



NEC3 Supply Contract (SC3)

Between **ESKOM HOLDINGS SOC Ltd**
(Reg No. 2002/015527/30)

and [Insert at award stage]
(Reg No. _____)

for **THE PROVISION FOR THE SUPPLY AND DELIVERY
OF AMMUNITION AND ELECTRONIC HEARING
PROTECTION FOR PEAKING OPERATING UNIT ON
AN AS-AND-WHEN-REQUIRED BASIS FOR A
PERIOD OF FIVE (5) YEARS**

Contents:	No of pages
Part C1 Agreements & Contract Data	[•]
Part C2 Pricing Data	[•]
Part C3 Scope of Work	[•]

CONTRACT No. [Insert at award stage]

PART C1: AGREEMENTS & CONTRACT DATA

Contents:	No of pages
C1.1 Form of Offer and Acceptance	[•]
[to be inserted from Returnable Documents at award stage]	
C1.2a Contract Data provided by the <i>Purchaser</i>	[•]
C1.2b Contract Data provided by the <i>Supplier</i>	[•]
[to be inserted from Returnable Documents at award stage]	
C1.3 Proforma Guarantees	[•]

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 PROVISION FOR THE SUPPLY AND DELIVERY OF AMMUNITION AND ELECTRONIC HEARING PROTECTION FOR PEAKING OPERATING UNIT ON AN AS-AND-WHEN-REQUIRED BASIS FOR A PERIOD OF FIVE (5) YEARS

The tenderer, identified in the Offer signature block, has

<i>either</i>	examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender.
<i>or</i>	examined the draft contract as listed in the Acceptance section and agreed to provide this Offer.

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:**

(Insert name and address of organisation)

Name &
signature of
witness

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	Agreements and Contract Data, (which includes this Form of Offer and Acceptance)
Part C2	Pricing Data
Part C3	Scope of Work: Goods Information including Supply Requirements

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

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Purchaser during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

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

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed and signed original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)

Capacity

**for the
Purchaser**

**Eskom Holdings SOC Ltd,
15 Pasita Street,
Rosenpark, Durbanville,
7550**

(Insert name and address of organisation)

Name &
signature of
witness

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	[•]	[•]
7	[•]	[•]

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,
15 Pasita Street,
Rosenpark, Durbanville,
7550**

Name &
signature
of witness

Date

C1.2 SC3 Contract Data

Part one - Data provided by the *Purchaser*

[Instructions to the contract compiler: (delete these two notes in the final draft of a contract)]

1. Please read the relevant clauses in the conditions of contract before you enter data. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data.
2. Some SC3 options are always selected by Eskom Holdings SOC Ltd. The remaining SC3 options are identified by shading in the left hand column. In the event that the option is not required select and delete the whole row. Where the following symbol is used "[•]" - data is required to be inserted relevant to the specific option selected.]

Completion of this data in full, according to the Options chosen, is essential to create a complete contract.

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for Options	
		X1: Price adjustment for inflation
		X2 Changes in the law
		X17: Low performance damages
		Z: <i>Additional conditions of contract</i>
	of the NEC3 Supply Contract (April 2013) ²	(If the December 2009 edition is to be used delete April 2013 and replace by December 2013)
10.1	The <i>Purchaser</i> is (name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company 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.	[•]
	Fax No.	[•]
10.1	The <i>Supply Manager</i> is (name):	Thandisiwe Tabasa
	Address	Eskom Holdings SOC Ltd 15 Pasita Street, Rosenpark, Durbanville 7550
	Tel	021 573 6131
	Fax	N/A

² Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902, www.ecs.co.za.

e-mail		TabasaT@eskom.co.za	
11.2(13)	The <i>goods</i> are	AMMUNITION AND ELECTRONIC HEARING PROTECTION	
11.2(13)	The <i>services</i> are	SUPPLY AND DELIVERY OF AMMUNITION AND ELECTRONIC HEARING PROTECTION FOR PEAKING OPERATING UNIT ON AN AS-AND-WHEN-REQUIRED BASIS FOR A PERIOD OF FIVE (5) YEARS	
11.2(14)	The following matters will be included in the Risk Register	• Delays in the manufacture or supply of ammunition and electronic hearing protection. • Delays in transportation and delivery to Eskom sites. • Regulatory or legislative restrictions affecting the supply of ammunition. • Non-conformance of supplied goods to specification requirements. • Unavailability of stock from manufacturers or authorised distributors.	
11.2(15)	The Goods Information is in	Part C3: Scope of Work and all documents to which it makes reference.	
11.2(15)	The Supply Requirements as part of the Goods Information is in	Part C3: Scope of Work.	
12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa	
13.1	The <i>language of this contract</i> is	English	
13.3	The <i>period for reply</i> is	1 weeks	
X17	Low performance damages		
X17.1	The amounts for low performance damages are:	amount	performance level
		R 2500	Failure to deliver the correct quantity in accordance with the Purchase Order
		R 5000	Supply of goods that do not comply with the technical specification or approved standards.
		R 2500	Failure to provide the required certificates, batch identification or compliance documentation at delivery.
		R 5000	Failure to replace rejected goods within the period instructed by the Supply Manager.

2	The Supplier's main	Data required by this section of the core
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responsibilities

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 <i>starting date</i> is.	The Contract Date	
30.1	The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is:	<i>goods and services</i>	<i>delivery date</i>
		1 All goods and services	Will be indicated in each Purchase Order each Purchase Order
30.2	The <i>Supplier</i> does not bring the <i>goods</i> to the Delivery Place more than one week before the Delivery Date.	The Supplier shall deliver the goods within the period stated in the relevant Purchase Order.	
31.1	The <i>Supplier</i> is to submit a first programme for acceptance within	Not Applicable	
32.2	The <i>Supplier</i> submits revised programmes at intervals no longer than	Not Applicable	
4	Testing and defects		
42	The <i>defects date</i> is	52 weeks after Delivery	
43.2	The <i>defect correction period</i> is	2 weeks	
42.2	The <i>defects access period</i> is	Not Applicable	
5	Payment		
50.1	The <i>assessment interval</i> is	between the 1st and last day of each successive month.	
51.1	The <i>currency of this contract</i> is the	South African Rand	
51.2	The period within which payments are made is	30 days	
51.4	The <i>interest rate</i> is	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 Limited (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	
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 <i>Purchaser's</i> risks	1. N/A
88.1	The <i>Supplier's</i> liability to the <i>Purchaser</i> for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to	R0.0 (zero Rand)
88.2	For any one event, the <i>Supplier's</i> liability to the <i>Purchaser</i> for loss of or damage to the <i>Purchaser's</i> property is limited to	(1) for the <i>Purchaser's</i> existing and surrounding property in the care, custody and control of the <i>Supplier</i> the amount of the deductible (first amount payable) relevant to the event and (2) for all other existing <i>Purchaser's</i> property the applicable deductible as at contract date
88.3	The <i>Supplier's</i> liability for Defects due to his design which are not notified before the last <i>defects date</i> is limited to:	Total Value of the Goods
88.4	The <i>Supplier's</i> total liability to the <i>Purchaser</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to	Total Value of the Goods
88.5	The <i>end of liability date</i> is	1 years after Delivery of the whole of the goods and services.

9 Termination and dispute resolution

94.1	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	[•]
	Tel No.	[•]
	Fax No.	[•]
	e-mail	[•]
94.2(3)	The <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za)
94.4(2)	The <i>tribunal</i> is:	Arbitration
94.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of

94.4(5)	The place where arbitration is to be held is 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	Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body. Cape Town, South Africa the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.
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10 Data for Option clauses

X1	Price adjustment for inflation			
X1.1	The <i>base date</i> for indices is	Base date for escalation will be the month prior to tender closing date. The price will be fixed for the 12 months thereafter CPA will apply annual for the remainder of the contract period.The contract will escalate according to the SEIFSA tables.		
	The proportions used to calculate the Price Adjustment Factor are:	proportion	linked to index for	Index prepared by
		15%	Fixed	Non-adjustable
		35%	Manufacturing	PPI Manufacturing
		25%	Imported Components/ Materials	Average USD/ZAR Exchange
		15%	Transport	Fuel/Transport Index
		10%	Labour	SEIFSA Labour Index
		[•]	non-adjustable	
		100%		
X2	Changes in the law			
X2.1	A change in the law of	Republic of South Africa is a compensation event if it occurs after the Contract Date		
X7	Delay damages			
X7.1	Delay damages for Delivery are	Delivery of	amount per day	
		Goods not delivered by the delivery date stated in the relevant Purchase Order	1% of the Purchase Order value per calendar day, capped at 10% of the Purchase Order value	

Z	The <i>additional conditions of contract</i> are	Z1 to Z15 always apply for Eskom
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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 Contractor undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the service. Without limitation the Contractor:
- will adhere to Eskom's Occupational Health and Safety policies, standards, procedures, directives, OHS requirements, applicable health and safety laws and regulations and other requirements, as amended.
 - may not commence work until the Health and Safety file has been approved by the respective Contract Custodian together with the OHS professional.
 - accepts that the Employer may appoint him as the "Main Contractor" for the Affected Property;
 - 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 the service; and
 - undertakes, in and about the execution of the service, 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 Contractor's direction and control, likewise observe and comply with the foregoing.
 - the Contractor, in and about the execution of the service, 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 Contractor's direction and control, likewise observe and comply with the foregoing.
- Z6.2 Personal Protective Equipment (PPE) Compliance:
- Compliance with PPE requirements is compulsory and non-negotiable across all operational areas. Non-compliance will result in immediate and strict consequence management as stipulated in the memorandum referenced in Annexure B of the OHS Requirements.

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 <i>Supplier</i> , 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.

- Z12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z12.2 The *Purchaser* may terminate the *Supplier's* obligation to Provide the 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 Services for this reason.
- Z12.3 If the *Purchaser* terminates the *Supplier's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.
- Z12.4 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.

Z13Insurance

Z 13.1 Replace core clause 84 with the following:

Insurance cover	84
	84.1 When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
	84.2 The <i>Supplier</i> provides the insurances stated in the Insurance Table A for events which are at the <i>Supplier's</i> risk from the <i>starting date</i> until the last <i>defects date</i> or a termination certificate has been issued.

INSURANCE TABLE A

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage to the <i>goods</i> , plant and materials	The replacement cost where not covered by the <i>Purchaser's</i> insurance. The <i>Purchaser's</i> policy deductible as at Contract Date, where covered by the <i>Purchaser's</i> insurance.
Liability for loss of or damage to property (except the <i>goods</i> , plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Supplier</i>) caused by activity in connection with this contract	<u>Loss of or damage to property</u> <i>Purchaser's</i> property The replacement cost where not covered by the <i>Purchaser's</i> insurance. The <i>Purchaser's</i> policy deductible as at Contract Date, where covered by the <i>Purchaser's</i> insurance. <u>Other property</u> The replacement cost <u>Death of or bodily injury</u> The amount required by the applicable law.
Liability for death of or bodily injury to employees of the <i>Supplier</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law

Z 13.2 Replace core clause 87 with the following:

**Insurance by
the *Purchaser***

87

87.1 The *Purchaser* provides the insurances stated in the Insurance Table B

INSURANCE TABLE B

Insurance against or name of policy	Minimum amount of cover or minimum of indemnity
Assets All Risk	Per the insurance policy document
Contract Works insurance	Per the insurance policy document
Environmental Liability	Per the insurance policy document
General and Public Liability	Per the insurance policy document
Transportation (Marine)	Per the insurance policy document
Motor Fleet and Mobile Plant	Per the insurance policy document
Terrorism	Per the insurance policy document
Cyber Liability	Per the insurance policy document
Nuclear Material Damage and Business Interruption	Per the insurance policy document

Nuclear Material Damage Terrorism	Per the insurance policy document
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Z14 Intellectual Property – Eskom owning Intellectual Property

“Intellectual Property” means (a) patents, trade marks, service marks, rights in designs, trade names, trade secrets, know how, copyrights and topography rights, in each case whether registered or not; (b) applications for registration of any of them; (c) rights under licences and consents in relation to any of them; (d) all forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world.

“Background Intellectual Property” means any and all Intellectual Property rights that are not Foreground Intellectual Property, and are owned or controlled by the relevant party or licensed to the relevant party prior to or outside of the [\[works / services / goods\]](#) but required for the purposes of the [\[works / services / goods\]](#).

“Foreground Intellectual Property” means all Intellectual Property rights and other matter capable of being the subject of intellectual property rights that is conceived, first reduced to practice or writing or developed in whole or in substantial part in the course of the execution of the [\[works / services / goods\]](#) and rights which are developed substantially as a result of the [\[works / services / goods\]](#). Any [\[works / services / goods\]](#) that will be developed, changed, modified and/or improved specifically for the Purposes will be Foreground Intellectual Property. Any data or any other information relating to [\[Employer/Client/Purchaser\]](#)’s proprietary information generated from the use of the [\[Contractor / Consultant / Supplier\]](#)’s Background Intellectual Property.

Z14.1 The [\[Contractor / Consultant / Supplier\]](#) retains ownership of all Background Intellectual Property rights made by or on behalf of the [\[Contractor / Consultant / Supplier\]](#) as part of the [\[works / services / goods\]](#) in information or material it uses in carrying out the [\[works / services / goods\]](#).

Z14.2 All Foreground Intellectual Property rights, contained in any developed materials which are created by the [\[Contractor / Consultant / Supplier\]](#) or on behalf of the [\[Contractor / Consultant / Supplier\]](#), for the purposes of and in support of the execution of the [\[works / services / goods\]](#) ([\[Employer/Client/Purchaser\]](#)’s IP) vest with the [\[Employer/Client/Purchaser\]](#).

Z14.3 Any data or any other information relating to [\[Employer/Client/Purchaser\]](#)’s proprietary information generated from the use of the [\[Contractor / Consultant / Supplier\]](#)’s Background Intellectual Property, the copyright therein shall be owned by the [\[Employer/Client/Purchaser\]](#).

Z14.4 The [\[Contractor / Consultant / Supplier\]](#) acknowledges that all rights, title, and interest in and to the Foreground Intellectual Property that may result or originate from or be developed in execution of the [\[works / services / goods\]](#) vests in the [\[Employer/Client/Purchaser\]](#) and that the [\[Contractor / Consultant / Supplier\]](#) has no claim of any nature in and to the Foreground Intellectual Property.

Z14.5 The [\[Contractor / Consultant / Supplier\]](#) ensures that a copyright notice is incorporated or embossed or labelled on the Foreground Intellectual Property, where the [\[Employer/Client/Purchaser\]](#) is reflected as the owner of the Foreground Intellectual Property.

Z14.6 The [\[Contractor / Consultant / Supplier\]](#) is obliged to provide Foreground Intellectual Property manufacturing documents, designs, processes and/or specifications to the [\[Employer/Client/Purchaser\]](#) before/on the [\[completion date / defect state\]](#).

Z14.7 The [\[Contractor / Consultant / Supplier\]](#) procures that each Sub-[\[Contractor / Consultant / Supplier\]](#) executes all and any [\[works / services / goods\]](#), and takes all and any other

actions as may be required, in order to give effect to this Agreement.

- Z14.8** The [\[Employer/Client/Purchaser\]](#) retains all Background Intellectual Property rights in all documents made by or on behalf of the [\[Employer/Client/Purchaser\]](#) including all documents and requirements provided prior to or during the execution of the [\[works / services / goods\]](#). The [\[Contractor / Consultant / Supplier\]](#) does not, without the written consent, of the [\[Employer/Client/Purchaser\]](#), copy, use or issue to a third party any of the [\[Employer/Client/Purchaser\]](#)'s Background Intellectual Property documents and requirements except for the purposes of executing the [\[works / services / goods\]](#).
- Z14.9** Either party procures that any third party executes confidentiality undertakings not to disclose to any other third parties, any of the [\[Employer/Client/Purchaser\]](#)'s Background Intellectual Property and IP documents and requirements at all, in respect of the [\[Employer/Client/Purchaser\]](#), or the Background Intellectual Property, in respect of the [\[Contractor / Consultant / Supplier\]](#).
- Z14.10 Third Party Claims:**
- Z14.10.1** In the event of any claims being made or actions brought against the [\[Employer/Client/Purchaser\]](#), on the ground that the [\[Contractor / Consultant / Supplier\]](#) infringed any patent, trade mark or copyright, the [\[Contractor / Consultant / Supplier\]](#) is notified thereof and at its own expense, conducts all negotiations in consultation with the [\[Employer/Client/Purchaser\]](#) for the settlement of the claim and litigation that may arise from such alleged infringement, provided that the [\[Employer/Client/Purchaser\]](#) will not bear any financial burden or losses.
- Z14.10.2** Save where the [\[Contractor / Consultant / Supplier\]](#) fails to take over the conduct of the negotiation or litigation within a reasonable time of the notification of the alleged infringement, the [\[Employer/Client/Purchaser\]](#) does not make any admission which might be prejudicial to the [\[Contractor / Consultant / Supplier\]](#)'s position. The [\[Employer/Client/Purchaser\]](#), at the request and the cost of the [\[Contractor / Consultant / Supplier\]](#) affords it all reasonable technical assistance that the [\[Employer/Client/Purchaser\]](#) is able to provide for the purpose of contesting any such claim or action.
- Z14.10.3** Should it be held in any such action that any such protected rights have been infringed, as definitely stated by a judgment of the court before which the action is brought, the [\[Contractor / Consultant / Supplier\]](#), at its own expense and in consultation with the [\[Employer/Client/Purchaser\]](#), either:
- procures for [\[Employer/Client/Purchaser\]](#) the right to continue to use the affected item or design, or
 - replaces the said affected item or design with a non-infringing item, or
 - provides a design of equivalent quality or modify such affected item or design so as to make it non-infringing without affecting the quality.
- Z14.10.4** Notwithstanding anything contained in this contract, the foregoing sets forth the entire responsibility of [\[Contractor / Consultant / Supplier\]](#) with respect to claims relating to infringement.
- Z14.10.5** Where it is alleged that the [\[Employer/Client/Purchaser\]](#) has committed an infringement as intended vis-à-vis the [\[Contractor / Consultant / Supplier\]](#) as set out in the third party intellectual property infringement clause, the [\[Employer/Client/Purchaser\]](#) has the same rights and obligations as the [\[Contractor / Consultant / Supplier\]](#), mutatis mutandis, as regards such alleged infringement.
- Z14.10.6** The [\[Contractor / Consultant / Supplier\]](#) herewith indemnifies the [\[Employer/Client/Purchaser\]](#) and undertakes to keep the [\[Employer/Client/Purchaser\]](#) indemnified against all claims of whatsoever nature, real or imagined, which may be made against the [\[Employer/Client/Purchaser\]](#) arising from the infringement of any third party intellectual property rights.

Z15 Asbestos

For the purposes of this Z-clause, the following definitions apply:

AAIA	means approved asbestos inspection authority.
ACM	means asbestos containing materials.
AL	means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL.
Ambient Air	means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet.
Compliance Monitoring	means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
OEL	means occupational exposure limit.
Parallel Measurements	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
Safe Levels	means airborne asbestos exposure levels conforming to the Standard's requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles.
Standard	means the <i>Purchaser's</i> Asbestos Standard 32-303: Requirements for Safe Processing, Handling, Storing, Disposal and Phase-out of Asbestos and Asbestos Containing Material, Equipment and Articles.
SANAS	means the South African National Accreditation System.
TWA	means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

Z15.1 The *Purchaser* ensures that the Ambient Air in the area where the *Supplier* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) ("Asbestos Regulations"). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.

Z15.2 Upon written request by the *Supplier*, the *Purchaser* certifies that these conditions prevail. All measurements and reporting are affected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Supplier* may perform Parallel Measurements and related control measures at the *Supplier's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.

Z15.3 The *Purchaser* manages asbestos and ACM according to the Standard.

Z15.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is

conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.

- Z15.5 The *Supplier's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z15.6 The *Supplier* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations.
- Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Purchaser* at the *Purchaser's* expense, and conducted in line with South African legislation.

C1.2 Contract Data

Part two - Data provided by the *Supplier*

[Instructions to the contract compiler: (delete this note before issue to tenderers with an enquiry)

Whenever a cell is shaded in the left hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row.]

Notes to a tendering supplier:

1. Please read both the NEC3 Supply Contract (SC3)³ and the relevant parts of its Guidance Notes (SC3-GN)⁴ in order to understand the implications of this Data which the tenderer is required to complete.
2. The number of the clause which requires the data is shown in the left hand column for each statement however other clauses may also use the same data
3. Where a form field like this [] appears, data is required to be inserted relevant to the option selected. Click on the form field **once** and type in the data. Otherwise complete by hand and in ink.

Completion of the data in full, according to Options chosen, is essential to create a complete contract.

Clause	Statement	Data								
10.1	The <i>Supplier</i> is (Name): Address Tel No. Fax No.									
11.2(8)	The Goods Information for the <i>Supplier's</i> design is in:									
11.2(11)	The tendered total of the Prices is	R , (in words)								
11.2(12)	The <i>price schedule</i> is in:									
11.2(14)	The following matters will be included in the Risk Register									
25.2	The restrictions to access for the <i>Supply Manager</i> and Others to work being done for this contract are									
30.1	The <i>delivery date</i> of the <i>goods and services</i> is:	<table><tr><th><i>goods and services</i></th><th><i>delivery date</i></th></tr><tr><td>1</td><td>[•]</td></tr><tr><td>2</td><td>[•]</td></tr><tr><td>3</td><td>[•]</td></tr></table>	<i>goods and services</i>	<i>delivery date</i>	1	[•]	2	[•]	3	[•]
<i>goods and services</i>	<i>delivery date</i>									
1	[•]									
2	[•]									
3	[•]									
31.1	The programme identified in the Contract Data is contained in:									

³ Either April 2013 or December 2009 Edition as stated by *Purchaser* in Contract Data part 1.

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

63.2	The <i>percentage for overheads and profit</i> added to the Defined Cost is	%
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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 its 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 Parent Company Guarantee (for use with Option X4)

(to be reproduced exactly as shown below on the letterhead of the Supplier's Parent Company)

Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sandton
Johannesburg

Date:

Dear Sirs,

Parent Company Guarantee for Contract No

With reference to the above numbered contract made or to be made between

Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sandton (the *Purchaser*) and
Johannesburg

[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 *Supplier's*
parent company (name)

of physical address

and duly authorised thereto do hereby unconditionally guarantee to the *Purchaser* that the *Supplier* shall Provide the Goods and Services in accordance with the above numbered Contract.

1. If for any reason the *Supplier* fails to Provide the Goods and Services, we hereby agree to cause to Provide the Goods and Services at no additional cost to the *Purchaser*.
2. If we fail to comply with the terms of this Deed of Guarantee, the *Purchaser* may itself procure such performance (whether or not the Agreement be formally determined). The *Purchaser* is to notify us and we shall indemnify the *Purchaser* for any additional cost or expense it incurs.
3. Our liability shall be as primary obligor and not merely as surety and shall not be impaired or discharged by reason of any arrangement or change in relationship made between the *Supplier* and the *Purchaser* and/or between us and *Supplier*; nor any alteration in the obligations undertaken by the *Supplier* or in the terms of the Agreement; nor any indulgence, failure, delay by you as to any matter; nor any dissolution or liquidation or such other analogous event of the *Supplier*.
4. The *Purchaser* shall not be obliged before taking steps to enforce the terms of this Deed of Guarantee to obtain judgement against the *Supplier* in any court or other tribunal, to make or file any claim in liquidation (or analogous proceedings) or to seek any remedy or proceed first against the *Supplier*.
5. This Deed of Guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa and we hereby submit to the non-exclusive jurisdiction of the High Court of South Africa.

Signed at _____ on this _____ day of _____ 20__

Signature(s)

Name(s) (printed)

Position in parent company

Signature of Witness(s)

Name(s) (printed)

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 <i>goods</i> and <i>services</i> , entered into between the <i>Purchaser</i> and the <i>Supplier</i> , on or about the [●] day of [●] 200[●] (Contract Reference No. [●]) as amended, varied, restated, novated or substituted from time to time;
1.4	" <i>Supplier</i> " means	[●] a company registered in accordance with the laws of [●] under Registration No [●].
1.5	" <i>Purchaser</i> " 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 <i>Purchaser</i> stating that all amounts due from the <i>Supplier</i> as certified in terms of the contract have been received by the <i>Purchaser</i> and that the <i>Supplier</i> 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 <i>Purchaser</i>.
1.7	"Guaranteed Sum" means	the sum of R[●], ([●] Rand)
1.8	" <i>goods</i> and <i>services</i> " 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 <i>price schedule</i>	[•]

C2.1 Pricing assumptions

1. How goods and services 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 <i>price schedule</i> 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 <i>Supplier</i> has completed, - where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the <i>Supplier</i> has completed by the rate, - plus other amounts to be paid to the <i>Supplier</i>, - less amounts to be paid by or retained from the <i>Supplier</i>. Any tax which the law requires the <i>Purchaser</i> to pay to the <i>Supplier</i> is included in the amount due.

This confirms that the Supply Contract is a priced contract where the Prices are derived from a list of items of *goods* and *services* which can be priced as lump sums or as expected quantities of *goods* and *services* multiplied by a rate, or a mix of both.

2. 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.

3. 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.

3.1. 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 *services* are provided, a unit of time is stated in the Unit column and the length of time (as a quantity of the stated units of time) is stated in the Quantity column.

C2.2 the *price schedule*

Item Nr	Description	Unit	Estimated Quantity	Rate	Price
1	9mm Parabellum FMJ Ammunition	Round	12 450		
2	5.56mm FMJ Ammunition	Round	4 360		
3	12 Bore AAA Ammunition	Round	2 300		
4	12 Bore No. 7 Ammunition	Round	375		
5	12 Bore Rubber Ammunition	Round	250		
6	Electronic Hearing Protection 22-26dB (or higher depending on operational needs and must be able to amplify low-level sounds (voices, commands, ambient sounds) while cutting off harmful noise level automatically.	Each	163		
XX	Additional Items (Actual Cost + % Fee)				

The total of the Prices

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

C3.1: *PURCHASER'S* GOODS INFORMATION

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

The purpose of this contract is to provide for the supply and delivery of ammunition and electronic hearing protection to Peaking Operating Unit sites on an as-and-when-required basis for a period of five (5) years. The goods supplied under this contract are intended to support operational security activities, firearms training and related operational requirements.

The quantities stated in this contract are estimates only and do not constitute a guarantee of the volume of goods to be purchased during the contract period. Goods will be ordered by means of individual Purchase Orders issued by the Purchaser.

The Supplier shall supply and deliver the following goods:

- i. 9mm Parabellum Ball Ammunition, 115–127 grain Full Metal Jacket (FMJ).
- ii. 5.56mm Ball Ammunition, 55 grain Full Metal Jacket (FMJ), suitable for LM4 / rifle platforms.
- iii. 12 Bore Shotgun Ammunition:
 - a. AAA
 - b. No. 7
 - c. Rubber rounds
- iv. Electronic active hearing protection suitable for range shooting and operational security activities.

All goods supplied under this contract shall be new, unused, factory-manufactured products supplied by the original manufacturer or an authorised distributor, and shall comply with all applicable South African legislation, the Firearms Control Act, applicable SANS standards and the manufacturer's specifications.

The Supplier shall maintain full traceability of all ammunition supplied under this contract through batch identification and manufacturer documentation.

Estimated quantities and delivery locations are contained in the Scope of Work and the Price Schedule.

2. Specification and description of the *goods*

The Supplier shall supply and deliver the following goods on an as-and-when-required basis:

- i. 9mm Parabellum Ball Ammunition, 115–127 grain Full Metal Jacket (FMJ).
- ii. 5.56mm Ball Ammunition, 55 grain Full Metal Jacket (FMJ), suitable for use in LM4 rifle platforms or equivalent firearms approved by the Purchaser.
- iii. 12 Bore Shotgun Ammunition:
 - a. AAA
 - b. No. 7
 - c. Rubber rounds
- iv. Electronic active hearing protection suitable for range shooting and operational security activities.

All ammunition supplied shall be new, unused, factory-manufactured ammunition and shall comply with all applicable South African legislation, applicable SANS standards (where applicable), and the manufacturer's published specifications.

Reloaded, remanufactured or refurbished ammunition shall not be accepted. All ammunition shall be supplied in the manufacturer's original sealed packaging, clearly marked with the calibre, batch number, lot number (where applicable), and manufacturing date. Packaging shall be free from damage, moisture or deterioration.

Ammunition supplied shall have a minimum remaining shelf life of 80% of the manufacturer's specified shelf life at the date of delivery, unless otherwise approved in writing by the Supply Manager.

The Supplier shall provide manufacturer certificates, batch identification and any compliance documentation specified in this Scope of Work or reasonably requested by the Supply Manager.

Electronic hearing protection supplied under this contract shall be new, unused and supplied with all applicable operating instructions, technical documentation and warranty information where applicable.

Detailed technical specifications and estimated quantities are contained in the relevant annexures to this Scope of Work.

2.1. Manufacture & fabrication

All goods supplied shall be new, unused, factory-manufactured products. Reloaded ammunition and refurbished electronic hearing protection shall not be accepted.

2.2. Operating manuals and maintenance schedules

For electronic hearing protection supplied under this contract, the Supplier shall provide the following documentation upon delivery:

- a) Manufacturer's operating instructions or user manual;
- b) Product technical data sheet;
- c) Warranty documentation, where applicable; and
- d) Any maintenance or battery replacement instructions applicable to the equipment.

All documentation shall be provided in English and may be supplied in electronic format.

No operating manuals or maintenance schedules are required for ammunition supplied under this contract. Where electronic documentation is provided, it shall be in a commonly accessible format (such as PDF) and supplied at no additional cost to the Purchaser.

3. Supply Requirements

3.1. Purchase Orders

The Supplier shall supply and deliver the Goods only against a valid Purchase Order issued by the Purchaser. Each Purchase Order shall specify, as applicable, the goods required, quantities, delivery location and required delivery date. No minimum order quantity or guaranteed purchase volume is implied by this contract.

3.2. Delivery

The Supplier shall deliver the Goods to the delivery location specified in the relevant Purchase Order during the Purchaser's normal business hours, unless otherwise agreed in writing by the Supply Manager.

3.3. Packaging and Transport

The Supplier shall ensure that all Goods are suitably packaged, labelled and transported to prevent damage, deterioration or contamination during transit. Packaging shall comply with all applicable legislative and manufacturer requirements for the safe transport and storage of ammunition and electronic hearing protection.

3.4. Delivery Documentation

Every delivery should include:

- Delivery Note
- Purchase Order number
- Item description

- Quantity supplied
- Batch / Lot number (for ammunition)
- Manufacturer certificates (where applicable)
- Warranty documentation for hearing protection (where applicable)

3.5. Inspection

The Purchaser may inspect the Goods upon delivery to verify compliance with the Purchase Order and this Scope of Work. Acceptance at the time of delivery does not relieve the Supplier of responsibility for latent defects or non-compliance subsequently identified.

3.6. Rejection

Goods which do not comply with the Purchase Order, this Scope of Work or applicable specifications may be rejected by the Purchaser. Rejected Goods shall be removed and replaced by the Supplier at its own cost within the period instructed by the Supply Manager.

3.7. Cost of Replacement

All costs associated with the removal, replacement and redelivery of rejected Goods shall be for the Supplier's account.

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

4.1. Programming constraints

The Supplier is not required to submit a programme in terms of clause 31 of the NEC3 Supply Contract. Deliveries shall be performed in accordance with the delivery dates and requirements specified in each Purchase Order.

4.2. Work to be done by the Delivery Date

For the purposes of this contract, Delivery is achieved when the Supplier has:

- a) Delivered the goods to the Eskom delivery location specified in the Purchase Order;
- b) Delivered the correct quantities and item types as specified in the Purchase Order;
- c) Supplied the applicable delivery documentation, including delivery notes and any required manufacturer or compliance documentation;
- d) Supplied the operating manuals, warranty documentation and technical data sheets applicable to electronic hearing protection, where required; and
- e) Handed over the goods to an authorised Eskom representative at the delivery location.

All goods shall be delivered in a new, unused and undamaged condition.

Any goods found to be damaged, defective or not in accordance with the Purchase Order may be rejected by Eskom and shall be replaced by the Supplier at no additional cost to Eskom.

Delivery shall only be regarded as complete once all applicable documentation required under this Scope of Work has been provided.

4.3. Constraints at the delivery place and place of use

The Supplier shall comply with all Eskom site access, security, health and safety and environmental requirements applicable to the delivery location.

Deliveries shall be arranged and coordinated with the designated Eskom representative identified in the Purchase Order.

The Supplier shall ensure that the transportation, handling and delivery of ammunition are undertaken in accordance with all applicable legislation and regulatory requirements.

The Supplier shall ensure that personnel entering Eskom sites comply with all access control, security and induction requirements applicable to the site.

Delivery times and any site-specific access restrictions shall be communicated by Eskom in the relevant Purchase Order or through the designated Eskom representative.

The Supplier shall ensure that all personnel entering Eskom premises carry valid identification and comply with all site security procedures applicable to the delivery location.

4.4. Services & other things to be provided by the Purchaser or Supplier

Activity	Responsible Party
Issuing Purchase Orders	Purchaser
Specifying delivery location and quantities	Purchaser
Arranging site access and delivery contact details	Purchaser
Transportation of goods to the delivery location	Supplier
Off-loading of goods at the delivery location	Supplier
Provision of delivery notes and supporting documentation	Supplier
Provision of operating manuals and warranty documentation for electronic hearing protection, where applicable	Supplier
Compliance with all applicable transport, storage and handling requirements for ammunition	Supplier
Inspection and verification of delivered goods	Purchaser
Acceptance or rejection of delivered goods	Purchaser
Notification of defects or discrepancies identified during inspection	Purchaser
Replacement of defective, damaged or incorrect goods	Supplier

4.5. Documentation control

The Supplier shall maintain records of deliveries, batch numbers, certificates of conformity and supporting documentation for all goods supplied under this contract and shall make such records available to the Purchaser upon request. The Supplier shall retain all delivery records, batch traceability records and supporting documentation for the duration of the Contract and for a minimum of three (3) years thereafter, unless a longer period is required by law.

4.6. Health and safety risk management

Occupational Health and safety

1. The Contractor shall comply with the health and safety requirements contained in OHS Requirements and the approved safety file. Eskom reserves the right to review the OHS Requirements to address the Operational risks and the contractor shall comply with the latest OHS Requirements as amended at no cost.
2. The OHSACT 37(2) agreement must be signed by Employer and Contractor/service provider's representatives.
3. The Contractor OHS professional must conduct internal audits at planned intervals to monitor compliance to the contractual health and safety requirements.

4. The Contract Custodian must conduct inspections at planned intervals to monitor compliance to the contractual health and safety and legal requirements.
5. The Contractor may be selected during internal and/or external Eskom Power Station audits to verify compliance to legal and contractual OHS requirements. The Contract Custodian will communicate this at relevant time periods, and the contractor shall avail themselves for this audit.
6. Below are minimum Safety requirements to be adhered to by contractors/service providers, to gain access to Eskom Power Stations:
 - a. Valid Medical fitness certificate
 - b. Clearance from SAPS or accredited service provider linked to SAPS AFIS system not older than thirty (30) days
 - c. Identification document (RSA ID or equivalent)
 - d. National Drivers Licence (applicable to drivers)
 - e. Adherence to the Eskom Life-saving rules 3 Buckle up and 4, Be Sober
 - f. Applicable risk based Personal Protective Equipment
 - g. Valid letter of good standing (COIDA or equivalent). Access to site to perform work will be denied should the Letter of good standing be expired.
 - h. Induction will only be conducted after all documents have been submitted and accepted by Eskom
7. The contractor/supplier/consultant who is working alone and not eligible to register with the compensation fund, shall provide Eskom with the member benefit statement of the insurance cover which include life and disability cover to the minimum fund of R500 000. Note: Induction will only after the above documents have been submitted and accepted by Eskom.

Contractor/service provider Management Key Performance Indicators (KPI's)

1. Maintain Health and Safety files and compliance to the health and safety plan, Eskom OHS requirements and applicable legislation as amended.
2. Always maintain good housekeeping where the task is being carried out and/or within the area of responsibility.
3. Implement and monitor near miss reporting strategy / programme (reporting of near misses).
4. Develop and comply with Behavioural Safety Observation (BSO) and Planned Job Observation programmes (PJO).
5. Maintain Zero Fatalities for the duration of the contract.
6. At any given point, the OHS performance must be within the lost time injury (LTI) tolerance level as amended.
7. All incidents must be reported immediately or before the end of the shift during which the incident occurred.
8. All incident investigations shall be completed within 07 days of the occurrence of an incident.
9. Incident investigation recommendations shall be closed within the recommended time frame recorded in the Incident investigation report.
10. Close audit findings as per the Eskom procedure or audit report recommended time frames.
11. Close non-conformance as per the recommended time frames.

Note: Monitoring of the above mentioned KPI's will take place through regular audits and inspection.

On completion of the project/contract, Eskom team (led by the Contract custodian) involved in the project together with the Contractor shall conduct the final meeting to identify the gaps prior to the contract close out. Before the final invoice is paid/processed, the Contract custodian shall ensure that the below requirements are met:

- a. Close all incidents and audit findings.
- b. Clean the respective yard and ensure good housekeeping where the contractor was working.
- c. Contractor shall submit safety statistics and a safety file to Eskom BU Safety department for closeout and filling.
- d. Completion of a closeout report (Annexure D form as per 32-726) to close the contractual work.

Gx Post Contract reviews (replaced 32-726 Annexure D)

4.7. Environmental constraints and management

The Supplier shall comply with all applicable environmental legislation and Eskom environmental requirements while performing work under this Contract.

Where deliveries are made to Eskom premises, the Supplier shall:

- a) take all reasonable measures to prevent pollution or environmental harm arising from its activities;
- b) immediately report any spill, leak or environmental incident occurring on Eskom premises to the authorised Eskom representative;
- c) ensure that all waste, packaging materials and other refuse generated during deliveries are removed from the delivery location and disposed of in accordance with applicable legislation; and
- d) comply with all lawful environmental instructions issued by the Purchaser while on Eskom premises.

The Supplier shall be responsible for the costs associated with cleaning up or remedying any environmental damage caused by its employees, agents or subcontractors during the performance of the Contract.

4.8. Quality

- The supplier shall complete and sign Form A (Enquiry/Contract/Quality Requirements for Supplier Quality Management Specification 240-105658000/ QM 58 and ISO 9001) under Category 3.
- The Contractor must demonstrate an ISO 9001-based QMS, submit a contract-specific quality plan, provide inspection/test documentation, and maintain corrective action procedures.
- A Contract Quality Plan shall be submitted for Eskom review and acceptance within thirty (30) days of contract award.
- All ammunition and electronic hearing protection supplied under this contract shall comply with applicable statutory requirements, manufacturer's specifications, procurement specifications, and relevant South African standards.
- The Contractor shall provide Certificates of Conformance, traceability records, warranties, and any applicable test certificates for each delivery. Eskom reserves the right to perform quality audits, inspections, surveillance activities, and source verification throughout the duration of the contract.
- The Contractor shall implement documented processes for non-conformance management, corrective actions, risk management, product preservation, traceability, and supplier performance monitoring. Any significant quality non-conformance shall be reported to Eskom within twenty-four (24) hours of identification.
- Quality records shall be retained for a minimum period of five (5) years after completion of the contract and shall be made available to Eskom upon request

The Supplier shall ensure that:

- a) all Goods supplied conform to the agreed technical specifications and applicable legislative requirements;
- b) all Goods are inspected prior to dispatch to verify compliance with the Contract requirements;
- c) all documentation required under this Contract accompanies the Goods at the time of delivery;
- d) non-conforming Goods are identified, controlled and prevented from being delivered to the Purchaser; and
- e) any quality-related non-conformance identified by the Purchaser is investigated and corrective action implemented to prevent recurrence.

Where requested by the Purchaser, the Supplier shall provide reasonable evidence demonstrating compliance with the quality requirements of this Contract.

The Supplier shall implement and maintain appropriate quality management and quality control processes to ensure that all Goods supplied under this Contract comply with the requirements of the Purchase Order, this Scope of Work and the applicable manufacturer's specifications.

4.9. Invoicing and payment

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

- a) The Supply Manager to be copied in on all electronic invoices emailed.
- b) Failure to submit the invoice to the correct address could result in delays in payment.
- c) The Tax Invoices comply with the requirements as stated in clause Z7 of the Contract Data
- d) Invoices are submitted electronically to:
 - Local Eskom Invoices - invoiceseskomlocal@eskom.co.za
- e) Details required when submitting invoices and additional data:
 - The subject line on your email should only contain your vendor number
 - Each invoice in PDF should be named with your invoice number only
 - All electronic invoices are sent in PDF format only
 - Attach the proof of delivery to your invoice
 - Where applicable, supporting documents are be attached to the scanned PDF invoice as one attachment
 - A copy of the signed assessment certificate
 - Any other appropriate documents, e.g.
 - Delivery note
 - Please do not attach unnecessary documents as this will make the file too large
- f) Other requirements:
 - Ensure compliance with the tax requirements for submitting invoices electronically
 - Each PDF should contain one credit note, one debit note or one credit note only. More than one invoice can be submitted by email
- g) Include the following information on the Invoice:

The *Supplier* shall address the tax invoice to

Eskom Holdings SOC Limited
P O Box 1091
Johannesburg
2000

and include on each invoice the following information

- Name and address of the Contractor and the Supply Manager;
- The contract number and title;
- *Supplier's* VAT registration number;
- The *Purchaser's* VAT registration number 4740101508;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- *Supplier's* company registration number if applicable
- *Supplier's* banking details
- Name and address of recipient
- Tax invoice number and date of issue,
- Description of goods/service provided,
- Quantity or volume of goods/services
- Period time for which the Tax Invoice is being rendered,
- Relevant Task Order Number (commencing with a 45 prefix),
- Relevant line-item number,
- Statement whether value added tax is included or excluded

5. Procurement

5.1. Subcontracting

The Supplier remains fully responsible for the performance of all obligations under this Contract, irrespective of whether any part of the supply or delivery is subcontracted. Subcontracting does not relieve the Supplier of any contractual responsibility or liability to the Purchaser.

5.1.1. Limitations on subcontracting

The Supplier shall not subcontract the whole of the Contract. Any proposed subcontracting of a material part of the Goods or Services shall be subject to the prior written acceptance of the Supply Manager.

5.1.2. Other requirements related to procurement

The Supplier shall maintain sufficient stock availability or procurement arrangements to meet the delivery requirements stated in Purchase Orders issued under this Contract.

6. List of drawings

6.1. Drawings issued by the *Purchaser*

This is the list of drawings issued by the *Purchaser* at or before the Contract Date and which apply to this contract.

Drawing number	Revision	Title

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 *services*.

It is most likely to be required for supply contracts where the tendering supplier will have proposed specifications and schedules for the *goods* and *services*, 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.