

NEC3 Supply

Short Contract (SSC3)

A contract between **The Purchaser**
Eskom Rotek Industries SOC LIMITED
(Reg No. 199006897/30)

and **The Supplier**
.....
Reg No.

for **The design, supply, deliver to site, site installation, testing, commissioning and hand over of the passenger and goods lift to Kusile Power Station to Kusile Power Station Unit 4 Dust Handling Plant and Silo 4.**

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Contract No

Documentation
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C1 Agreements & Contract Data

C1.1 Form of Offer and Acceptance

Offer

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

The design, supply, deliver to site, site installation, testing, commissioning and hand over of the passenger lift to Kusile Power Station to Kusile Power Station Unit 4 Dust Handling Plant and Silo 4.

The tenderer, identified in the signature block below, has 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.

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	
Value Added Tax @ 15% is	
The offered total of the Prices inclusive of VAT is	
(in words)	

This Offer may be accepted by the Purchaser by signing the form of Acceptance overleaf 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:**

Name &
signature of
witness

Date

Tenderers CIDB Registration Number and Grading:

Registration Number:
Grading:

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 1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)

Part 2 Pricing Data

Part 3 Scope of Work: Goods Information

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

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender 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, which must be signed by the duly authorised representative(s) for both parties.

The tenderer shall within one week 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 copy of this document, including the Schedule of Deviations (if any) together with all the terms of the contract as listed above.

Signature(s)

Name(s)

Capacity

**for the
Purchaser**

Name &
signature of
witness

Date

Schedule of Deviations

Note:

1. To be completed by the Purchaser prior to award of contract. 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	N/A	N/A
2	N/A	N/A
3	N/A	N/A
4	N/A	N/A
5	N/A	N/A
6	N/A	N/A
7	N/A	N/A

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

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

For the tenderer:

Signature

Name

Capacity

On behalf
of

For the Purchaser

ESKOM ROTEK INDUSTRIES SOC LIMITED

Name &
signature
of witness

Date

C1.2 Contract Data

Data provided by the Purchaser

Completion of the data in full is essential to create a complete contract.

Clause	Statement	Data
General		
10.1	The <i>Purchaser</i> is (Name):	Eskom Rotek Industries SOC Limited (Reg No: 1990006897/30), a juristic person incorporated in terms of the company laws of the Republic of South Africa
	Address	Roshland Office Park Lower Germiston Road Rosherville Cleveland 2022
	Represented by:	Khomotso Mothata
	Tel No.	+27 11 621 3196
	E-mail address	mothatke@eskom.co.za
11.2(4)	The <i>delivery date</i> is	23 September 2022
11.2(5)	The Goods Information is in	the document called 'Goods Information' in Part 3 of this contract.
11.2(8)	The <i>goods</i> are	Structural Steelwork as per the attached SOW
12.2	The <i>law of the contract</i> is	the Republic of South Africa
13.2	The <i>period for reply</i> is	21 Calendar Days
15.1	The <i>premises</i> are	Kusile Power Station
23.1	The <i>Purchaser</i> requires the <i>Supplier</i> to Provide the Goods when instructed by Batch Order.	No
23.1	If the <i>goods</i> are instructed by Batch Order,	the batch order interval is Not Applicable the end date is Not Applicable the quantity range of <i>goods</i> in a batch is Not Applicable
30.1	The <i>starting date</i> is.	23 May 2022
30.1	The <i>completion date</i> is.	23 September 2022
41.1	The <i>defects date</i> is	1 Calendar Week
42.2	The period for the correction of Defects after Delivery is	1 Calendar Week
50.1	The <i>assessment day</i> is the	25th Day of Each Month.

50.5	The <i>delay</i> damages are	1 % of Contract Value Per Day
51.2	The interest rate on late payment is	0% per complete week of delay. [Insert a rate only if a rate less than 0.5% per week of delay has been agreed]
84.1	The <i>Purchaser</i> provides this insurance [only enter details here if the <i>Purchaser</i> is to provide insurance; otherwise state none]	<p>1. Insurance against Loss of or damage to the goods, plant and materials and loss of or damage to the <i>Purchaser</i>'s surrounding property.</p> <p>Cover / indemnity is Overseas shipment / transit insurance (only) to cover events at the <i>Supplier</i>'s risk (if any) after the goods have left the <i>Supplier</i>'s overseas premises. See notes in Annexure B</p> <p>If this contract includes the supervision of installation, testing, commissioning or building work at the <i>Purchaser</i>'s premises, the <i>Purchaser</i> also provides cover for physical loss of or damage to the <i>Purchaser</i>'s surrounding property including any temporary work required to complete the Delivery.</p>
	The deductibles are	See data for clause 86.2 below and Annexure B
86.1	The <i>Supplier</i> 's liability to the <i>Purchaser</i> for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to	Nil Rand
86.2	The <i>Supplier</i> is not liable to the <i>Purchaser</i> for loss of or damage to the <i>Purchaser</i> 's property in excess of	<p>(1) for the <i>Purchaser</i>'s existing and surrounding property in the care, custody and control of the <i>Supplier</i> the amount of the deductible (first amount payable) relevant to the event described in the insurance policy available on http://www.eskom.co.za/c/101/insurance-policies-procedures/ and</p> <p>(2) for all other existing <i>Purchaser</i>'s property the highest applicable deductible (first amount payable) namely:</p> <ul style="list-style-type: none"> • R15 million (fifteen million Rand) for Generation Division property; • R7.5 million (seven million five hundred thousand Rand) for Transmission Division property and; • R1 million (one million Rand) for Distribution Division and all other <i>Purchaser</i>'s property
		See notes in Annexure B

93.1	The <i>Adjudicator</i> is (Name)	the person selected from the Panel of Adjudicators listed in Annexure A to this Contract Data by the Party intending to refer a dispute to him.
93.2(2)	The <i>Adjudicator nominating body</i> is: An Adjudicator will be appointed between the Contractor and the Employer should a dispute arises. The costs that the Adjudicator charge will be divided between both Parties at 50% for each parties account.	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)
93.4	The <i>tribunal</i> is: If the <i>tribunal</i> is arbitration, the arbitration procedure is	arbitration. the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
11.1	The <i>conditions of contract</i> are the NEC3 Supply Short Contract (December 2009)¹ and the following additional conditions (Clauses Z1 to Z19 always apply):	

Z1 Cession delegation and assignment

- Z1.1 The *Subcontractor* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Main Contractor*.
- Z1.2 The *Main Contractor* may on written notice to the *Subcontractor* cede and delegate its rights and obligations under this contract to any of its present divisions or operations which may be converted into separate legal entities or to Eskom SOC Limited or any of Eskom's SOC Limited's subsidiaries.

Z2 Joint Ventures

- Z2.1 If the *Subcontractor* 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 *Main Contractor* for the performance of this contract.
- Z2.2 Unless already notified to the *Main Contractor*, the persons or organisations notify the *Project Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Main Contractor* on their behalf.
- Z2.3 The *Subcontractor* does not substantially alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Main Contractor* having been given to the *Main Contractor* in writing.

¹ State whether attached as a 'PDF' file in terms of an ePrint licence from the publishers, Thomas Telford Ltd in UK, or to be obtained from Engineering Contract Strategies on www.ecs.co.za, Tel 011 803 3008, Fax 011 803 3009

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

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

Z4 Ethics

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.

- Z4.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z4.2 Notwithstanding the provisions of core clause 90.2, the procedures on termination in terms of this clause are P1, P2 and P3 as stated in the core clause 92 and the amount due is A1 and A3 as stated in core clause 93.

Z4.3 The Purchaser may terminate the Supplier's obligation to Provide the Goods 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 Goods for this reason.

Z4.4 If the Purchaser terminates the Supplier's obligation to Provide the Goods for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.

Z4.5 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.

Z5 Confidentiality

Z5.1 The *Subcontractor* 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 *Subcontractor*, enters the public domain or to information which was already in the possession of the *Subcontractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Subcontractor* disclose information to Others in terms of clause 25.1, the *Subcontractor* ensures that the provisions of this clause are complied with by the recipient.

Z5.2 If the *Subcontractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Project Manager*.

Z5.3 In the event that the *Subcontractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Subcontractor*, to the extent permitted by law prior to disclosure, notifies the *Main Contractor* 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 *Subcontractor* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z5.4 The taking of images (whether photographs, video footage or otherwise) of the works or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the *Project Manager*. All rights in and to all such images vests exclusively in the *Main Contractor*.

Z5.5 The *Subcontractor* ensures that all approved his *Sub-subcontractors* abide by the undertakings in this clause.

Z6 Waiver and estoppel: Add to core clause 12.3:

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

Z7 Health, safety and the environment: Add to core clause 27.4

Z7.1 The *Subcontractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the works. Without limitation the *Subcontractor*:

- accepts that the *Main Contractor* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2003 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Site;

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

Z7.2 The *Subcontractor*, in and about the execution of the works, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his *Sub-subcontractors*, employees and others under the *Subcontractor's* direction and control, likewise observe and comply with the foregoing.

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

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

Z8.2 If the *Subcontractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Main Contractor* 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 *Main Contractor* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z8.3 The *Subcontractor* (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 *Main Contractor's* VAT number (**4330196330**) on each invoice he submits for payment.

The *Contractor* shall address the tax invoice to;
Eskom ROTEK Industries SOC Limited

and include on each invoice the following information:

Name and address of the *Main Contractor* and the *Project Manager*:

Eskom ROTEK Industries SOC Limited –
Roshland Office Park
Lower Germiston Road
Rosherville

Project Manager – Khomotso Mothata

The contract title: **The design, supply, deliver to site, site installation, testing, commissioning and hand over of the passenger lift to Kusile Power Station to Kusile Power Station Unit 4 Dust Handling Plant and Silo 4**

Contract No:

Subcontractor's VAT registration number;

The *Main Contractor's* VAT registration number: **4330196330**

Description of service provided for each item invoiced based on the Price List;

Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
(add other as required)

- a) the Price for each lump sum item in the Price List or Task Order which the *Contractor* has completed and
- b) where a quantity is stated for an item in the Price List or Task Order, an amount calculated by multiplying the quantity which the *Contractor* has completed by the rate.

Z9 Notifying Compensation Events

Z9.1 Delete from the last sentence in core clause 61.3, “unless the *Project Manager* should have notified the event to the *Subcontractor* but did not”.

Z10 Main Contractor's limitation of liability

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

Z10.2 The *Subcontractor*'s entitlement under the indemnity in 83.1 is provided for in 60.1(14) and the *Employer*'s liability under the indemnity is limited to compensation as provided for under the compensation events stated in this contract.

Z11 Clause 90 - Termination

If the *Main Contractor* terminates in terms of this clause, the procedures to be followed will be as per those stated in Clause 92 and the amount due will include amounts as listed in Clause 93, less a deduction of the forecast additional cost to the *Main Contractor* for completing the *works*.

Furthermore, if the amount due by the *Subcontractor* for delay damages reaches the limits stated in this Contract Data, the *Main Contractor* may also terminate the *Subcontractor*'s obligation to provide the *works*. If the *Main Contractor* terminates under the aforementioned circumstances then the procedures and amounts due will be as per Clauses 92 and 93 mentioned above, less a deduction of the forecast additional cost to the *Main Contractor* for completing the *works*.

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

Z12.1 If the amount due for the *Subcontractor*'s payment of delay damages reaches the limits stated in this Contract Data for Option X7 or Options X5 and X7 used together, the *Main Contractor* may terminate the *Subcontractor*'s obligation to Provide the *Works*.

Z12.2 If the *Main Contractor* terminates in terms of this clause, the procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

Z13 Second Tier Procurement

Z13.1 The *Main Contractor* requires the *Subcontractor* to maximise the use of regional suppliers surrounding the site.

Z14 Delays By The *Main Contractor*

Z14.1 Delays in access to the site, if notified by the *Main Contractor* within one week of the event, will be compensated as an extension of time without additional costs.

Z15 Change of Legal Status

- Z15.1 The *Subcontractor* immediately notifies the *Main Contractor* in writing of any change in its legal status. Failure on the part of the *Subcontractor* to notify the *Main Contractor* of a change in legal status will constitute a reason for termination. The *Main Contractor* assesses the impact of the change on the contract and reserves the right to terminate the contract.
- Z15.2 If the *Main Contractor* 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 per A1 and A3 as stated in Clause 93

Z16 Payment of Employee's Wages

- Z16.1 It is understood and agreed between the parties that wages for work carried out by the *Subcontractor*'s employees shall be paid by the *Subcontractor* to all workmen employed by or on behalf of the *Subcontractor*. The *Subcontractor* shall remain liable for payment of his employee's remuneration even in the event of non-payment by the *Main Contractor*. Failure to meet the aforesaid payment of the employee's remuneration will result in the termination of this subcontract agreement

Z17 Entire Agreement

The Contract comprises the entire agreement between the Contractor and the Subcontractor relating to the Works (as hereinafter defined) and subject matter hereunder and supersedes all prior negotiations, representations, arrangements, understandings, agreements and/or contracts relating thereto whether written or oral except to the extent that they are expressly incorporated in the Contract. The Parties shall not be entitled to rely upon nor claim at law whether in contract, delict, for breach of statutory duty or on any other legal basis in relation to any statements, representations or warranties made or given by either Party during the course of negotiations which are not contained in or referred to in this Contract. The Parties agree and confirm that they have placed no reliance upon each other and shall not claim against the other in respect of any statement, representation or warranty made or given by or on behalf of either Party (whether during the course of negotiations or otherwise) which is not included as a term in this Contract and/or the Contract Documents.

Solicitation

- Z18 A Party may not, without the prior agreement of the other Party, solicit for employment any employee of the other party who has been involved in this contract at any time while that employee is working for the other Party on this contract, or for a period which is the lesser of (i) 6 months following termination of such employee's employment with the other Party; and (ii) 6 months from expiry of the contract.

Retention

The *retention* free amount is R NIL

The *retention percentage* is 5% (50% released on completion of the works and the submission of a Completion Certificate and the balance released at the end of the defects period and the submission of a Hand Over Certificate)

Annexure A: The Purchaser's Panel of Adjudicators

The following persons listed in alphabetical order of their surname have indicated their willingness to be included in the *Purchaser's Panel of Adjudicators*. Their CV's may be obtained by using the contact details provided.

Name	Location	Contact details (phone & e mail)
Nigel ANDREWS	Gauteng	+27 11 836-6760 nigela@quoin.net
Andrew BAIRD	Gauteng	+27 11 803 3008 andrew@ecs.co.za
Christopher BINNINGTON	Gauteng	+27 11 888-6141 cdb@bca.co.za
Peter HIGGINS	UK	+44 1293 873 868 peterhiggins@pdconsult.co.uk
Adv. Bruce LEECH	Gauteng	+27 11 290 4000 leech@counsel.co.za
Nigel NILEN	Gauteng	+27 11 465 3601; nilences@global.co.za
Robert St. LEGER	Cape Town	+27 21 794 7488 bobst@iafrica.com
Peter THURLOW	Gauteng	+27 11 787 6226 info@thurlowassoc.com

Information about the Panel and appointment of the selected *Adjudicator* is available from the Purchaser at +27 11 800 4031 or Leighton.Itholeng@eskom.co.za

Annexure B: Insurance provided by the Purchaser

These notes are provided as guidance to tendering suppliers and the Supplier about the insurance provided by the Purchaser. These notes are not part of this contract.

Transit insurance of goods originating from outside the borders of the Republic of South Africa

For the purpose of supply contracts, the only insurance provided by Eskom (the *Purchaser*) is transit shipment cover, commonly known as Marine Insurance for air, sea, rail and road freight (including local land arrangements) for conveyance of goods originating outside RSA. Please consult the website stated below to ascertain whether Format A, Format B or Format Dx is applicable to this contract and then the

- Marine Insurance Policy wording;
- Eskom Shipment Policies and Procedures – note a pre-shipment survey form has to be completed under certain circumstances;
- Marine Claims Handling Procedures – for important shipment actions and claims forms in event of damages to cargo freight via sea, barge, air, road or rail.

For EXW (Ex Works collections) this is of no concern to the *Supplier* but for any other Supply Requirement (such as CIF, DDU, or DDP) the *Supplier* need not provide such insurance even if the INCOTERM requires it and tendering suppliers should 'discount' their prices when tendering to allow for this provision by the Purchaser (Eskom).

Supplier's liability for damage to the Purchaser's property

Whilst this is a liability the *Supplier* carries and should cover (if he is required to deliver the goods to the Purchaser's premises) his liability is limited to the amount of cover provided to the *Purchaser* within his assets policy. This amount varies depending on the Division within Eskom to which the *Supplier* is making the delivery. For any one occurrence or series of occurrences arising out of one event but unlimited during the period of insurance the *Supplier's* liability would be:

- R15million for Generation Division projects,
- R7.5million for Transmission Division projects or
- R1.0million for Distribution Division projects

All other insurance

As required by clause 84, the *Supplier* provides all other insurance for his risks. The *Supplier* should give further consideration to providing for these additional insurance concepts [for amounts and periods of insurance the *Supplier* deems fit and necessary].

Professional Indemnity: The insurance provided shall indemnify the *Supplier* (and/or his professional consultant) for those sums which the *Supplier* or his consultant shall become legally liable to pay as damages arising from any claim first made against the *Supplier* / consultant and reported to their insurers during the Period of Insurance, directly arising out of any negligent act, error or omission committed or alleged to have been committed by the *Supplier* / consultant in the conduct of **professional services** (for example, design) in connection with this contract.

Products Liability: A special General Liability extension for liability arising out of the *Supplier's* **defective**:

- production and manufacturing process (workmanship or material), or
- product design, or
- warnings, instructions, usage and maintenance manuals and specifications.

For any further explanation of insurance requirements tendering suppliers are advised to consult their brokers or insurers who may in turn contact Eskom Insurance Management Services per contact details provided on the following website:



Rotek Industries

**The design, supply, deliver to site, site installation, testing, commissioning and hand over of
the passenger lift to Kusile Power Station to Kusile Power Station Unit 4 Dust Handling Plant and Silo 4.**

Contract No:.....

<http://www.eskom.co.za/c/101/insurance-policies-procedures/>

Data provided by the Supplier (the Supplier's Offer)

The tendering Supplier is advised to read both the NEC3 Supply Short Contract (December 2009) and the relevant parts of its Guidance Notes (SSC3-GN)² in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on page 26 of the SSC3 Guidance Notes and Flow Charts.

Completion of the data in full is essential to create a complete contract.

10.1 The *Contractor* is (Name):

Address

Tel No.

Contact Person.

E-mail address

11.2(4)	The Price List is in	the document called 'Price List' in Part 2 of this contract.
11.2(4)	The offered total of the Price is	(excluding VAT)
63.2	The percentage for overheads and profit added to the Defined Cost is	0% - Deemed to be included

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

C2 Pricing Data

C2.1 Pricing Assumptions

Entries in the first four columns of this Price Schedule are made either by the *Purchaser* or the tenderer. If the *Supplier* is to be paid an amount for the item which is not adjusted if the quantity of goods in the item changes, the tenderer 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 of goods which is the rate for the goods multiplied by the quantity supplied, the tenderer enters a rate for each item and multiplies it by the Quantity to produce the Price, to be entered in the final column.

The rates and Prices entered for each item includes for all work and other things necessary to supply the item.

C2.2 Price Schedule

The rates and Prices entered for each item includes for all work and other things necessary to supply the item.

C3: Scope of Work

C3.1 Goods Information

1. Description of the *goods*

The design, supply, deliver to site, site installation, testing, commissioning and hand over of the passenger lift to Kusile Power Station to Kusile Power Station Unit 4 Dust Handling Plant and Silo 4

2. Specifications

See Scope of Work Attached.

3. Constraints on how the *Supplier* Provides the Goods

3.1 Subcontracting

3.2 BBBEE and Preferencing Scheme

4. Requirements for the programme

4 Month Period for the Completion and Hand Over of the Works

5. Services and other things provided by the *Purchaser*

Item	Date by which it will be provided
.....
.....
.....
.....
.....



Rotek Industries

The design, supply, deliver to site, site installation, testing, commissioning and hand over of the passenger lift to Kusile Power Station to Kusile Power Station Unit 4 Dust Handling Plant and Silo 4.

Contract No:.....

6. Supply Requirements

C: CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ('Agreement') is entered into between the Employer and the Consultant.

WHEREAS, the Employer and the Consultant (the 'Parties') desire to exchange certain confidential information; and consider further business dealings with each other.

WHEREAS, the parties desire to evidence their agreements governing the exchange of certain confidential information as set forth below.

Now therefore, for good and valuable consideration, including the mutual agreements hereinafter recited, the parties hereby agree as follows:

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the 'Subject Information') may include but not be limited to the parties' inventions, trade secrets, know-how, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.
2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other.
3. The parties each agree that they shall maintain in secrecy in accordance with the terms of this Agreement all of the Subject Information each party receives (the 'Receiving Party') from the other party (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.
4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.
5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.
6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes and other writings prepared by the parties, or their advisors, based on the Subject Information of each other, shall be destroyed, and such destruction shall be certified in writing by an authorised officer supervising such destruction.
7. If a party, with the written consent of the Proprietor of Subject Information, discloses any Subject Information received from its Proprietor to any third party, it shall do so only under a secrecy agreement having a scope similar to and which is consistent with this Agreement, and the disclosing

party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party

8. Each party agrees that it shall not, while and for so long as it is obligated to maintain Subject Information in secrecy, use for its own benefit, or for the benefit of others or exploit, commercialise, develop, test promote, sell, lease, market or otherwise dispose of any products or services using, incorporating or relying on Subject Information received from its Proprietor without the written consent of the Proprietor.
9. The obligations of the party receiving Subject Information pursuant to this Agreement shall be effective with respect of each item of Subject Information for a term of five (5) years from the date of submission of the Subject Information to the Receiving Party by its Proprietor, unless the Proprietor agrees otherwise in writing.
10. For purposes of this Agreement, each party shall include (to the extent applicable) the officers, directors, employees, agents, representatives, attorneys, joint ventures, partnerships, affiliates, subsidiaries, and divisions of the party, and any other entity or entities which such party controls or which controls it, and, further, shall include any transferee, successor and assign of the assets of the party.
11. This Agreement shall be construed (both as to validity and performance) and enforced in accordance with, and governed by, the laws of Republic of South Africa.
12. Neither this Agreement nor the exchange of Subject Information between the parties shall create or be relied on by either party as a basis for creating any license between the parties under any patent, or other industrial or intellectual property rights of the Proprietor of the Subject Information, or any other license between the parties in the absence of any express written license agreement between them
13. The parties agree that no contract or agreement providing for a transaction shall be deemed to exist between them unless and until a definitive agreement has been executed and delivered, the parties hereby waive, in advance, any claim (including, without limitation, breach of contract) in connection with a possible transaction with each other unless and until they shall have entered into a definitive agreement. The parties also agree that unless and until a definitive agreement between them has been executed and delivered, neither party has any legal obligation of any kind whatsoever with respect to any such transaction by virtue of this Agreement or any other written or oral expression with respect to such transaction, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this paragraph, the term 'definitive agreement'; does not include an executed letter of intent, memorandum of understanding.

IN WITNESS WHEREOF, and intending to be legally bound, this Agreement has been executed by the parties as of and effective from the date first written above.