

LIMESTONE SUPPLY AGREEMENT

in respect of limestone from

[Insert Name of Limestone Resource / Mine]

entered into by and between

ESKOM HOLDINGS SOC LTD

registration number 2002/015527/30, a company incorporated in terms of the laws of the Republic of South Africa with its registered office at Megawatt Park, Maxwell Drive, Sunninghill
("Eskom")

and

[INSERT NAME OF THE SUPPLIER]

registration number [●]/[●]/[●] a company incorporated in terms of the laws of the Republic of South Africa with its registered office at [●]
("the Supplier")

Eskom Vendor Number: [●]

TABLE OF CONTENTS

	Page
1. Preamble	3
2. Definitions and Interpretation	3
3. Contract Documents	6
4. Warranties by the Supplier <i>[Drafting note: These provisions may be altered to cater for value-adding/beneficiation]</i>	7
5. Commencement of Deliveries	8
6. Duration	8
7. Limestone Quantities	8
8. Base Price	9
9. Price Adjustments	9
10. Contract Limestone Quality	11
11. Rail Transportation of Contract Limestone	11
12. Road Transportation of Contract Limestone <i>[Drafting note: Please do not delete, provisions for both DAT and FCA must be retained]</i>	12
13. Service of Documents	12

1. Preamble

- 1.1 Eskom requires Contract Limestone in the quantities, for the duration and for the purposes mentioned in this Agreement.
- 1.2 The Supplier is the Holder of the Mine Mining Right in respect of the Limestone Resource.
- 1.3 The Supplier wishes to sell, to Eskom, Contract Limestone produced from limestone mined pursuant to the Mine Mining Right, for the duration and for the purposes mentioned in this Agreement.
- 1.4 The Parties wish to enter into a limestone supply agreement on the terms and conditions recorded below.

It is hereby agreed as follows:

2. Definitions and Interpretation

In this Agreement, the following words and expressions shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words and expressions) shall bear corresponding meanings:

- | | | |
|-----|------------------------------------|--|
| 2.1 | "Agreement" | means this limestone supply agreement ("the Limestone Supply Agreement ") and shall include the Standard Terms and Conditions of Limestone Supply and all Annexes hereto, as amended from time to time; |
| 2.2 | "Annexe" | means an annexe attached to the Agreement, as amended or replaced from time to time; |
| 2.3 | "Annual Quantity" | Means, in relation to a Year, the provisional Limestone quantities which requires the Supplier to Deliver during that Year, |
| 2.4 | "Base Date" | means in respect of each cost component set out in Table 2, the date set out in the fifth column of Table 2; |
| 2.5 | "Base Date Index Value (B)" | means in respect of each cost component set out in the first column of Table 2, the value of the relevant index on the Base Date of such cost component set out in the fourth column of Table 2; |

- 2.6 **"Base Price"** shall have the meaning ascribed to it in clause 8;
- 2.7 **"Business Day"** Means all days other than Saturday, Sunday and public holidays in South Africa;
- 2.8 **"Commencement Date"** shall have the meaning ascribed to it in clause 4;
- 2.9 **"Consignment"** means the Limestone Supplied in terms of this Agreement on each Delivery Date of the Contract Period;
- 2.10 **"Contract Limestone"** means all Limestone Supplied in terms of this Agreement, in respect of which the values of the Quality Parameters of a Consignment are equal or more favourable than their respective Contract Quality Specifications;
- 2.11 **"Contract Period"** means the period described in clause 6;
- 2.12 **"Contract Quantity"** means all quantities of Limestone to be Supplied during the Contract Period as determined in accordance with the terms of this Agreement;
- 2.13 **"Expected Quality"** means the quality of Contract Limestone that the Supplier expects to Deliver as set out in Table 3;
- 2.14 **"Latest Index Value (L)"** means, in relation to each cost component in Table 2, the latest available value for the relevant index for such cost component, as set out in the third column of Table 2 and at the time of calculating any price adjustment, which shall be the value of the relevant index for each cost component published for the Month prior to the most recent annual Price Adjustment Date except for diesel, which shall be the value of the diesel index published for the current Month;
- 2.15 **"Maximum Annual Quantity"** means the maximum quantity of Contract Limestone, which Eskom is entitled to Take Off and which the Supplier required to Deliver during each Year, being 105% (one hundred and five percent) of the Annual Quantity;

- 2.16 **"Maximum Monthly Quantity"** means the maximum quantity of Contract Limestone, in Tons, which Eskom is entitled to Take Off and which the Supplier is required to Deliver during each Month, being 120% (one hundred and twenty percent) of the Monthly Quantity;
- 2.17 **"Maximum Quarterly Quantity"** means the maximum quantity of Contract Limestone, in Tons, which the Supplier is required to Deliver and which Eskom is required to Take Off during each Quarter, being 110% (one hundred and ten percent) of the Quarterly Quantity;
- 2.18 **"Mine"** means the [name of the mine] limestone mine/colliery established to exploit the Limestone Resource;
- 2.19 **"Mine Mining Right"** means the Mining Right [DMR reference] granted to [●] relating to limestone in respect of various portions of the farm [●] no. [●] (as more fully indicated on the sketch plan attached thereto), Registration Division IS, in the Magisterial District of [●], in the province of [●], measuring [●] hectares and registered in the Titles Office on [●] under registration number [●];
- 2.20 **"Minimum Annual Quantity"** means the minimum quantity of Contract Limestone, in Tons, which Eskom is entitled to Take Off and which the Supplier is required to Deliver during each Year, being 95% (ninety five percent) of the Annual Quantity;
- 2.21 **"Minimum Monthly Quantity"** means the minimum quantity of Contract Limestone, in Tons, which Eskom is entitled to Take Off and which the Supplier is required to Deliver during each Month, being 80% (eighty percent) of the Monthly Quantity;
- 2.22 **"Minimum Quarterly Quantity"** means the minimum quantity of Contract Limestone, in Tons, which the Supplier is required to Deliver and which Eskom is required to Take Off during each Quarter, being 90% (ninety percent) of the Quarterly Quantity;
- 2.23 **"Monthly Quantity"** means the quantity of Contract Limestone, in Tons, which Parties target Supplying during each Month;

- 2.24 **"Power Station"** means [●] Power Station or any other Eskom owned or operated power station within the Republic of South Africa and which has been designated by Eskom as the destination of Contract Limestone;
- 2.25 **"Price"** shall have the meaning ascribed to it in clause 9.1.3;
- 2.26 **"Price Adjustment Date"** shall have the meaning ascribed to it in clause 9.1.1;
- 2.27 **"Price Adjustment Factor (PAF)"** means 1 (one) plus [the sum of (L-B)/B for each applicable index in Table 2 multiplied by the corresponding proportion for that index as set out in the second column of Table 2], where 'L' is the Latest Index Value and 'B' is the Base Date Index Value;
- 2.28 **"Quality Specification"** means in respect of each limestone quality parameter set out in Table 3, the specification stipulated in Table 3, with which Contract Limestone and/or Qualifying Alternative Limestone Delivered by the Supplier to Eskom in terms of this Agreement must comply;
- 2.29 **"Rail Siding"** means the railway siding identified by number [●] situated at the Mine and operated by the Supplier;
- 2.30 **"Standard Terms and Conditions of Limestone Supply"** means the document containing terms and conditions of limestone supply which shall form, and be read and construed as, part of this Agreement;
- 2.31 **"Supplier"** means [●] (Proprietary) Limited registered under the laws of South Africa registration number [●]/[●]/[●];
- 2.32 **"Total Energy Quantity"** shall have the meaning ascribed to it in clause 7.2; and

3. Contract Documents

- 3.1 The following documents shall form, and be read and construed as, part of this Agreement:
- 3.1.1 This Limestone Supply Agreement;
- 3.1.2 The **Standard Terms and Conditions of Limestone Supply**; and
- 3.1.3 The following annexes to the Agreement:

- 3.1.3.1 **Annexe A:** The Limestone Quality Management Procedure
- 3.1.3.2 **Annexe B:** Supplier Development and Localisation Targets
- 3.1.3.3 **Annexe C:** The Safety and Health Requirements
- 3.1.3.4 **Annexe D:** The Environmental Legal Requirements
- 3.1.3.5 **Annexe E:** The Rules of Rail Transportation
- 3.1.3.6 **Annexe F:** The Rules of Road Transportation
- 3.1.3.7 **Annexe G:** Example Calculations of Price Adjustment Factor
- 3.1.3.8 **Annexe I:** Technical Liaison Meeting Agenda

3.2 The contract documents are to be taken as mutually explanatory of one another.

3.3 This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

4. Warranties by the Supplier [Drafting note: These provisions may be altered to cater for value-adding/beneficiation]

The Supplier hereby warrants unto and in favour of Eskom that:

- 4.1 the Supplier is the Holder of the Mine Mining Right, has and shall retain the un-encumbered right to dispose of the Contract Limestone so produced to Eskom in accordance with the provisions of this Agreement;
- 4.2 the Supplier has not and shall not pledge, mortgage, cede or grant any other security rights over the Mine Mining Right, any limestone produced pursuant thereto and/or this Agreement except for the purposes of raising finance required in order for the Supplier to comply with its obligations in terms of this Agreement and the Mine, in which event the Supplier shall request Eskom's consent in accordance with clause 34.2 of the Standard Terms and Conditions of Limestone Supply;
- 4.3 the Supplier is able to prove title to all rights held by it, including the Mine Mining Right; and

4.4 to the best of its knowledge and belief, the Supplier has disclosed to Eskom all legal, environmental matters and rehabilitation obligations relating to the Limestone Resource, life of mine plan, and the Mine Mining Right.

5. Commencement of Deliveries

The Supply of Contract Limestone shall commence on **[date]** or such date that the Parties may agree to in writing ("**the Commencement Date**") in accordance with clause 9 of the Standard Terms and Conditions of Limestone Supply.

6. Duration

The term of this Agreement shall be for a period commencing on the Commencement Date and expiring when the Total Tonnes Quantity has been Delivered, which period ("**the Contract Period**") is estimated to be **[number of years] ([number of years in words])** years **[number of months] ([number of months in words])** months, unless extended or earlier terminated in accordance with the terms of this Agreement.

7. Limestone Quantities

7.1 The Supplier shall Deliver and Eskom will Take Off in each Month, a quantity of Contract Limestone between the Minimum Monthly Quantity and the Maximum Monthly Quantity, in accordance with clause 9 of the Standard Terms and Conditions of Limestone Supply;

7.2 The total quantity of Contract Limestone to be Supplied under this Agreement shall be the **Total Tonnage Quantity** stipulated in Table 1 below.

7.3 The Supplier shall Deliver Contract Limestone as set out in Table 1 hereunder.

Table 1: Contract Limestone Supply Schedule¹ [Drafting note: Please include the ramp-up profile]

Period	Annual Quantity	Minimum Annual Quantity	Maximum Annual Quantity	Monthly Quantity	Minimum Monthly Quantity	Maximum Monthly Quantity
Month 1 – Month 12 (million GJ)						
(Tons)						
Month 1 – Month 12 (million GJ)						
(Tons)						

Period	Annual Quantity	Minimum Annual Quantity	Maximum Annual Quantity	Monthly Quantity	Minimum Monthly Quantity	Maximum Monthly Quantity
Month 1 – Month 12 (million GJ)						
(Tons)						
Month 1 – Month 12 (million GJ)						
(Tons)						
Estimated Total Tonnage (Tons)						

8. Base Price

- 8.1 The price for Contract Limestone on the Base Date ("**the Base Price**") shall be R[●] ([●]) per Ton excluding VAT, Free Carrier (FCA) at the Delivery Point for Contract Limestone Supplied.
- 8.2 For the avoidance of doubt, the Base Price excludes any consideration due to the Supplier by Eskom for road transportation. Such consideration shall be determined in accordance with clause 12.
- 8.3 The Base Price and Price adjustments have been negotiated on an arm's length basis and the Supplier accepts all risks of cost elements, cost increases other than provided for in clause 9.

9. Price Adjustments

9.1 Annual Adjustments

- 9.1.1 The Base Price stipulated in clause 8.1, shall be adjusted upwards or downwards as the case may be on [the first anniversary of the Base Date] and annually thereafter on [the anniversary of the Base Date] of each subsequent Year ("**the Price Adjustment Date**"), by the Price Adjustment Factor, subject to clause 9.1.2.
- 9.1.2 If in respect of any Year, the increase in the Base Price as a result of applying the Price Adjustment Factor in accordance with clause 9.1.1 exceeds the price increase for Eskom limestone as determined by the National Energy Regulator of South Africa (NERSA), the increase as determined by NERSA shall apply.
- 9.1.3 The Base Price as adjusted in terms of clause 9.1.1 on [the anniversary of the Base Date] of each Year shall be the price ("**the Price**") of Contract Limestone applicable until [the last Month] of that Year, subject to any Monthly price adjustments determined in accordance with clause 9.2.

9.1.4 For the avoidance of doubt, the Parties note that the calculation of the Price Adjustment Factor each Year automatically adjusts the proportions set out in the second column of Table 2 in line with the changes in the values of the indices.

Annexe G shows Example Calculations of the Price Adjustment Factor.

9.2 Monthly Adjustment for Diesel Price Changes

The Price determined in accordance with clause 9.1.3 shall be adjusted upwards or downwards on the first Business Day of each Month to reflect the change in the price of diesel only, during the previous Month, by multiplying the Base Price by the Price Adjustment Factor.

Table 2: Base Price Adjustment Indices

Cost Component	Proportion	Index and Source Table	Base Date Index Value (B)	Base Date	Frequency of Adjustments
Labour	26%	SEIFSA labour index (Table C4)			Annually
Mining Supplies	6%	General and special purpose machinery (P0142.1, Table 1)			Annually
	4.5%	Rubber and plastic products (P0142.1, Table 1)			Annually
	4.5%	Structural and fabricated metal products (P0142.1 Table 1)			Annually
Diesel	8%	DME 0.05% Sulphur Reef			Monthly
Electricity	4%	Electricity PPI (P0142.1, Table 3)			Annually
Overheads	7.5%	CPI headline items (P0141 Table A all items)			Annually
	7.5%	PPI final manufactured goods (P0142.1, Table 1)			Annually
Profit & Capital	11%	CPI headline items (P0141 Table A all items)			Annually
	11%	PPI Limestone and Gas (P0142.1, Table 4)			Annually
Fixed	10%	Fixed			Not applicable
Total	100%				

9.3 Review of Table 2: Base Price Adjustment Indices *[Drafting note: This clause 9.3 is only applicable to Agreements with Contract Periods of 5 (five) years or more.]*

9.3.1 On a date not earlier than 2 (two) Years from the Commencement Date, and annually thereafter, the Parties shall consult with each other in good faith with the objective of reaching agreement on the following:

9.3.1.1 whether or not any of the indices and source tables (as set out in the third column of Table 2) measuring changes in the cost elements as set out in the first column of Table 2 are still applicable as an accurate measurement of actual cost movement in respect of that cost element in the South African Limestone mining industry; and

9.3.1.2 appropriate replacement indices and sources tables to be utilised, if necessary.

9.3.2 Should the Parties be unable to reach agreement in respect of any of the aforesaid matters, at least 6 (six) Months before the commencement of the next Year, such matters shall be resolved in terms of the provisions of clause 28 of the Standard Terms and Conditions of Limestone Supply.

9.3.3 Should the Parties not have resolved any dispute, as set out in clause 9.3.2 above, before the commencement of the next Year, the indices and source tables in use before the dispute was declared shall be applied until the dispute has been resolved, where after, the determination of the independent expert shall be applied retrospectively and any necessary adjustment payments shall be made.

10. Contract Limestone Quality

The Supplier shall ensure that each quality parameter of the Contract Limestone Delivered to Eskom in terms of this Agreement shall comply with the Quality Specifications set out in the fourth column of Table 3 hereunder.

Table 3: Contract Limestone Quality Specifications

Metric	Units	Expected Quality Specification	Distress Points	Rejection Points
Carbonate (CaCO ₃)	%	≥ 92.0	<90.0	<89.0
Magnesium Carbonate (MgCO ₃)	%	≤ 2.5	≥2.7	≥3.0
Silica Dioxide (SiO ₂)	%	≤ 2.5	>2.8	≥3.0
Other Inerts	%	≤ 3.0	>4.5	≥5.0
Size Distribution 0-5mm	%	< 10%	N/A	≥10%

11. Rail Transportation of Contract Limestone

In respect of Contract Limestone Delivered by rail, the Supplier shall, at its own cost and expense:

11.1 ensure that [●] ([●]) Tons product stockpile capacity and corresponding reclaim system is dedicated to Eskom, which reclaim system must have a capacity of [●] ([●]) Tons per hour; and

11.2 provide rail infrastructure which shall be included in the Limestone Supply Equipment and Infrastructure and which shall include:

11.2.1 the Rail Siding; and

11.2.2 a rapid load out station or front-end loader which must be maintained to have a consistent loading rate of [●] ([●]) Tons per hour; such that approximately the Maximum Annual Quantity of Contract Limestone per Year can be uniformly loaded into trains. The rapid load out station must be capable of loading heavy haul (for Jumbo Trains) and general freight business trains (for Small Trains).

12. Road Transportation of Contract Limestone [Drafting note: Please do not delete, provisions for both DAT and FCA must be retained]

12.1 The Parties hereby agree that, effective from the Commencement Date, the Contract Limestone shall be transported by [the Supplier (on a DAT basis)] / [Eskom (on an FCA basis)]. Road transportation of Contract Limestone by [the Supplier] / [Eskom] shall continue until such time that Eskom varies the mode of transport and/or Delivery Point as contemplated in clause 19.3.2 of the Standard Terms and Conditions of Limestone Supply.

12.2 Road Transportation of Contract Limestone by the Supplier (Supply on a DAT Basis)

The transport tariff per Ton payable by Eskom to the Supplier (and which shall be in addition of the Price payable for the Contract Limestone so Delivered) shall be determined using the Road Limestone Transport Model. For the avoidance of doubt, the transport tariff payable in terms of the Road Limestone Transport Model shall be reviewed each Month and the Price adjustment provisions as set out in clause 9 shall not apply to the said tariff.

12.3 Road Transportation of Contract Limestone by Eskom (Supply on an FCA Basis)

The Supplier shall, at its own cost, provide, maintain and operate Pre-Certified Stockpiles with a total capacity of no less than [●] ([●]) Tons, an access road, equipped with a weighbridge, terminating on the [●] ([●]) road, and truck loading equipment such that the Maximum Annual Quantity can be uniformly loaded per annum into trucks and transported to the Power Station or any other Eskom nominated site by road.

13. Service of Documents

13.1 The Parties choose the following addresses at which documents and notices in legal proceedings in connection with this Agreement shall be served (i.e. their *domicilia citandi et executandi*) and at which notices shall be received:

13.1.1 **in the case of Eskom to:** The General Manager – Primary Energy

physical address

Eskom Holdings Limited

Megawatt Park
Maxwell Drive
Sunninghill

postal address PO Box 1091
Johannesburg
2000

e-mail address: [●]

13.1.2 **in the case of the Supplier to:** The Chief Executive Officer

physical address: [The Supplier]
[Physical address line 1]
[Physical address line 2]

postal address P O Box [●],
[Postal address line 1],
[Postal address line 2]

e-mail address: [●]

13.2 The Parties choose the following address at which invoices and Drawdown Order may be received:

13.2.1 in the case of Eskom, invoices shall be submitted to:

Finance Manager – Primary Energy

physical address Eskom Holdings SOC Limited
Megawatt Park
Maxwell Drive
Sunninghill

postal address PO Box 1091
Johannesburg
2000

e-mail address: [●]

13.2.2 **in the case of the Supplier, Drawdown Orders shall be submitted to:**

The Mine Manager

physical address: [The Supplier]
[Physical address line 1]
[Physical address line 2]

postal address P O Box [●],

[Postal address line 1],
[Postal address line 2]

e-mail address:

[●]

Thus done and signed at Megawatt Park on the [●] day of [●] in the presence of the undersigned witnesses.

For and on behalf of
ESKOM HOLDINGS SOC LTD
(who warrants that he is duly authorised hereto)

Name: [Name] [Surname]

Capacity: [Title]

AS WITNESSES:

1. Full Names: _____ Signature: _____

2. Full Names: _____ Signature: _____

Thus done and signed at [●] on the [●] day of [●] in the presence of the undersigned witnesses.

For and on behalf of
[Insert Supplier Name] (PROPRIETARY) LIMITED
(who warrants that he is duly authorised hereto)

Name: [Name] [Surname]

Capacity: [Title]

AS WITNESSES:

1. Full Names: _____ Signature: _____

2. Full Names: _____ Signature: _____