NEC3 Supply Contract (SC3)

Between	**ESKOM HOLDINGS SOC LIMITED (Reg No. 2002/015527/30)**	
and	**[Insert at award stage] (Reg No. _____)**	
for	**THE SUPPLY AND DELIVERY OF ADMIRALTY BRASS CONDENSER TUBES AT DUVHA POWER STATION**	
Contents:		**No of pages**
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CONTRACT No.		

PART C1: AGREEMENTS & CONTRACT DATA

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C1.1 Form of Offer & Acceptance

Offer

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

THE SUPPLY AND DELIVERY OF ADMIRALTY BRASS CONDENSER TUBES AT DUVHA POWER STATION

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[1]	**R**
	(in words)	

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:				
Name & signature of witness	*(Insert name and address of organisation)*		Date	

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

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 and Acceptance)	Agreements and Contract Data, (which includes this Form of Offer
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, Megawatt Park, Maxwell Drive, Sandton, Johannesburg, 2199**			
Name & signature of witness	*(Insert name and address of organisation)*		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		

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*

Clause	Statement	Data
1	**General**	
	The *conditions of contract* are the core clauses and the clauses for Options	
		X2: Changes in the law
		X3: Multiple currencies
		X7: Delay damages **X17: Low performance damages**
		Z: *Additional conditions of contract*
	of the NEC3 Supply Contract (December 2009)[2]	
10.1	The *Purchaser* is (name):	**Eskom Holdings SOC Limited (Reg No: 2002/015527/30), a juristic person incorporated in terms of the company laws of the Republic of South Africa**
	Address	**Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg**
	Tel No.	**+27 13 690 0497**
	Fax No.	**+27 86 609 1432**
10.1	The *Supply Manager* is (name):	**Gerson Mompei**
	Address	**Duvha Power Station** **PO Box 2199** **Witbank** **1035**
	Tel	**+27 13 295 9085**
	Fax	**+27 86 603 1308**
	e-mail	**mompeigj@eskom.co.za**
11.2(13)	The *goods* are	The Supply and delivery of Admiralty Brass Condenser Tubes at Duvha Power Station
11.2(14)	The following matters will be included	**1. Delays due to failed quality tests.**

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

	in the Risk Register	**2. Delays due to rejection of detailed engineering drawing of the packaging case by Eskom Duvha.**		
11.2(15)	The Goods Information is in	**Part 3: Scope of Work and all documents and drawings to which it makes reference.**		
11.2(15)	The Supply Requirements as part of the Goods Information is in	**Annexure A to this Contract Data**		
12.2	The *law of the contract* is the law of	**the Republic of South Africa**		
13.1	The *language of this contract* is	**English**		
13.3	The *period for reply* is	**Five working days**		
2	**The *Supplier's* main responsibilities**	**Data required by this section of the core clauses is provided by the *Supplier* in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.**		
3	**Time**			
30.1	The *starting date* is.	**01 October 2021 or as soon as possible**		
30.1	The *delivery date* of the *goods* and *service*s is:	***goods and services***		***delivery date***
		1	**Hot Condenser admiralty brass C44300 tubes - Quantity 24052**	**5 months from contract start date**
		2	**Cold Condenser admiralty brass C44300 tubes - Quantity 1354**	
31.1	The *Supplier* is to submit a first programme for acceptance within	**One week after order placement**		
32.2	The *Supplier* submits revised programmes at intervals no longer than	**One month following the accepted revision to the original program**		
4	**Testing and defects**			
42	The *defects date* is	**52 (fifty two) weeks following installation and commissioning on site or 5 (five) years from date of delivery and preservation. (Supplier to provide the preservation procedure).**		
43.2	The *defect correction period* is	**2 (two) weeks (locally, SA)**		
	except that the *defect correction period* for Foreign repairs	**4 (four) weeks**		

42.2	The *defects access period* is	**2 (two) working days**
	except that the *defect access period* for	**Foreign repairs are 10 (ten) days.**
	Foreign repairs	
5	**Payment**	
50.1	The *assessment interval* is	**On delivery to site.**
51.1	The *currency of this contract* is the	**South African Rand**
51.2	The period within which payments are made is	**4 (four) weeks after invoice received**
51.4	The *interest rate* is	**(i) zero percent above the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and** **(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 *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	**Compensation events**	**There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.**
7	**Title**	**There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.**

8	**Risks, liabilities, indemnities and insurance**	
80.1	These are additional *Purchaser's* risks	**Damage of goods on transfer of ownership**
84.1	The *Purchaser* provides these insurances from the Insurance Table	**See notes about *Purchaser* provided insurance in Annexure B to this Contract Data**
	1. Insurance against	**Loss of or damage to the *goods*, plant and materials.**
	Cover / indemnity is	**Overseas shipment / transit insurance (only) to cover events at the *Supplier*'s risk (if any) after the *goods* have left the *Supplier*'s overseas premises. See notes in Annexure 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 *Supplier* 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 *Purchaser* is:	**The price of contract value**
84.2	The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *goods*, plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the *Supplier*) caused by activity in connection with this contract for any one event is:	**whatever the *Supplier* deems necessary in addition to that provided by the *Purchaser* for any one event with cross liability so that the insurance applies to the Parties separately.** **However if the *Supplier* is exposed to damage to the *Purchaser*'s property the cover limit amount is not less than** • **R15 million (fifteen million Rand) for exposure to Generation Division property;** • **R7.5 million (seven million five hundred thousand Rand) for exposure to Transmission Division property and;** • **R1 million (one million Rand) for**

		exposure to Distribution Division and all other *Purchaser*'s property **for any one occurrence or series of occurrences arising out of one event but unlimited during the period of insurance.**
84.2	The minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Supplier* 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 *Contractor's* common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (five hundred thousand Rand).**
88.1	The *Supplier's* liability to the *Purchaser* 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 *Supplier's* liability to the *Purchaser* for loss of or damage to the *Purchaser's* property is limited to	**(1) for the *Purchaser's* existing and surrounding property in the care, custody and control of the *Supplier* the amount of the deductible (first amount payable) relevant to the event described in the "Format A" / "Format B" / "Format Dx" {choose the applicable format, then delete the others and this note}, insurance policy available on 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:** **1. R15 million (fifteen million Rand) for Generation Division property;** **2. R7.5 million (seven million five hundred thousand Rand) for Transmission Division property and;** **3. R1 million (one million Rand) for Distribution Division and all other *Purchaser*'s property** **See notes in Annexure B**
88.3	The *Supplier's* liability for Defects due to his design which are not notified before the last *defects date* is limited to:	**Total of the Prices.**
88.4	The *Supplier's* total liability to the *Purchaser*, for all matters arising under or in connection with this	**Total of the Prices.**

	contract, other than the excluded matters, is limited to			
88.5	The *end of liability date* is	**5 (five) years after Delivery of the whole of the *goods* and *service*s.**		
9	**Termination and dispute resolution**			
94.1	The *Adjudicator* 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 *Adjudicator nominating body* is:	**the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za)**		
94.4(2)	The *tribunal* is:	**arbitration**		
94.4(5)	The *arbitration procedure* is	**the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.**		
94.4(5)	The place where arbitration is to be held is	**South Africa**		
	The person or organisation who will choose an arbitrator - if the Parties cannot agree a choice or - if the arbitration procedure does not state who selects an arbitrator, is	**the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.**		
10	**Data for Option clauses**			
X2	**Changes in the law**			
X2.1	A change in the law of	**South Africa is a compensation event if it occurs after the Contract Date**		
X3	**Multiple currencies**			
X3.1	The *Purchaser* will pay for these items in the currencies stated	**Items**	**Other currency**	**Total maximum payment in the currency**
		[●]		
		[●]		
		[●]		
X3.1	The *exchange rates* are those published in	**[●] on [●] (date)**		

		The items will be paid in the other currency **- to a foreign Bank account nominated by the *Supplier*** **- to a valid SARB approved CFC account in South Africa** **- in accordance with an alternative payment method agreed with the *Purchaser* 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**
		Hot Condenser admiralty brass C44300 tubes - Quantity 24052 **Cold Condenser admiralty brass C44300 tubes - Quantity 1354**	**R20 000.00 up to the 10% of the contract value**
X17	**Low performance damages**		
X17.1	The amounts for low performance damages are:	**amount**	**performance level**
		R10 000.00 per day till a recovery plan is enforced to be able to revert back to the original plan **R 10 000 per day till the defect correction is effected**	**Deviation from the programme identified milestones.** **Deviation from pre-approved QCP.**
		R 10 000 per day from agreed date till all certificates are submitted	**Submission of all tests results/certificates including data packs.**
Z	**The *additional conditions of contract* are**	**Z1 to Z12 always apply for Eskom**	
Z1	**Cession delegation and assignment**		
Z1.1	The *Supplier* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Purchaser.*		

Z1.2	Notwithstanding the above, the *Purchaser* may on written notice to the *Supplier* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.
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.

Z 12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.

Z 12.2 The *Purchaser* may terminate the *Supplier*'s obligation to Provide the Goods and 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 Goods and Services for this reason.

Z 12.3 If the *Purchaser* terminates the *Supplier*'s obligation to Provide the Goods and Services for this reason, the procedures and amounts due on termination are respectively P1, P2 and P3, and A1 and A3.

Z 12.4 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.

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[3] 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	
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:

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

[Should there be a need to amplify any of the published obligations listed above for the chosen INCOTERM, add them here.]
All other information NOT pertinent to the above is given in the balance of the Goods Information

[3] International Chamber of Commerce, Incoterms 2010, Paris, January 2011

THE SUPPLY AND DELIVERY OF ADMIRALTY BRASS CONDENSER TUBES AT DUVHA POWER STATION

The Supply Requirements for this contract are as follows:

[Use these when INCOTERMS do not apply].

1. The requirements for the supply are	**Refer to annexure (Document ID) : ETS0010 Revision 5** Timing as stipulated on the section 30.1 above	
2. The requirements for transport are	The mode of road transport to site to be used	
3. The delivery place is	Duvha Power Station **N.B:** Exact location within Duvha to be confirmed with the Supply Manager	
4. Actions of the Parties during supply	**Action**	**Party which does it**
	Giving notice of Delivery	Supplier
	Checking packing and marking before dispatch	Supplier
	Contracting for transport.	Supplier
	Pay costs of transport	Supplier
	Arrange access to delivery place	Eskom
	Loading the *goods*	Supplier
	Unloading the *goods*	Supplier
For international procurement	Undertake export requirements	N/A
	Undertake import requirements	Supplier / Eskom
5. Information to be provided by the *Supplier*	**Title of document**	
	Packing lists for cases and their contents	
	Copy of invoice for the *goods*	
	Delivery Note	
	Test results and maintenance manuals	
	Refer to annexure (Document ID) : ENS0079	
For international procurement	Licences, authorisations and other formalities associated with export of the *goods*	
	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 *goods* 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

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. The Supplier must obtain its own advice.

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

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

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

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

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

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

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

All other insurance

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

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

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

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

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

http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx

C1.2 Contract Data

Part two - Data provided by the *Supplier*

Clause	Statement	Data		
10.1	The *Supplier* is (Name):			
	Address			
	Tel No.			
	Fax No.			
11.2(8)	The Goods Information for the *Supplier's* design is in:			
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	**1. Delays due to failed quality tests.** **2. Shipping delays** **3. Damages due to inadequate packaging**		
25.2	The restrictions to access for the *Supply Manager* and Others to work being done for this contract are	**N/A**		
30.1	The *delivery date* of the *goods* and *service*s is:	***goods and services***		***delivery date***
		1	**Hot Condenser admiralty brass C44300 tubes - Quantity 24052**	**5 months from contract start date**
		2	**Cold Condenser admiralty brass C44300 tubes - Quantity 1354**	
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 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
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Bank reference No.

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 *goods* and *service*s, entered into between the *Purchaser* and the *Supplier*, 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 • the date that the Bank receives a notice from the *Purchaser* stating that all amounts due from the *Supplier* as certified in terms of the contract have been received by the *Purchaser* and that the *Supplier* has fulfilled all his obligations under the Contract, or • the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by the *Purchaser*.
1.7	"Guaranteed Sum" means	the sum of R[●], ([●] Rand)
1.8	"*goods* and *services*" means	[insert details from Contract Data part 1]

2. 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.

3. 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.

4. 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.

5. 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		

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
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Bank ref no. **[●]**

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_

Signature(s)		
Name(s) (printed)		
Position in Surety company		
Signature of Witness(s)		
Name(s) (printed)		

PART 2: PRICING DATA

NEC3 Supply Contract

Document reference	Title	No of pages
C2.1	Pricing assumptions	2
C2.2	The *price schedule*	

C2.1 Pricing assumptions

How *goods* and *service*s 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 *service*s which can be priced as lump sums or as expected quantities of *goods* and *service*s multiplied by a rate, or a mix of both.

Function of the Price Schedule

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

Preparing the *price schedule*

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

It will be assumed that the tendering supplier has

- Read Pages 8, 11, 12 and Appendix 5 of the SC3 Guidance Notes before preparing the *price schedule;*
- Included in his Prices and rates for correction of Defects (core clause 43.1) as there is no compensation event for this unless the Defect is due to a *Supplier’s* risk;
- Spread the cost of doing work he chooses not to list as separate items in the *price schedule* across other Prices and rates in order to fulfil the obligation to Provide the Goods and Services for

the tendered total of the Prices;

- Understood that there is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item later turns out to be different to that which the *Supplier* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event per clause 60.1;
- Understood that the *Supplier* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event.

Format of the *price schedule*

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

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

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

If the *Supplier* is to be paid an amount for an item proportional to the length of time for which the *goods* and *service*s 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	Stock numbers	Description	Unit	Quantity	Rate	Price
1	0610842	Hot Condenser admiralty brass C44300 tubes	EA	24052		
2	0610842	Cold Condenser admiralty brass C44300 tubes	EA	1354		
3		Transportation to and offloading at Duvha Power Station	EA	1		
		N.B: Transport costs will be calculated as per actual delivery destination				

The total of the Prices

_____ _____ _____

Name and Surname Signature Date

PART 3: SCOPE OF WORK

Document reference	Title	No of pages
	This cover page	1
C3.1	*Purchaser*'s Goods Information	
C3.2	*Supplier*'s Goods Information	
	Total number of pages	

C3.1: *PURCHASER'S* GOODS INFORMATION

Refer to annexure (Document ID): ENS0079

C3.2 *SUPPLIER*'S GOODS INFORMATION

This section of the Goods Information will always be contract specific depending on the nature of the *goods* and *service*s.
It is most likely to be required for supply contracts where the tendering supplier will have proposed specifications and schedules for the *goods* and *service*s, which once accepted by the *Purchaser* prior to award of contract now become obligations of the *Supplier* per core clause 20.1.

This section could also be compiled as a separate file.