

NEC3 Engineering and Construction

Short Contract (ECSC3)

A contract between Eskom Rotek Industries SOC Limited
Turbo Gen Services
Reg. No: 1990006897/30

and Reg. No:

for Hendrina LP Rotor Dis-assembly and Re-assembly

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Documentation prepared by: Hawa Karodia

C1 Agreements & Contract Data

C1.1 Form of Offer and Acceptance

Offer

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

Hendrina LP Rotor Dis-assembly and Re-assembly

The tenderer, identified in the signature block below, having examined the documents listed in the Tender Data and addenda thereto as listed in the Tender Schedules, and by submitting this Offer has accepted the Conditions of Tender.

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the Contractor under the Contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the conditions of contract identified in the Contract Data.

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

This Offer may be accepted by the Employer by signing the form of Acceptance overleaf and returning one copy of this document including the Schedule of Deviations (if any) to the tenderer before the end of the period of validity stated in the Tender Data, or other period as agreed, whereupon the tenderer becomes the party named as the Contractor in the conditions of contract identified in the Contract Data.

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

**Eskom Rotek Industries SOC Limited
Turbo Gen Services**

Name &
signature of
witness

Date

Tenderer's CIDB registration number:

Acceptance

By signing this part of this Form of Offer and Acceptance, the Employer identified below accepts the tenderer's Offer. In consideration thereof, the Employer shall pay the Contractor 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 Employer and the tenderer upon the terms and conditions contained in this Agreement and in the Contract that is the subject of this Agreement.

The terms of the Contract, are contained in:

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

Part 2 Pricing Data

Part 3 Scope of Work: Works Information

Part 4 Site Information

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Tender Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Employer during this process of Offer and Acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule, which must be signed by the duly authorised representative(s) for both parties.

The tenderer shall within one week of receiving a completed copy of this Agreement, including the Schedule of Deviations (if any), contact the Employer's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the conditions of contract identified in the Contract Data at, or just after, the date this Agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this Agreement.

Notwithstanding anything contained herein, this Agreement comes into effect on the date when the tenderer receives one fully completed and signed copy of this document, including the Schedule of Deviations (if any) together with all the terms of the contract as listed above.

Signature(s)	_____	_____
Name(s)	_____	Mr. Gersh Bonga
Capacity	_____	General Manager
for the Employer		Eskom RoteK Industries SOC Ltd
		Lower Germiston Road
		Cleveland
		2022
Name & signature of witness	_____	Date _____

Schedule of Deviations

1. To be completed by the Employer prior to award of contract. This part of the Offer & Acceptance would not be required if the contract has been developed by negotiation between the Parties and is not the result of a process of competitive tendering.
2. The extent of deviations from the tender documents issued by the Employer 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 Employer 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 Employer 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 Employer

Signature

Name

Capacity

On behalf
of

Name &
signature
of witness

Date

Mr. Gersh Bonga

General Manager

Eskom RoteK Industries SOC Ltd
Lower Germiston Road
Cleveland
2022

Eskom RoteK Industries SOC Ltd
Turbo Gen Services

C1.2 Contract Data

Data provided by the *Employer*

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

Clause	Statement	Data
	General	
10.1	The <i>Employer</i> is (Name):	
	Address	
10.1 & 14.4	The <i>Employer's</i> representative to whom the <i>Employer</i> in terms of clause 14.4 delegates his actions ¹ is (Name):	
	Address	
	Tel No.	
	E-mail address	
11.2(11)	The <i>works</i> are	Hendrina LP Rotor Dis- assembly and Re-assembly
11.2(13)	The Works Information is in	the document called 'Works Information' in Part 3 of this contract.
11.2(12)	The Site Information is in	the document called 'Site Information' in Part 4 of this contract.
11.2(12)	The <i>site</i> is	Rosherville Generator Services Workshop
30.1	The <i>starting date</i> is.	On receipt of an official order and Hendrina LP rotor in the Contractors Rosherville Workshop
11.2(2)	The <i>completion date</i> is. (Installation & Commissioning Completion)	3 months from receipt of order for Engineering and tooling development 10 Weeks for SOW execution
13.2	The <i>period for reply</i> is	2 Working Days Health and Safety – immediately Technical and EW not exceeding 2 working days
40	The <i>defects date</i> is	52 weeks after Completion
40.1	Defect Notification	<i>Contractor</i> corrects a defect when the <i>Employer</i> notifies him of it.
41.3	The <i>defect correction period</i> is	To be mutually agreed to between the Site representatives of both <i>Employer</i> and <i>Contractor</i>. The time to respond to a defect's notification will be 1 calendar day.
50.1	The <i>assessment day</i> is the	25th day of each month.
50.5	The <i>delay damages</i> are	1% per week to a maximum of 5% of the Contract value.

¹ Except those actions which can only be done by the *Employer* as a Party to the contract.

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50.6	The retention is	Not applicable
50.7	The retention	Not applicable
50.1	Forward cover	Not applicable for this SOW
50	Progress Payments	100% of the contract value will be paid on completion of the works.
51.2	The interest rate on late payment is	(i) Zero (0%) percent above the average of the prime lending rates in force from time to time at South Africa's four largest commercial banks.
60.1 (10)	Compensation Events	Any additional work not specified in the SOW Any Damage found during inspection phase Supply of spare parts that are not included in the SOW

82.1	The <i>Contractor</i> provides the insurances stated in the Insurance Table. The insurances provide cover for events which are at the <i>Contractor's</i> risk from the <i>starting date</i> until the end of the <i>service period</i> or a termination certificate has been issued. INSURANCE TABLE <table border="1"> <thead> <tr> <th data-bbox="304 367 807 443">Insurance against</th><th data-bbox="807 367 1455 443">Minimum amount of cover or minimum limit of indemnity</th></tr> </thead> <tbody> <tr> <td data-bbox="304 443 807 680">Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property</td><td data-bbox="807 443 1455 680"> The <i>Employer's</i> policy deductible as at Contract Starting Date were covered by the <i>Employer's</i> insurance, <u>provided the <i>Contractor</i> has not in any way contributed through omission, negligence or wilful intent.</u> The replacement cost </td></tr> <tr> <td data-bbox="304 680 807 918">Loss of or damage to Plant and Materials</td><td data-bbox="807 680 1455 918"> The replacement cost where not covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>. The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance. </td></tr> <tr> <td data-bbox="304 918 807 1218">Loss of or damage to Equipment</td><td data-bbox="807 918 1455 1218"> The replacement cost where not covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>. The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>. </td></tr> <tr> <td data-bbox="304 1218 807 1464">The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service</td><td data-bbox="807 1218 1455 1464"> <u>Loss of or damage to property</u> The replacement cost. <u>Bodily injury to or death of a person</u> The amount required by the applicable law. </td></tr> <tr> <td data-bbox="304 1464 807 1599">Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract</td><td data-bbox="807 1464 1455 1599"> The amount required by the applicable law. </td></tr> </tbody> </table> During the term of the Contract, the <i>Contractor</i> shall maintain only the following insurance coverage: (i) any insurance required by law with respect to work-related injuries or disease of employees of <i>Contractor</i> in such form) and amounts required by all applicable laws and (ii) Commercial General Liability insurance, providing coverage for liability assumed under contract, with an annual aggregate limit of One Million, Six Hundred & Seventy Thousand Dollar (\$1,670,000). The <i>Employer</i> will not be either additional named insured, additional insured or coinsured under such policies. The <i>Contractor</i> shall provide just certificates of insurance, showing that the foregoing insurance is in full force and effect, but not copy of the policies. <i>Contractor</i> shall be liable for deductible of Assets Portfolio of Generation Area only.	Insurance against	Minimum amount of cover or minimum limit of indemnity	Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property	The <i>Employer's</i> policy deductible as at Contract Starting Date were covered by the <i>Employer's</i> insurance, <u>provided the <i>Contractor</i> has not in any way contributed through omission, negligence or wilful intent.</u> The replacement cost	Loss of or damage to Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>. The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance.	Loss of or damage to Equipment	The replacement cost where not covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>. The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>.	The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service	<u>Loss of or damage to property</u> The replacement cost. <u>Bodily injury to or death of a person</u> The amount required by the applicable law.	Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law.
Insurance against	Minimum amount of cover or minimum limit of indemnity												
Loss of or damage caused by the <i>Contractor</i> to the <i>Employer's</i> property	The <i>Employer's</i> policy deductible as at Contract Starting Date were covered by the <i>Employer's</i> insurance, <u>provided the <i>Contractor</i> has not in any way contributed through omission, negligence or wilful intent.</u> The replacement cost												
Loss of or damage to Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>. The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance.												
Loss of or damage to Equipment	The replacement cost where not covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>. The <i>Employer's</i> policy deductible as at contract date, where covered by the <i>Employer's</i> insurance, provided the <i>Contractor</i> has not in any way contributed through omission or any conduct on the part of the <i>Contractor</i>.												
The <i>Contractor's</i> liability for loss of or damage to property (except the <i>Employer's</i> property, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) arising from or in connection with the <i>Contractor's</i> Providing the Service	<u>Loss of or damage to property</u> The replacement cost. <u>Bodily injury to or death of a person</u> The amount required by the applicable law.												
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law.												

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80.2	The <i>Employer</i> provides the insurances stated in the Insurance Table below.	
	INSURANCE TABLE	
	Insurance against	Minimum amount of cover or minimum limit indemnity as stated for "Format TSC3" available o
	Assets All Risk	Minimum amount of cover or minimum limit indemnity
	Project insurance	
	General and Public Liability	As per the insurance policy document.
	Environmental Liability	As per the insurance policy document.
	Transport (Marine)	As per the insurance policy document.
	Motor Fleet and Mobile Plant	As per the insurance policy document.
	Terrorism	As per the insurance policy document.
	Cyber Liability	As per the insurance policy document.
	Nuclear Public Liability	As per the insurance policy document.
	Nuclear Material Damage and Business Interruption	As per the insurance policy document.
	Nuclear Material Damage Terrorism	As per the insurance policy document.
93.1	The <i>Adjudicator</i> is	the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).
	Address	N/A
	Tel No.	N/A
	Fax No.	N/A
	e-mail	N/A
93.2(2)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the London Institution of Civil Engineers. (See www.ice-sa.org.za) or its successor body
93.4	The <i>tribunal</i> is:	arbitration.
	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.
	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.

	The conditions of contract are the NEC3 Engineering and Construction Short Contract (April 2013)²³ and the following additional conditions Z1 to Z11 which always apply:
Z1	Cession delegation and assignment
Z1.1	The Parties will not cede, delegate or assign any of its rights or obligations to any person or its affiliates or subsidiary without the written consent of the other party. Such notified consent shall not be unreasonably withheld. However, with written notice to <i>Employer</i> , <i>Contractor</i> may cede and delegate its rights and obligations under this contract to any of its subsidiary or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of business for execution of services scope.
Z1.2	Notwithstanding the above, the <i>Employer</i> may on written notice to the <i>Contractor</i> 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	Change of Broad Based Black Economic Empowerment (B-BBEE) status
Z2.1	Deleted as not applicable.
Z3	Ethics
Z3.1	Any offer, payment, consideration, or benefit of any kind made by the <i>Contractor</i> , 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 <i>Contractor's</i> obligation to Provide the Works or taking any other action as appropriate against the <i>Contractor</i> (including civil or criminal action).
Z3.2	The <i>Employer</i> may terminate the <i>Contractor's</i> obligation to Provide the Works if the <i>Contractor</i> is found guilty by a competent court, administrative or regulatory body of participating in illegal or corrupt practices. 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 <i>Employer</i> or other people or organisations and including in circumstances where the <i>Contractor</i> or any such member is removed from an approved vendor data base of the <i>Employer</i> as a consequence of such practice.
Z3.3	If the <i>Employer</i> terminates in terms of this clause, the procedures on termination are those stated in Clause 91.1 and the amount due on termination includes amounts listed in Clause 92.1.
Z4	Confidentiality
Z4.1	The <i>Contractor</i> does not disclose or make any information arising from or in connection with this contract available to others except where required by this contract. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the <i>Contractor</i> , enters the public domain or to information which was already in the possession of the <i>Contractor</i> at the time of disclosure (evidenced by written records in existence at that time). Should the <i>Contractor</i> disclose information to others where required by this contract the <i>Contractor</i> ensures that the provisions of this clause are complied with by the recipient.
Z4.2	If the <i>Contractor</i> is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the <i>Employer</i> .
Z4.3	In the event that the <i>Contractor</i> is, at any time, required by law to disclose any such information which is required to be kept confidential, the <i>Contractor</i> , to the extent permitted by law prior to

	disclosure, notifies the <i>Employer</i> 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 <i>Contractor</i> 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 <i>works</i> or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the <i>Employer</i> . All rights in and to all such images vests exclusively in the <i>Employer</i> .
Z4.5	The <i>Contractor</i> ensures that all his subcontractors abide by the undertakings in this clause.
Z5	Waiver and estoppel: Add to clause 12.2:
Z5.1	Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties or their delegates or the <i>Adjudicator</i> 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. Changes: Each party may, from time to time, propose changes in the scope of work to be performed by <i>Contractor</i> under this Contract, which changes will be subject to mutual agreement of the parties. Neither party shall be obligated to proceed with any change until the parties have agreed upon its effect and signed a written change order document.
Z6	Health, safety and the environment
Z6.1	The <i>Contractor</i> undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the <i>works</i> . Without limitation the <i>Contractor</i> : • accepts that the <i>Employer</i> may appoint him as the “Principal Contractor” (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) (“the Construction Regulations”) for the Site; This Construction Regulations not applicable to this Contract: • warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of <i>works</i>; and • undertakes, in and about the execution of the <i>works</i>, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the <i>Contractor’s</i> direction and control, likewise observe and comply with the foregoing. • <u>Hazardous Materials</u>: Employer agrees to properly dispose of all Hazardous Materials encountered by Contractor at site and of those produced by the Contractor during the performance of the Contract. For the purpose of this section, Hazardous Materials means batteries, or toxic substances or hazardous substances as such terms are defined in any law, or regulations of the United States of America or of the country of the site. • <u>Safety</u>: If, in Contractor's reasonable opinion, security or safety of personnel or the safe execution of work is, or is apt to be, imperilled by security concerns, local conditions, terroristic acts or threats, Contractor may remove some or all of its personnel from the site and/or suspend performances of all or any part of its services and/or evacuate its personnel. In the event of an evacuation, Employer shall assist in said evacuation. Any of the foregoing shall be considered to be a force majeure event.
Z6.2	The <i>Contractor</i> , in and about the execution of the <i>works</i> , 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 <i>Contractor’s</i> direction and control, likewise observe and comply with the foregoing.
Z7	Provision of a Tax Invoice and interest. Add to clause 50

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Z7.1	The <i>Contractor</i> provides the <i>Employer</i> with a tax invoice in accordance with the <i>Employer's</i> procedures stated in the Works Information, showing the correctly assessed amount due for payment.
Z7.2	If the <i>Contractor</i> does not provide a tax invoice in the form and by the time required by this contract, the time by when the <i>Employer</i> 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 <i>Employer</i> in terms of clause 51.2 is then calculated from the delayed date by when payment is to be made.
Z7.3	The <i>Contractor</i> is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the <i>Employer's</i> VAT number 4330196330 on each invoice he submits for payment. If <i>Employer</i> pays to <i>Contractor</i> , then, Commercial invoice in EUR along with all supporting documentation to be submitted to the <i>Employer</i> to process payments. <i>Contractor</i> Offshore Bank account details must be provided along with Invoice. If <i>Contractor</i> pays to employer, then clause Z7.3 shall be applicable.
Z7.4	<i>Contractor</i> shall be responsible for all corporate taxes measured by net income due to performance of or payment for work under this Contract (" <i>Contractor Taxes</i> "). <i>Employer</i> shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on <i>Employer</i> or <i>Contractor</i> or its subcontractors) in relation to the Contract or the performance of or payment for work under the Contract other than <i>Contractor Taxes</i> (" <i>Employer Taxes</i> "). The Contract Price does not include the amount of any <i>Employer Taxes</i> . If <i>Employer</i> deducts or withholds <i>Employer Taxes</i> , <i>Employer</i> shall pay additional amounts so that <i>Contractor</i> receives the full Contract Price without reduction for <i>Employer Taxes</i> . <i>Employer</i> shall provide to <i>Contractor</i> , within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.
Z8	Notifying compensation events
Z8.1	Deleted.
Z9	<i>Employer's</i> limitation of liability; Add to clause 80.1
Z9.1	The <i>Employer</i> liability to the <i>Contractor</i> for the <i>Contractor's</i> indirect or consequential loss is limited to R0.00 (zero Rand). Should the <i>Contractor</i> be found to be deliberately negligent the liability shall be equal to Contract Price. The <i>Main Contractor's</i> liability to the <i>Subcontractor</i> for the <i>Subcontractor's</i> indirect or consequential loss is limited to R0.00 (zero Rand)
Z10	Termination: Add to clause 90.2, after the words "or its equivalent":
Z10.1	or had a business rescue order granted against it. Termination and suspension: Either Party can terminate the Contract for material breach if the other Party does not cure in a reasonable period. <i>Contractor</i> can suspend the Contract performance if <i>Employer</i> fails to comply with any payment obligations under the Contract. The foregoing are the sole and exclusive suspension and termination rights of the Parties. If <i>Employer</i> Terminates that Contract, then <i>Employer</i> shall first provide <i>Contractor</i> with detailed written notice of the breach and of <i>Employer's</i> intention to terminate the Contract, and (b) <i>Contractor</i> shall have failed, within 30 days after receipt of the notice, to commence and diligently pursue cure of the breach. The <i>Employer</i> may termination or suspend this contract for any business reason whatsoever. If <i>Employer</i> terminates the Contract pursuant to this clause, (i) <i>Employer</i> shall pay to <i>Contractor</i> (a) the portion of the Contract Price allocable to Products completed with evidence of Contract

	Price allocation, (b) less fees incurred, and (c) amounts for Services performed before the effective date of termination. The amount due for Services shall be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Contractor's then-current standard time and material rates. <i>Contractor</i> may suspend or terminate the Contract (or any affected portion thereof) immediately for cause if <i>Employer</i> (i) becomes Insolvent/Bankrupt, or (ii) materially breaches the Contract, including, but not limited to, failure or delay in <i>Employer</i> providing Payment Security, making any payment when due, or fulfilling any payment conditions. If the <i>Employer</i> terminates in terms of this clause, the procedures to be followed will be as per those stated in Clause 92 and the amount due will include amounts as listed in Clause 93, less a deduction of the forecast additional cost to the <i>Employer</i> for completing the works. Furthermore, if the amount due by the <i>Contractor</i> for delay damages reaches the limits stated in this Contract Data, the <i>Employer</i> may also terminate the <i>Contractor's</i> obligation to provide the works. If the <i>Employer</i> terminates under the aforementioned circumstances, then the procedures and amounts due will be as per Clauses 92 and 93 mentioned above, less a deduction of the forecast additional cost to the <i>Employer</i> for completing the works
Z11	Addition to Clause 50.5
Z11.1	If the amount due for the <i>Contractor's</i> payment of <i>delay damages</i> reaches the limits stated in this Contract Data (if any), the <i>Employer</i> may terminate the <i>Contractor's</i> obligation to Provide the Works after <i>Contractor</i> has failed to deliver Goods after 45 days of cure period from notice to <i>Contractor</i> from <i>Employer</i> for delay damages limit reached.
Z11.2	If the <i>Employer</i> terminates in terms of this clause, the procedures on termination are those stated in Clause 91.1 and the amount due on termination includes amounts listed in Clause 92.1.
Z11.3	Under the Contract, should <i>Contractor</i> fail to deliver Goods by the Delivery Lead Time as agreed, for the reasons solely attributable to the <i>Contractor's</i> fault or negligence, <i>Employer</i> shall be entitled, with formal notice to the <i>Contractor</i> for payment of liquidated damages, for such failure in the amounts specified below, and such payment shall be construed as liquidated damages and not as a penalty. One Point Two Five percent (1.25%) of the Total Price per full week, up to a maximum of Five percent (5%) of the Total Price. However, <i>Contractor</i> shall have no liability to <i>Employer</i> under this Article if <i>Contractor's</i> delay causes no damages or losses to <i>Employer</i>. Should there be any losses or damages, then <i>Contractor</i> shall be liable under LD clause.

Data provided by the *Contractor* (the *Contractor's Offer*)

The tendering contractor is advised to read both the NEC3 Engineering and Construction Short Contract (April 2013) and the relevant parts of its Guidance Notes (ECSC3-GN)⁴ in order to understand the implications of this Data which the tenderer is required to complete. An example of the completed Data is provided on page 31 of the ECSC3 April 2013 Guidance Notes.

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

10.1	The <i>Contractor</i> is (Name):	Eskom RoteK Industries
	Address	Lower Germiston Road Rosherville 2094
	Tel No.	+27 13 295 9199
	Cell No.	+27 78 460 1920
	E-mail address	ramaletf@eskom.co.za
63.2	The percentage for overheads and profit added to the Defined Cost for people is	Deemed to be included in the price
63.2	The percentage for overheads and profit added to other Defined Cost is	Deemed to be included in the price
11.2(9)	The Price List is in	the document called 'Price List' in Part 2 of this contract.
11.2(10)	The offered total of the Prices is [Enter the total of the Prices from the Price List]:	

⁴ Available from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902 or www.ecs.co.za.

C2 Pricing Data

C2.1 Pricing assumptions

- The *Contractor* is paid an amount for the item of work completed as agreed and signed off by both Parties representatives.
- All Prices excludes VAT
- The Cost Estimate to complete the LP Rotor is R 7 647 722.00.

C2.2 Price List

Item	Quantity	Description	Unit Price ZAR	Total Value ZAR
0001	1 EA	Tooling, Engineering and Development (Once off) Engineering calculations for rigging & lifting adapter Manufacture of 2 x lifting adapters for shrink fitting on existing shaft tapers Manufacture of trunnion turning tooling Equipment rental – induction heater		
		Eskom Hendrina LP Rotor Dis- and Re- assembly		
0002	1 EA	First LP Rotor (Dis- and Re-assembly)		
0003	1 EA	Second LP Rotor (Dis- and Re-assembly)		
The total of the Prices (excluding VAT)				R

C3: Scope of Work

C3.1 Works Information

1. Description of the works

SCOPE OF WORK

1. Tooling, Engineering and Development (Once off)

- Engineering calculations for rigging & lifting adapter.
- Manufacture of 2 x lifting adapters for shrink fitting on existing shaft tapers
- Manufacture of trunion turning tooling.
- Equipment Rental – Induction heater

2. Eskom Hendrina LP Rotor Dis- and Re- assembly

First LP Rotor (Dis- and Re-assembly)

- Receiving & offloading of Rotor on free issue cradle (Road transportation from Rotek excluded)
- Dry ice & boxing to chill Rotor Shaft.
- Removal of TS Coupling
- Removal of GS Coupling
- Removal of Stage 4TS Disc
- Removal of Stage 3TS Disc
- Removal of 2TS Disc
- Removal of 1TS Disc
- Removal of 4GS Disc
- Removal of 3GS Disc
- Removal of 2GS Disc
- Removal of 1GS Disc
- Clean the shaft
- Dimensional inspect the shaft
- Perform NDT (MPI and UT) on the shaft
- Carry out run-out check on the shaft
- Engineering to evaluate all reports
- Fit free-issue stage 1 GS disc
- Fit free-issue stage 2 GS disc
- Fit free-issue stage 3 GS disc
- Fit free-issue stage 4 GS disc and lock
- Fit free-issue stage 1 TS disc
- Fit free-issue stage 2 TS disc
- Fit free-issue stage 3 TS disc
- Fit free-issue stage 4 TS disc and lock
- Fit TS and GS balance collars
- Fit TS and GS couplings

Included in the scope:

- Final machine all the locks and dowels for stage 4 discs and couplings (Rotek to supply rough material)
- Manufacture drive pins and cups
- Manufacture lifting hole plugs
- Machining of stage 1 & 2, TS and GS disc bores (free issue new discs)
- Drill lifting and drive pin holes in the stage 1 & 2, TS and GS discs
- Roller burnish the drive pin holes
- NDT on the machined items and areas

3. Second LP Rotor (Disassembly only)

- Receiving & offloading of Rotor on free issue cradle (Road transportation from Rotek excluded)
- Receiving Inspection
- Flash Blast Clean
- NDT inspection
- Visual, Dimensional & Runout inspection
- Machining to remove GS Coupling Dowels
- Removal of GS Coupling
- Removal of balance collar GS
- Removal of 4TS Disc
- Removal of 3TS Disc
- Removal of 2TS Disc
- Removal of 1TS Disc

Notes:

- Rotek Engineering to manage all logistics of the rotor and discs.

Durations:

- 3 Months for Engineering and tooling development –
- 10 Weeks for above scope

Requirements:

- Rotek Engineering to remove the GS coupling dowels.

Programmes & Updates:

- A Project plan will be issued on placement of order
- Updates to be given once weekly in writing

Quality Documentation:

- A Databook will be made available on order placement.
- A QCP will be issued on order placement.
- Any specific documentation or quality requirements must be stipulated in writing

3 Management and Start Up

3.1 Management Meetings

The contractor holds regular progress review meetings with the Project Manager during the implementation of the project. Records of these meetings are submitted to the Project Manager by the person convening the meeting within five days of the meeting.

All meetings are recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register are not used for the purpose of confirming actions or instructions under the contract.

3.2 Safety Management

The Employer's Health and Safety requirements are in accordance with the OHS Act No 85 of 1993. It is a primary objective of the project that the work is executed in accordance with statutory obligations and in accordance with the Employer's Health and Safety procedures and policies. The contractor complies with all the Employer's Health and Safety requirements. All project personnel are responsible for:

Ensuring health and safety compliance across the project.

Ensuring safety is adequately addressed in toolbox talk meetings on a daily basis; and
That health and safety requirements are appropriately included in enquiry and contract documents.

The Security Manager, Safety Manager and Project Manager have joint responsibility to ensure that safety initiatives and to the Employer's "Zero Harm" principles are promoted and adhered to.

3 Quality Assurance Requirements and restrictions

Quality Management is seen as a critical integrated part of the overall project delivery process. The contractor must comply with Eskom technical standards attached and industrial norms and standards.

4 The Contractors Management, Supervision and Key People including Engineering support.

The contractor makes an adequate, experienced and stable project team available for the duration of the contract. The contractor is required to minimize replacement of individual project team members, in order to ensure optimum work continuity.

The contractor shall provide an organogram of all people who will be directly involved with the management and execution of the Contract down to supervisory level. The organogram shows each key person named to do the job including a Civil Engineer for daily oversight including quality and approval of hold / witness points. The principal contractor appoints the necessary engineering team and professional service of which the cost is included in the price list.

5 Contractor Responsibilities:

- 1 Ensure that work is done in strict compliance with all applicable Eskom Standards, SHEQ policies/legislation and City of Johannesburg requirements.
- 2 Ensure that all applicable safety measures are enforced in connection with the work.
- 3 Test controls and **demonstrate** compliance of installed equipment with requirements.
- 4 Submit all documentation to effect one (2)-year warranty on parts and labour.
- 5 Occupational certificate within 7 days of completion.
- 6 All Compliance Certificates before handover
- 7 Items on the Snag list completed before occupation and any delays shall be treated as delay damages.

6 Time Limit:

Contractor is given one week after order is received to finalize SHEQ file and conclude SHEQ induction.

To be onsite two days once the contract is signed and,

To provide the final construction programme two days after the contract is signed so that the programme can be signed off by the TGS PM and CS PM. The principal contractor shall ensure that all its sub-contractors complies to the programme and manage any potential delays before it occurs. Any delays by the sub-contractors is for the principal contractor's costs.

The Employer must be notified of any potential delays as and when it occurs, and the principal contractor shall within 1 day update the programme for Employer's re-approval . Any changes/ delays must be mutually agreed by both parties Project Managers including Contract Managers.

7 Work Days and Hours:

Perform work Monday through Friday; 7h00 to 17h00. Working outside these hours will require Security Management approval. The principal contractor shall manage time and attendance including compliance to Rosherville security requirements.

3. Specifications

List the specifications that apply to this contract. Some typical headings have been provided as a minimum; delete if not required or expand and include correct titles as applicable.

Title	Date or revision	Tick if publicly available
General :		
Health and Safety requirements		
Environmental requirements		
Quality Requirements		

4.3 Invoicing and payment

The Z clauses make reference to invoicing procedures stated here in this Works Information. Also include a list of information which is to be shown on an invoice. The following text is provided as a guide; revise to suit actual requirements.

In terms of core clause 50 the Principal *Contractor* assesses the amount due and applies to the *Employer* for payment date. The *Contractor* applies for payment with a tax invoice addressed to the *Employer* as follows:

The *Contractor* includes the following information on each tax invoice:

- Name and address of the *Contractor*
- The contract number and title;
- *Contractor's* VAT registration number;
- The *Employer's* VAT registration number 4330196330;
- The total Price for Work Done to Date which the *Contractor* has completed;
- Other amounts to be paid to the *Contractor*;
- The change in the amount due since the previous payment being the invoiced amount - excluding VAT, the VAT and including VAT;
- (add other as required)

The *Contractor* attaches the detail assessment of the amount due to each tax invoice showing the Price for Work Done to Date for each item in the Price List for work which he has completed.

It is agreed between both parties Finance Business Partners that journal shall be done to effect payment.
Payment to the principal sub-contractors is not reliant on the Employer's date.

Procedures for invoice submission and payment is to the Employer's PM to ratify and PSM for approval

6. Services and other things provided by the *Employer*

Describe what the *Employer* will provide such as services (including water and electricity) and "free issue" Plant and Materials and equipment.

Item	Date by which it will be provided
Transportation of the LP Rotor to and from the Contractor's Rosherville Workshop.	

C4: Site Information

Site Information is information about the *site* at the time of tender which the tendering contractor needs to allow for in his rates and Prices. The information does not change after contract award, nor does it describe or specify anything which the Parties do during the contract. It is only referred to during administration of the contract if the *Contractor* encounters conditions which are different to those described here. The *Contractor* will then make a comparison between actual conditions encountered and those described here in his assessment of any additional cost or time he may need to be compensated for in order to complete the works. Disputes about the difference between the effects of conditions encountered and those which the *Contractor* allowed for in his Prices will be minimised if the information given here is complete and relevant. If no information is given the tendering contractor will need to guess what he may encounter thus tendering higher Prices to allow for conditions that may not even exist.

C4.1: Information about the *site* at time of tender which may affect the work in this contract

1. Access limitations

State if there is any physical, time or other "third party" constraint associated with gaining access to and doing work on the *site* that may not be immediately apparent from an inspection of the *site*.

None

2. Ground conditions in areas affected by work in this contract

If earthworks are included in the Scope of Work, provide details of the ground conditions the *Contractor* is likely to encounter when doing the work. This could vary from indicating where a test pit has been opened up for the *Contractor* to make his own observations to providing full borehole logs and associated geotechnical report.

Principal contractor to review and confirm with the Employer as per site meeting with TAP.

3. Hidden and other services within the site

Provide details of underground or other hidden services which the *Contractor* may encounter whilst doing the work. Instructions about how to deal with them if encountered should be included in the Works Information.

Principal contractor to confirm with its previous site PM

4. Details of existing buildings / facilities which *Contractor* is required to work on

If work is to be carried out on existing buildings or facilities Site Information would be the 'as-built drawings' of those buildings or facilities. If these are not a correct statement or not available other means of describing the existing buildings or facilities would have to be used, such as providing photographs

N/A

CONFIDENTIALITY AGREEMENT

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

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

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

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

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the 'Subject Information') may include but not be limited to the parties' inventions, trade secrets, know-how, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.
2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other. Any project specific information that may help understand the purpose/context of the exchange of information.
3. The parties each agree that they shall maintain in secrecy in accordance with the terms of this Agreement all of the Subject Information each party receives (the 'Receiving Party') from the other party and its Affiliates (as defined below) (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not if provided in writing or by email or other tangible electronic storage medium and is clearly marked "Confidential" or "Proprietary", or if orally or visually if it is identified as confidential at the time of disclosure and is confirmed as confidential by a written summary within ten (10) working days thereafter.
4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.
5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor or if the Receiving Party can document was independently developed without use of any Subject Information of the Proprietor. If either party or any of their respective Affiliates or Authorized Parties is requested or required, by interrogatories, subpoena, or similar legal process, to disclose any Subject Information or notes, such party agrees to provide the Proprietor with prompt written notice of each such request, to the extent practicable, so that the Proprietor may seek an appropriate protective order, waive compliance by the Receiving Party with the provisions of this Agreement, or both. If, absent the entry of a protective order or receipt of a waiver, the Receiving Party is, in the opinion of its counsel, legally compelled to disclose such Subject Information or

notes, the Receiving Party may disclose such Subject Information or notes to the persons and to the extent required without liability.

6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes and other writings prepared by the parties, or their advisors, based on the Subject Information of each other, shall be destroyed, and such destruction shall be certified in writing by an authorised officer supervising such destruction. Nothing in this Section 6 shall require either party or any of their respective Affiliates and/or Authorized Parties to return, destroy, or delete copies of any computer records and/or files containing the Subject Information that have been created pursuant to automated processes such as document retention/archiving and/or back-up policies/procedures, provided that each and any such copies: (a) are kept confidential and cannot be accessed in the regular course of business; (b) are maintained and archived in compliance with reasonable information security standards; and (c) are properly deleted as required by the Receiving Party's document retention/archiving and/or back-up policies/procedures.
7. If a party, with the written consent of the Proprietor of Subject Information, discloses any Subject Information received from its Proprietor to any third party, affiliates and its affiliates' employees, officers, directors and agents (including attorneys) that need to know ("Authorized Parties"), it shall do so only under a secrecy agreement having a scope similar to and which is consistent with this Agreement, and the disclosing party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party. An affiliate is considered a representative only if it actually receives Subject Information.
8. Each party agrees that it shall not, while and for so long as it is obligated to maintain Subject Information in secrecy, use for its own benefit, or for the benefit of others or exploit, commercialise, develop, test promote, sell, lease, market or otherwise dispose of any products or services using, incorporating or relying on Subject Information received from its Proprietor without the written consent of the Proprietor.
9. This Agreement automatically terminates two years from the Effective Date, however, the obligations of the party receiving Subject Information pursuant to this Agreement and all other obligations set forth hereunder shall survive the expiration or termination of this for a term of five (5) years from the date of submission of the Subject Information to the Receiving Party by its Proprietor, unless the Proprietor agrees otherwise in writing.
10. For purposes of this Agreement, each party shall include (to the extent applicable) the officers, directors, employees, agents, representatives, attorneys, joint ventures, partnerships, affiliates, subsidiaries, and divisions of the party, and any other entity or entities which such party controls or which controls it, and, further, shall include any transferee, successor and assign of the assets of the party.
11. As used in this Agreement, an "Affiliate" with respect to a party means any entity (including without limitation any individual, corporation, company, partnership, limited liability company or group) that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with such party and is not a Contractor's competitor.
12. Each party acknowledges that money damages would not be a sufficient remedy for any breach of this Agreement. Accordingly, in the event of any such breach, in addition to any other remedies at law or in equity that a party may have, it shall be entitled to exercise all appropriate relief, including injunctive relief by any competent court, to obtain enforcement of the provisions of this Agreement.
13. This Agreement shall be construed (both as to validity and performance) and enforced in accordance with, and governed by, the laws of Republic of South Africa.
14. Neither this Agreement nor the exchange of Subject Information between the parties shall create or be relied on by either party as a basis for creating any license between the parties under any patent, or other industrial or intellectual property rights of the Proprietor of the Subject Information,

or any other license between the parties in the absence of any express written license agreement between them.

15. The parties agree that no contract or agreement providing for a transaction shall be deemed to exist between them unless and until a definitive agreement has been executed and delivered, the parties hereby waive, in advance, any claim (including, without limitation, breach of contract) in connection with a possible transaction with each other unless and until they shall have entered into a definitive agreement. The parties also agree that unless and until a definitive agreement between them has been executed and delivered, neither party has any legal obligation of any kind whatsoever with respect to any such transaction by virtue of this Agreement or any other written or oral expression with respect to such transaction, except, in the case of this Agreement, for the matters specifically agreed to herein. For purposes of this paragraph, the term 'definitive agreement'; does not include an executed letter of intent, memorandum of understanding.

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