



## NEC3 Supply Contract (SC3)

Between **ESKOM HOLDINGS LIMITED**  
(Registration No. 2002/015527/06)

and  
(Registration No.)

for **Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis**

---

<b>Contents:</b>	<b>No of pages</b>
<b>Part C1 Agreements &amp; Contract Data</b>	<b>16</b>
<b>Part C2 Pricing Data</b>	<b>18</b>
<b>Part C3 Scope of Work</b>	<b>21</b>

---

**CONTRACT No.:**

---

## PART C1: AGREEMENTS & CONTRACT DATA

---

<b>Contents:</b>	<b>No of pages</b>
<b>C1.1 Form of Offer and Acceptance</b>	<b>2</b>
[to be inserted from Returnable Documents at award stage]	
<b>C1.2a Contract Data provided by the <i>Purchaser</i></b>	<b>12</b>
<b>C1.2b Contract Data provided by the <i>Supplier</i></b>	<b>1</b>
[to be inserted from Returnable Documents at award stage]	

---

# 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 gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.

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	R

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

Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.

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 original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)

Capacity

for the  
***Purchaser***

**Eskom Holdings SOC Ltd, Nelspruit Distribution, Mpumalanga Operating Unit.**

*(Insert name and address of organisation)*

Name &  
signature of  
witness

Date

# C1.2(a) SC3 Contract Data

## Part one - Data provided by the Purchaser

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	
		<p><b>X1 Price Adjustment</b></p> <p><b>X2 Changes in the law</b></p> <p><b>X7: Delay damages</b></p> <p><b>Z: Additional conditions of contract</b></p>
	of the NEC3 Supply Contract (December 2009) <sup>1</sup>	
10.1	The <i>Purchaser</i> is (name):	<b>Eskom Holdings Limited (Registration no: 2002/015527/06), a juristic person 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>(013] 755 9004 (086) 580 7044</b>
	Fax No.:	
10.1	The <i>Supply Manager</i> is (name):	<b>Tebogo Khosana</b>
	Address:	<b>Eskompark</b>
		<b>1200</b>
	Tel No.:	<b>+27 13 693 4302</b>
	Fax No.:	
	e-mail address:	<b>KhosanTL@eskom.co.za</b>
11.2(13)	The <i>goods</i> are:	<b>Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.</b>

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

11.2(13)	The <i>services</i> are:	<b>Supply and Delivery</b>				
11.2(14)	The following matters will be included in the Risk Register:	<b>Delays on delivery date</b>				
11.2(15)	The Goods Information is in:	<b>Part C3: Scope of Work</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>2 (two) working days</b>				
<b>2</b>	<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>				
<b>3</b>	<b>Time</b>					
30.1	The <i>starting date</i> is:					
30.1	The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is:	<table border="1"> <thead> <tr> <th><i>goods and services</i></th> <th><i>delivery date</i></th> </tr> </thead> <tbody> <tr> <td>As per scope on as and when required basis</td> <td>As per batch order for collection</td> </tr> </tbody> </table>	<i>goods and services</i>	<i>delivery date</i>	As per scope on as and when required basis	As per batch order for collection
<i>goods and services</i>	<i>delivery date</i>					
As per scope on as and when required basis	As per batch order for collection					
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>For Collection</b>				
31.1	The <i>Supplier</i> is to submit a first programme for acceptance within:	<b>N/A</b>				
32.2	The <i>Supplier</i> submits revised programmes at intervals no longer than:	<b>N/A</b>				
<b>4</b>	<b>Testing and defects</b>					
42	The <i>defects date</i> is:	<b>1 weeks after Delivery to final Delivery Place</b>				
43.2	The <i>defect correction period</i> is:	<b>Within one month after <i>Purchaser's</i> notification of a Defect</b>				
	except that the <i>defect correction period</i> for:	<b>documentation is 3 weeks</b>				
42.2	The <i>defects access period</i> is:	<b>3 days</b>				
<b>5</b>	<b>Payment</b>					
50.1	The <i>assessment interval</i> is:	<b>Payment within 14 days after delivery to various CNC</b>				
51.1	The <i>currency of this contract</i> is the:	<b>ZAR</b>				

51.2	The period within which payments are made is:	<b>14 days</b>
51.4	The <i>interest rate</i> is:	<p>(i) zero percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rand; and</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 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.</p>
6	<b>Compensation events</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
7	<b>Title</b>	There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.
8	<b>Risks, liabilities, indemnities and insurance</b>	
80.1	These are additional <i>Purchaser’s</i> risks:	<b>1. Unloading of the goods at Delivery Site</b>
84.1	The <i>Purchaser</i> provides these insurances from the Insurance Table:	<b>See notes about <i>Purchaser</i> provided insurance in Annexure B to this Contract Data</b>
	1. Insurance against:	<b>Loss of or damage to the goods, plant and materials.</b>
	Cover / indemnity is:	<b>Overseas shipment / transit insurance (only) to cover events at the <i>Supplier’s</i> risk (if any) after the goods have left the <i>Supplier’s</i> overseas premises. See notes in Annexure B</b>

If this contract includes the supervision of installation, testing, commissioning or building work at the *Purchaser's* premises, the *Purchaser* also provides cover for physical loss of or damage to the *Purchaser's* surrounding property including any temporary work required to complete the Delivery.

The deductibles are: See notes in data for clause 88.2 below and Annexure B

84.1	The <i>Supplier</i> provides these additional insurances:	See notes in Annexure B
84.2	The minimum amount of cover for loss of or damage to any plant and materials provided by the <i>Purchaser</i> is:	N/A
84.2	The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the <i>goods</i> , plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Supplier</i> ) caused by activity in connection with this contract for any one event is:	<p>Whatever the <i>Supplier</i> deems necessary in addition to that provided by the <i>Purchaser</i> for any one event with cross liability so that the insurance applies to the Parties separately.</p> <p>However if the <i>Supplier</i> is exposed to damage to the <i>Purchaser's</i> property the cover limit amount is not less than</p> <ul style="list-style-type: none"> <li>• ZAR 15 million (fifteen million Rand) for exposure to Generation Division property;</li> <li>• ZAR 7.5 million (seven million five hundred thousand Rand) for exposure to Transmission Division property and;</li> <li>• ZAR 1 million (one million Rand) for exposure to Distribution Division and all other <i>Purchaser's</i> property</li> </ul> <p>for any one occurrence or series of occurrences arising out of one event but unlimited during the period of insurance.</p>
84.2	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the <i>Supplier</i> arising out of and in the course of their employment in connection with this contract for any one event is:	As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than ZAR 500 000 (five hundred thousand Rand).
88.1	The <i>Supplier's</i> liability to the <i>Purchaser</i> for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to:	ZAR 0.0 (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:	(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

Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.

amount payable) relevant to the event described in the "Format A" / " , insurance policy available on [http://www.eskom.co.za/live/content.php?Item\\_ID=9248](http://www.eskom.co.za/live/content.php?Item_ID=9248)

and

(2) for all other existing Purchaser's property the highest applicable deductible (first amount payable) namely:

- ZAR 15 million (fifteen million Rand) for Generation Division property;

See notes in Annexure B

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:	N/A
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:	total contract Price
88.5	The <i>end of liability date</i> is:	1 (one) year after Delivery of the whole of the goods.

---

**9 Termination and dispute resolution**

---

94.1	The <i>Adjudicator</i> is (Name):	the person selected from the Panel of Adjudicators listed in Annexure C to this Contract Data by the Party intending to refer a dispute to him.
94.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See <a href="http://www.ice-sa.org.za">www.ice-sa.org.za</a> )
94.4(2)	The <i>tribunal</i> is:	<b>arbitration</b>
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:  The person or organisation who will choose an arbitrator:	<b>Johannesburg, South Africa</b>
	- if the Parties cannot agree a choice or - if the arbitration procedure does not	<b>the Chairman for the time being or his nominee of the Association of Arbitrators (Southern</b>

state who selects an arbitrator, is: **Africa) or its successor body.**

## 10 Data for Option clauses

<b>X2</b>	<b>Changes in the law</b>	
X2.1	A change in the law of:	<b>The Republic of South Africa is a compensation event if it occurs after the Contract Date</b>
<b>X3</b>	<b>Multiple currencies</b>	
X3.1	N/A	
<b>X7</b>	<b>Delay damages</b>	
X7.1	<ul style="list-style-type: none"> <li>Delay damages for Delivery are:</li> </ul>	<b>Delay damages of 1% (one) per day up to a maximum of 10 % of the order value for late deliveries will apply.</b>
<b>X14</b>	<b>Advance payment to the Supplier</b>	
X14.1	<ul style="list-style-type: none"> <li>The amount of the advance payment is:</li> </ul>	<b>None</b>
X14.2	<ul style="list-style-type: none"> <li>An advance payment :</li> </ul>	<b>Not applicable</b>
X14.3	<ul style="list-style-type: none"> <li>The <i>Supplier</i> repays the instalments in assessments starting not less than</li> </ul>	<b>Not applicable</b>
<b>Z</b>	<b>The additional conditions of contract are: (Z1 to Z10 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 and the Electricity Distribution Industry.

### Z2 Joint ventures

- Z2.1 If the *Supplier* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Purchaser* for the performance of this contract.
- Z2.2 Unless already notified to the *Purchaser*, the persons or organisations notify the *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Supplier* on their behalf.
- Z2.3 The *Supplier* does not substantially alter the composition of the joint venture, consortium or other

Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.

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.

### **Z4 Ethics**

- Z4.1 Any offer, payment, consideration, or benefit of any kind made by the *Supplier*, which constitutes or could be construed either directly or indirectly as an illegal or corrupt practice, as an inducement or reward for the award or in execution of this contract constitutes grounds for terminating the *Supplier's* obligation to Provide the Goods and Services or taking any other action as appropriate against the *Supplier* (including civil or criminal action).
- Z4.2 The *Purchaser* may terminate the *Supplier's* obligation to Provide the Goods and Services if the *Supplier* (or any member of the *Supplier* where the *Supplier* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations) is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices.
- Z4.3 Such practices include making of offers, payments, considerations, or benefits of any kind or otherwise, whether in connection with any procurement process or contract with the *Purchaser* or other people or organisations and including in circumstances where the *Supplier* or any such member is removed from the an approved vendor data base of the *Purchaser* as a consequence of such practice.

### **Z5 Confidentiality**

- Z5.1 The *Supplier* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Supplier*, enters the public domain or to information which was already in the possession of the *Supplier* at the time of disclosure (evidenced by written records in existence at that time).
- Z5.2 If the *Supplier* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*.
- Z5.3 In the event that the *Supplier* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Supplier*, to the extent permitted by law prior to disclosure, notifies the *Purchaser* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or

Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.

cannot, be obtained, then the *Supplier* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z5.4 The *Supplier* ensures that all his subcontractors abide by the undertakings in this clause.

**Z6 Waiver and estoppel: Add to core clause 12.3:**

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

**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 "The *Employer* or *Contractor* can notify a compensation event to the other. The *Employer* would instruct the *Contractor* to submit a quotation at the same time as notifying a compensation event to the *Contractor*."

**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 judicial management order granted against it.

## Annexure A: Supply Requirements

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

<p><b>1. The requirements for the supply are</b></p>	<p>Constraints (see clause 11.2 (5))</p> <ul style="list-style-type: none"> <li>• The <i>Supplier</i> does not procure the services of a sub-supplier without the prior written approval of the <i>Purchaser</i>.</li> <li>• No compensation is payable if the <i>Supplier</i> arrives on site without prior arrangement with the <i>Purchaser</i>.</li> </ul> <p>All <i>goods</i> shall be delivered at the GX Real Estate stores (properties building) with all products clearly marked SABS approved</p> <ul style="list-style-type: none"> <li>• The <i>Purchaser</i> has the right to refuse acceptance of any <i>goods</i> which in the opinion of <i>Purchaser</i>, does not meet the requirements of the SABS standards.</li> <li>• The <i>Supplier</i> ensures that all items to be supplied are to the SABS standard and quality accepted by the <i>Purchaser</i> and ensures that they are suitable for the purpose intended for by the manufacturer.</li> <li>• Whenever the materials are required by the <i>Purchaser</i> in an emergency, materials shall be expedited by the <i>Supplier</i> despite the lead times.</li> <li>• The <i>Supplier</i> shall have no claim against the <i>Purchaser</i> in respect of delay due to the above constraints.</li> <li>• As business requirements might change in future, items that are not listed on the price list might be procured via this contract. The <i>Supplier</i> will use the same pricing strategy for unlisted items as was used for listed items. Such items shall be included in the contract in accordance with core clause.</li> </ul>	
<p><b>2. The requirements for transport are</b></p>	<p>N/A</p>	
<p><b>3. The Delivery Place is</b></p>	<p>The individual will collect from the supplier.</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>Send a request in the form of order</p>	<p><i>Purchaser</i></p>
	<p>The individual will check the items</p>	<p><i>Purchaser</i></p>

Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.

Goods Information

## **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:

- ZAR15 million for Generation 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.

Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.

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

[http://www.eskom.co.za/live/content.php?Item\\_ID=9248](http://www.eskom.co.za/live/content.php?Item_ID=9248)

Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.

## Annexure C: The Purchaser's Panel of Adjudicators

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

Name	Location	Contact details (phone & e mail)
Nigel ANDREWS	Gauteng	+27 11 836-6760 nigela@quoin.net
Andrew BAIRD	Gauteng	+27 11 803 3008 <a href="mailto:andrewbaird@ecsconsult.co.za">andrewbaird@ecsconsult.co.za</a>
Christopher BINNINGTON	Gauteng	+27 11 888-6141 <a href="mailto:cdb@bca.co.za">cdb@bca.co.za</a>
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 <a href="mailto:bobst@iafrica.com">bobst@iafrica.com</a>
Peter THURLOW	Gauteng	+27 11 787 6226 <a href="mailto:info@thurlowassoc.com">info@thurlowassoc.com</a>

Information about the Panel and appointment of the selected *Adjudicator* is available from Eskom Supply Chain Operations management, by contacting Leighton Ithuleng on 011800 4034 or [Marika.vdHeever@eskom.co.za](mailto:Marika.vdHeever@eskom.co.za)

# C1.2(b)Contract Data

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

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:	<b>Not Applicable</b>						
11.2(11)	The tendered total of the Prices is:							
11.2(12)	The <i>price schedule</i> is in:	<b>The document called the "<i>price schedule</i>" and in the document PART C2 – Pricing Data referred to by it</b>						
11.2(14)	The following matters will be included in the Risk Register:	<b>Not Applicable</b>						
25.2	The restrictions to access for the <i>Supply Manager</i> and Others to work being done for this contract are:	<b>Not Applicable</b>						
30.1	The <i>delivery date</i> of the <i>goods and services</i> is:	<table border="1"> <thead> <tr> <th></th> <th><i>goods and services</i></th> <th><i>delivery date</i></th> </tr> </thead> <tbody> <tr> <td>1</td> <td>As per scope</td> <td>As per task order</td> </tr> </tbody> </table>		<i>goods and services</i>	<i>delivery date</i>	1	As per scope	As per task order
	<i>goods and services</i>	<i>delivery date</i>						
1	As per scope	As per task order						
31.1	The programme identified in the Contract Data is contained in:	<b>Not applicable</b>						
63.2	The <i>percentage for overheads and profit</i> added to the Defined Cost is:							

## PART C2: PRICING DATA

### NEC3 Supply Contract

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
C2.1	Pricing assumptions	2
C2.2	The <i>price schedule</i>	16

## C2.1 Pricing assumptions

### The conditions of contract

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

Clause 11 in NEC3 Supply Contract, December 2009 (SC3) core clauses states:

<b>Identified and defined terms</b>	11 11.2	(11) The Prices are the amounts stated in the price column of the Price Schedule. Where a quantity is stated for an item in the Price Schedule, the Price is calculated by multiplying the quantity by the rate.  (12) The Price Schedule is the <i>price schedule</i> unless later changed in accordance with this contract.
<b>Assessing the amount due</b>	50.2	The amount due is  the Price for each lump sum item in the Price Schedule which the <i>Supplier</i> has completed, where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the <i>Supplier</i> has completed by the rate, plus other amounts to be paid to the <i>Supplier</i> , less amounts to be paid by or retained from the <i>Supplier</i> .  Any tax which the law requires the <i>Purchaser</i> to pay to the <i>Supplier</i> 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.

### Function of the Price Schedule

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

### Preparing the price schedule

It will be assumed that the tendering supplier has read Pages 11 and 12 and Appendix 5 of the SC3 Guidance Notes before 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.

1 As the *Supplier* has an obligation to correct Defects (core clause 43.1) and there is no compensation event for this unless the Defect was due to a *Supplier's* risk, the lump sum Prices and rates must also include for the correction of Defects.

Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.

2 If the *Supplier* has decided not to identify a particular item in the *price schedule* at the time of tender the cost to the *Supplier* of doing the work is assumed to be included in, or spread across, the other Prices and rates in the *price schedule* in order to fulfil the obligation to Provide the Goods and Services for the tendered total of the Prices.

3 There is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item of *goods* or *services* 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. See Clause 60.1.

4 Hence the Prices and rates tendered by the *Supplier* in the *price schedule* are inclusive of everything necessary and incidental to Providing the Goods and Services in accordance with the Goods Information, as it was at the time of tender, as well as correct any Defects not caused by a *Purchaser's* risk.

5 The *Supplier* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event. It should be noted that the list of compensation events includes those arising as a result of a *Purchaser's* risk event listed in core clause 80.1.

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

(From Appendix 5 on page 78 of the SC3 Guidance Notes)

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*

**Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.**

### Part 1

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

Item Number	Sap Number	Description	Item to be procured (✓)
1.	0718284	SHEET GSKT;THK 1.5 MM;LG 1.2 M; WD 1.2 M	
2.	0718272	SHEET GSKT;THK 3 MM;LG 1.2 M; WD 1.2 M	
3.	0718271	SHEET GSKT;THK 6 MM;LG 1.2 M; WD 1.2 M	
4.	0718270	SHEET GSKT;THK 9.5 MM;LG 1.2 M; WD 1.2 M	
5.	0718269	SHEET GSKT;THK 12.5 MM;LG 1.2 M; WD 1.2 M	

Total of the Prices for Part 1

### Part 2

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

Item no.	Description	Unit	Quantity	Rate	Price

**Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.****PART C3: SCOPE OF WORK****NEC3 Supply Contract**

<b>Document reference</b>	<b>Title</b>	<b>No of pages</b>
	This cover page	1
C3.1	Scope of Work	15
C3.2	<i>Purchaser's Goods Information</i>	5
C3.3	<i>Supplier's Goods Information</i>	1
	Total number of pages	

**Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.**

**PART C3: SCOPE OF WORK**

SUPPLY AND DELIVERY OF GASKETS USED DURING TRANSFORMERS MAINTENANCE AND REPAIRS WITHIN MPUMALANGA OPERATING UNIT ON AS AND WHEN REQUIRED BASIS.

<b>The Scope</b>	
<b>1</b>	<b>Description of the <i>services</i></b>

**The Scope**

**1 Description of the *services***

**1. PACKAGE SCOPE**

**Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.**

**C3.2: PURCHASER’S GOODS INFORMATION**

**1. Overview of the *goods* and *services***

**1.1 Executive overview**

- a) **Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.**

**2. Specifications of the *goods* and *services***

**2.1 Detailed scope of work**

- As per full technical specification given on Goods Information
- Specifications (include Environmental specification) and drawings
- The *Supplier* implements a quality system and maintains the quality system until the delivery of all actuators. The system will be to the *Purchaser’s* satisfaction and will be accepted prior to the signing of the *contract*. The *Supplier* will be subject to periodic audits by the *Purchaser* in order to ensure compliance with the system. Any deviations will be corrected to the *Purchaser’s* satisfaction.
- 

**2.2 Supporting Documents supplied by *Purchaser***

**Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.**

The *Supplier* shall comply with all the following procedures / documentations.

The following documents will be supplied within one week of the contract being signed:

Number	Title
	Environmental Policy
	Environmental non-conformances
	Environmental spillage management procedure
	Waste management
	Safety, Health and Environmental Specifications for Suppliers
32-421	Cardinal Rules
CSD/MAT/11/243	Material Specification

These documents and standards may be reviewed from time to time. In all cases, the latest revision will be applicable, unless the *Purchaser* indicates otherwise in writing.

## 2.3 Packaging / Crating

- The *Supplier* shall be responsible for the packaging and delivered to – Main Stores.

## 2.4 Delivery to Site

- The *Supplier* shall be responsible for the transportation of all *goods* delivered to Mpumalanga Operating Unit.
- Ownership will only be transferred to the *Purchaser* once the quality inspection has been performed after the delivery of the goods.

## 2.5 Supply before award of contract

The *Supplier* will provide the following on notification by the *Supply Manager*:

Records, data sheets, materials, facilities and samples to be provided by the *Supplier* for tests and inspection (clause 40.2) – (if applicable)

## 2.6 Supply on delivery

The *Supplier* will provide the following documentation when delivering the *goods*:

- The *Supplier* must provide a full technical description of all the *goods* supplied under this contract.
- The details shall include as a minimum the following:
  - Purchase Order Number
  - Description
  - Manufacture
  - Part Number
  - Eskom Material number
- Actual QCPs will be forwarded to allow the *Purchaser* to add the required intervention points
- Individual QCPs must be kept for all *goods* delivered to site (if applicable)

**Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.**

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

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

All work must be done by the Delivery Date.

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

Number	Title	Issued by
Act 85 of 93	Occupational Health and Safety Act	<i>Supplier</i>
	Quality Control Plan (QCP)	<i>Supplier</i>

#### 3.3 Management meetings

The meeting between both parties will be arranged and conducted whenever the need arises

#### 3.4 Health and safety risk management

The *Supplier* shall at all times comply with the health and safety requirements prescribed by law as they may apply to the *services*.

The *Supplier* shall, when coming on site (Mpumalanga Operating unit), abide by the Cardinal Rules. These will be provided by the *Purchaser* on the start of the contract. The *Supplier* shall also abide by the Safety, Health and Environmental Specifications for Contractors Procedure, which will also be provided by the *Purchaser*.

The *Purchaser* follows an accident prevention policy that includes the investigation of all accidents involving personnel and property. This is done with the intention of introducing control measures to prevent a recurrence of the same incidents. The *Supplier* will report any incident and accidents to Power Station immediately when it occurs. This report does not relieve the *Supplier* of his legal obligation to report certain incidents to the Department of Labour, or to keep records in terms of the Occupational Health and Safety Act, and Compensation for Occupational Injuries and Diseases Act.

#### 3.5 Environmental constraints and management

The *Supplier* shall comply with Mpumalanga Operating Unit environmental management system. This includes the identification, collection, storage, transportation and disposal of waste. Hazardous waste shall be disposed off in line with the applicable environmental legislation. It is important to note that all spillages must be cleaned immediately and reported to the project manager as soon as possible. It is the responsibility of the polluter to clean all spillages and for the rehabilitation of the polluted land.

#### 3.6 Invoicing and payment

**Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.**

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

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

Finance Department (Account Payable Section)

**Address**

and include on it the following information:

- Name and address of the *Supplier*;
- The contract number and title;
- *Supplier's* VAT registration number;
- The *Employer's* VAT registration number 4740101508;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- Purchase Order number as provided by the *Employer* on monthly basis

### 3.7 Insurance provided by the *Purchaser*

Below is information with regards to the Eskom Insurance Management Service, for in case the *Supplier* has any questions with regards to insurances:

#### Eskom Insurance Management Services (EIMS) Contact Details:

Contact Person	Contact Number	E-mail address
Mr Wiseman Khoza	+27(0)11 800 6286	wiseman.khoza@eskom.co.za
Ms Thembi Mabanga	+27(0)11 800 6509	<a href="mailto:thembi.mabanga@eskom.co.za">thembi.mabanga@eskom.co.za</a>
Ms Mamosidi Katane-Mathibela	+27(0)11 800 6380	<a href="mailto:KataneE@eskom.co.za">KataneE@eskom.co.za</a>
Ms Beverley Jemaine-Cain	+27(0)11 800 3331	<a href="mailto:Beverley.jemaine-cain@eskom.co.za">Beverley.jemaine-cain@eskom.co.za</a>
Mr Krishan Chaithoo	+27(0)11 800 4455	<a href="mailto:Krishan.chaithoo@eskom.co.za">Krishan.chaithoo@eskom.co.za</a>
Mr Velaphi Mabaso	+27 (0)11 800 3836	<a href="mailto:velaphi.mabaso@eskom.co.za">velaphi.mabaso@eskom.co.za</a>

#### **EIMS General Information:**

Fax Number: +27 11 507 5758

Telephone Number: +27 11 800 4466

## 4. Procurement

### 4.1 Subcontracting

N/A

### 4.2 Plant and Materials

**Supply and delivery of gaskets used during transformers maintenance and repairs within Mpumalanga Operating unit on as and when required basis.****4.2.1 Quality**

The *Purchaser* is in the process of implementing an ISO 9001:2000 series, therefore the *Supplier* will be expected to implement a quality system and maintains the quality system until the completion of this contract. The *Supplier* will comply with the provisions of the ISO 9001:2000 series

The *Supplier* will work according to the *Purchaser's* standards, specifications, guidelines and procedures. Where no standards, specifications, guidelines and procedures are available, the *Supplier* will work according to the Generation Quality manual and professional guidelines.

**4.2.2 Plant & Materials provided "free issue" by the *Purchaser***

The *Purchaser* will offload the *goods* on site

**4.3 Tests and inspections before delivery**

- The *Purchaser* will evaluate the submitted QCP and ensure that the correct hold, witness and inspection points are introduced where applicable. Quality control will be conducted by the *Purchaser* with possible intervention from *Purchaser* third parties

**4.4 Marking Plant and Materials outside the Working Areas**

N/A

**4.5 Completion, testing, commissioning and correction of Defects****4.5.1 Work to be done by the Completion Date**

All work will be done by the completion date.