the left hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row.]

#### 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):  Address  Tel No.  Fax No.	
11.2(8)	The Goods Information for the <i>Supplier's</i> design is 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)



11.2(11) The tendered total of the Prices is **R** ,  
(in words)

11.2(12) The *price schedule* is in:

11.2(14) The following matters will be included in  
the Risk Register

25.2 The restrictions to access for the *Supply Manager* and Others to work being done for this contract are

30.1 The *delivery date* of the *goods* and *services* is:

*goods and services* *delivery date*

**1** [•] [•]

**2** [•] [•]

**3** [•] [•]

31.1 The programme identified in the Contract  
Data is contained in:

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

%

## C1.3 Forms of Securities

### Pro formas for Bonds & Guarantees

For use with the NEC3 Supply Contract (SC3)

***[Note to contract compiler:***

***Once it has been decided which securities are required for this contract delete from this file the ones not required, revise the notes below accordingly and delete this note.]***

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

Option X4: Parent company guarantee

Option X13: Performance bond

Option X14 Advanced payment to the *Supplier*

These Options require a bond or guarantee “in the form set out in the Goods Information”.

Pro forma documents for these bonds and guarantees are provided here for convenience but are to be treated as part of the Goods Information.

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

## Pro forma Parent Company Guarantee (for use with Option X4)

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

**Eskom Holdings SOC Ltd**

**Megawatt Park**

**Maxwell Drive**

**Sandton**

**Johannesburg**

Date:

Dear Sirs,

### Parent Company Guarantee for Contract No

With reference to the above numbered contract made or to be made between

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

(the *Purchaser*) and

**[Insert registered name and address of the *Supplier*]**

(the *Supplier*), for

**[Insert details of the *goods* and *services* from the Contract Data]**

(the *goods* and  
*services*).

I/We the undersigned

on behalf of the *Supplier's*  
parent company (name)

of physical address

and duly authorised thereto do hereby unconditionally guarantee to the *Purchaser* that the *Supplier* shall Provide the Goods and Services in accordance with the above numbered Contract.

1. If for any reason the *Supplier* fails to Provide the Goods and Services, we hereby agree to cause to Provide the Goods and Services at no additional cost to the *Purchaser*.
2. If we fail to comply with the terms of this Deed of Guarantee, the *Purchaser* may itself procure such performance (whether or not the Agreement be formally determined). The *Purchaser* is to notify us and we shall indemnify the *Purchaser* for any additional cost or expense it incurs.
3. Our liability shall be as primary obligor and not merely as surety and shall not be impaired or discharged by reason of any arrangement or change in relationship made between the *Supplier* and the *Purchaser* and/or between us and *Supplier*; nor any alteration in the obligations undertaken by the *Supplier* or in the terms of the Agreement; nor any indulgence, failure, delay by you as to any matter; nor any dissolution or liquidation or such other analogous event of the *Supplier*.
4. The *Purchaser* shall not be obliged before taking steps to enforce the terms of this Deed of Guarantee to obtain judgement against the *Supplier* in any court or other tribunal, to make or file any claim in liquidation (or analogous proceedings) or to seek any remedy or proceed first against the *Supplier*.
5. This Deed of Guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa and we hereby submit to the non-exclusive jurisdiction of the High Court of South Africa.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

Signature(s)

Name(s) (printed)

Position in parent company

Signature of Witness(s)

Name(s) (printed)

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

(to be reproduced exactly as shown below on the letterhead of the Bank providing the Bond / Guarantee)

**Eskom Holdings SOC Ltd**

Bank reference No.

**Megawatt Park**

**Maxwell Drive**

**Sandton**

**Johannesburg**

Date:

Dear Sirs,

**Performance Bond – Demand Guarantee for [insert name of *Supplier*] required in terms of contract [insert *Supplier's* contract reference number or title]**

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

1.1	“Bank” means	[Insert name of Bank], [●] Branch, Registration No. [●]
1.2	“Bank’s Address” means	[Insert physical address of Bank]
1.3	“Contract” means	the written agreement relating to providing the <i>goods</i> and <i>services</i> , entered into between the <i>Purchaser</i> and the <i>Supplier</i> , on or about the [●] day of [●] 200[●] (Contract Reference No. [●]) as amended, varied, restated, novated or substituted from time to time;
1.4	“Supplier” means	[●] a company registered in accordance with the laws of [●] under Registration No [●].
1.5	“Purchaser” means	Eskom Holdings SOC Ltd a company registered in accordance with the laws of the Republic of South Africa under Registration Number [●]

1.6	"Expiry Date" means	the earlier of <ul style="list-style-type: none"> <li>the date that the Bank receives a notice from the <i>Purchaser</i> stating that all amounts due from the <i>Supplier</i> as certified in terms of the contract have been received by the <i>Purchaser</i> and that the <i>Supplier</i> has fulfilled all his obligations under the Contract, or</li> <li>the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by the <i>Purchaser</i>.</li> </ul>
1.7	"Guaranteed Sum" means	the sum of R[●], ([●] Rand)
1.8	"goods and services" means	[insert details from Contract Data part 1]

- At the instance of the *Supplier*, we the undersigned \_\_\_\_\_ and \_\_\_\_\_, in our respective capacities as \_\_\_\_\_ and \_\_\_\_\_ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of the *Purchaser* as security for the proper performance by the *Supplier* of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to the *Purchaser*, on written demand from the *Purchaser* received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.
- A demand for payment under this guarantee shall be made in writing at the Bank's address and shall:
  - be signed on behalf of the *Purchaser* by a Group Executive, Divisional Executive, Senior General Manager, General Manager or its delegate;
  - state the amount claimed ("the Demand Amount");
  - state that the Demand Amount is payable to the *Purchaser* in the circumstances contemplated in the Contract.
- Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank's obligation/s to make payment:
  - is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
  - is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
- The Bank's obligations in terms of this Guarantee:
  - shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
  - shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between the *Purchaser* and the *Supplier*.

6. The *Purchaser* shall be entitled to arrange its affairs with the *Supplier* in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the *Supplier* or any variation under or to the Contract.
7. Should the *Purchaser* cede its rights against the *Supplier* to a third party where such cession is permitted under the Contract, then the *Purchaser* shall be entitled to cede to such third party the rights of the *Purchaser* under this Guarantee on written notification to the Bank of such cession.
8. This Guarantee:
- shall expire on the Expiry Date until which time it is irrevocable;
  - is, save as provided for in 7 above, personal to the *Purchaser* and is neither negotiable nor transferable;
  - shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
  - shall be regarded as a liquid document for the purpose of obtaining a court order; and
  - shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.
  - will be invalid and unenforceable if any claim which arises or demand for payment is received after the Expiry Date.
9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank's Address.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

For and on behalf of the Bank

Bank Signatories(s)

Name(s) (printed)

Witness(s)



Bank's seal or stamp

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## Pro forma Advanced Payment Bond (for use with Option X14)

(to be reproduced exactly as shown below on the letterhead of the Bank providing the Bond)

**Eskom Holdings SOC Ltd**

Bank ref no. [●]

**Megawatt Park**

**Maxwell Drive**

**Sandton**

**Johannesburg**

Date: [●]

Dear Sirs,

### Advanced Payment Bond for Contract No. [●]

With reference to the above numbered contract made or to be made between

**Eskom Holdings SOC Ltd**

(the *Purchaser*) and

**{Insert registered name and address of the *Supplier*}**

(the *Supplier*), for

**{Insert details of the *goods and services* from the Contract Data}**

(the *goods and services*).

I/We the undersigned [●]

on behalf of the Surety [●]

of physical address [●]


and duly authorised thereto do hereby bind ourselves as Surety and co-principal debtors in solidum for the due and proper repayment by the *Supplier* to the *Purchaser* of the advanced payment made by the *Purchaser* to the *Supplier* under the Contract, and for all losses and expenses that may be suffered or incurred by the *Purchaser* as a result of non-payment by the *Supplier*, subject to the following conditions

1. The terms *Purchaser*, *Supplier*, and the *goods and services* have the meaning as assigned to them by the *conditions of contract* listed in the Contract Data for the aforesaid Contract.
2. We renounce all benefits from the legal exceptions "Benefit of Excussion and Division", "No value received" "Revision of Accounts", "Cession of Action" and any other exceptions which might or could be pleaded against the validity of this bond, with the meaning and effect of which exceptions we declare ourselves to be fully acquainted.
3. The *Purchaser* has the absolute right to arrange his affairs with the *Supplier* in any manner which the *Purchaser* deems fit and without being advised thereof the Surety shall not have the right to claim his release on account of any conduct alleged to be prejudicial to the Surety. Without derogating from the foregoing compromise, extension of the supply period, indulgence, release or variation of the *Supplier's* obligation shall not affect the validity of this Advance Payment bond.
4. This bond expires on the date when the Surety receives a notice from the *Supply Manager* stating that the advanced payment has been repaid to the *Purchaser* in terms of the Contract, or liquidated by deductions from other payments due to the *Supplier*.
5. The amount of the bond shall be payable to the *Purchaser* upon the *Purchaser's* demand and no later than 7 days following the submission to the Surety of a certificate signed by the *Supply Manager* stating the amount of the *Purchaser's* losses, damages and expenses incurred as a result of the non-performance aforesaid. The signed certificate shall be deemed to be conclusive proof of the extent of the *Purchaser's* loss, damage and expense.
6. Our total liability hereunder shall not exceed the sum of ..... (R ..... ) which is equal to the advance payment.
7. This Advanced Payment Bond is neither negotiable nor transferable and is governed by the laws of the Republic of South Africa.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 200\_

Name(s) (printed)

[illegible]

## NEC3 Supply Contract

Document reference	Title	No of pages
C2.1	Pricing assumptions	2
C2.2	The <i>price schedule</i>	[•]

## C2.1 Pricing assumptions

### 1. How *goods* and *services* are priced and assessed for payment

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

**Identified and  
defined terms**

11

11.2

(11) The Prices are the amounts stated in the price column of the Price Schedule. Where a quantity is stated for an item in the Price Schedule, the Price is calculated by multiplying the quantity by the rate.

(12) The Price Schedule is the *price schedule* unless later changed in accordance with this contract.

**Assessing the  
amount due**

50.2

The amount due is

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

Any tax which the law requires the *Purchaser* to pay to the *Supplier* is included in the amount due.

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

### 2. 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.

### 3. 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;
- 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.

#### 3.1. 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	Price Per drum	Total Price
0549667	OIL, INSULATING: TYPE: INHIBITED; CONTAINER: DRUM 210 L; TRADE NAME: VIRGIN OIL 60 UX; VISCOSITY RATING: 1800 AT 30 DEG C;12 AT 40 DEG C; FLASH POINT: 135; SPECIFICATION: IEC 60296:2003-11	Per drum	567		

The total of the Prices

**PRICE PER DRUM MUST INCLUDE DELIVERY TO KZN  
EAST GRID ESKOM SITES**

**ALL SUBSTATIONS IN TRANSMISSION KZN EAST GRID**

**THE REQUIREMENTS FOR 10 TON TRUCK WITH CRANE OR SIMILAR  
TRANSPORT ARE**