# NEC3 Supply Contract (SC3)

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

**and**

**for** **The supply and delivery of Circuit Breaker in the Gauteng Cluster on an as and when required basis for a period of 60 months.**

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**CONTRACT No.** **[Insert at award stage]**

# PART C1: AGREEMENTS & CONTRACT DATA

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# C1.1 Form of Offer & Acceptance

## Offer

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

## Title of the Contract: The supply and delivery of Circuit Breaker in the Gauteng Cluster on an as and when required basis for a period of 60 months.

The tenderer, identified in the Offer signature block, has

| | |
|---|---|
| *either* | 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. |
| *or* | 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 | **Rate Based** |
| | Value Added Tax @ 15% is | **Rate Based** |
| | The offered total of the amount due inclusive of VAT is[1] | **Rate Based** |
| | (in words) **Rate Based** | |

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, Megawatt Park, Maxwell Drive, Sandton, Johannesburg, 2199**

*(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, Megawatt Park, Maxwell Drive, Sandton, Johannesburg, 2199** |
| Name & signature of witness | | |
| Date | | |

# C1.2 SC3 Contract Data

## Part one - Data provided by the *Purchaser*

| Clause | Statement | Data |
|---|---|---|
| 1 | **General** | |
| | The *conditions of contract* are the core clauses and the clauses for Options | **X1: Price adjustment for inflation**<br>**X2: Changes in the law**<br>**X4: Parent company guarantee.**<br>**X7: Delay damages**<br>**X13: Performance bond**<br>**Z: *Additional conditions of contract*** |
| | 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 *Purchaser* 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. | **011 800 8111** |
| | Fax No. | **011 800 4299** |
| 10.1 | The *Supply Manager* is (name): | **Onia Gumede** |
| | Address | **Megawatt Park, Maxwell Drive, Sunninghill, Sandton, Johannesburg, 2128** |
| | Tel | **+27 18 469 9003** |
| | e-mail | **GumedeOJ@eskom.co.za** |
| 11.2(13) | The *goods* are | **The supply and delivery of Circuit Breaker in the Gauteng Cluster on an as and when required basis for a period of 60 months.** |
| 11.2(13) | The *services* are | **N/A** |
| 11.2(14) | The following matters will be included in the Risk Register | **1. Delay on delivery of the required goods**<br>**2. Changes to the expected lead time** |

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

| | | |
|---|---|---|
| | | **3. Damages to the goods required**<br>**4. Poor quality checks on the goods required** |
| 11.2(15) | The Goods Information is in | **Part 3: Scope of Work and all documents and drawings to which it makes reference.** |
| 11.2(15) | The Supply Requirements as part of the Goods Information is in | **Annexure A to this Contract Data** |
| 12.2 | The *law of the contract* is the law of | **the Republic of South Africa** |
| 13.1 | The *language of this contract* is | **English** |
| 13.3 | The *period for reply* is | **Two (2) weeks** |
| 2 | **The *Supplier's* main responsibilities** | **Data required by this section of the core clauses is provided by the *Supplier* in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.** |
| 3 | **Time** | |
| 30.1 | The *starting date* is. | **[Insert at contract award]** |
| 30.1 | The *delivery date* of the *goods* and *service*s is: | ***goods and services*** / ***delivery date***<br>**1** **The supply and delivery of Circuit Breaker in the Gauteng Cluster on an as and when required basis for a period of 60 months.** / **To be indicated on each purchase order** |
| 30.2 | The *Supplier* does not bring the *goods* to the Delivery Place more than one week before the Delivery Date. | **N/A Collection and Delivery to be completed by Rotran** |
| 31.1 | The *Supplier* is to submit a first programme for acceptance within | **4 weeks of the Contract Date.** |
| 32.2 | The *Supplier* submits revised programmes at intervals no longer than | **Two (2) weeks.** |
| 4 | **Testing and defects** | |
| 42 | The *defects date* is | **52 weeks after Delivery.** |
| 43.2 | The *defect correction period* is | **Four (4) weeks** |
| | except that the *defect correction period* for | **Imported products is 6 weeks.** |
| | and the *defect correction period* for | **Programming is 3 weeks including testing.** |
| 42.2 | The *defects access period* is | **7 days** |
| | except that the *defect access period* for | **Imported products is 7 days.** |
| | and the *defect access period* for | **Programming is 7 days** |
| 5 | **Payment** | |
| 50.1 | The *assessment interval* is | **Upon delivery of each batch** |

| | | |
|---|---|---|
| 51.1 | The *currency of this contract* is the | **South African Rand** |
| 51.2 | The period within which payments are made is | **For contracts valued below R50 000 000 (Fifty Million Rand) including VAT, Eskom is committed to paying Suppliers within 30 days of submission of a tax compliant invoice with a GR number to Eskom Financial Shared Services.**<br><br>**For contracts valued above R50 000 000 (Fifty Million Rand) including VAT, Eskom is committed to paying suppliers within 60 days of submission of a tax compliant invoice with a GR number to Eskom Financial Shared Services.** |
| 51.4 | The *interest rate* 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.** |
| 6 | **Compensation events** | **There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.** |
| 7 | **Title** | **There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.** |
| 8 | **Risks, liabilities, indemnities and insurance** | |
| 80.1 | These are additional *Purchaser's* risks | **1** Political Risks<br>• Trade restrictions, tariffs, and geopolitical tensions may affect the availability of imported circuit breaker components.<br>• Local content and industrialisation requirements may influence sourcing and supplier participation.<br>**2** Economic Risks<br>• Exchange rate fluctuations may increase procurement costs for imported components and technologies.<br>• Inflation and commodity price increases (e.g. copper, silver, steel, polymers) may drive up manufacturing and logistics costs. |

Social Risks

- Labour unrest, skills shortages, and transport disruptions may impact production and delivery performance.

Environmental Risks

- Environmental compliance requirements may increase operating costs.
- Extreme weather events may disrupt manufacturing, logistics, and supply chains.

Legal and Regulatory Risks

- Compliance with Eskom specifications, IEC/SANS standards, safety, environmental, and quality requirements is mandatory.
- Changes to import, customs, or local content regulations may affect supply and lead times.

Technological Risks

- Rapid technological advancements may lead to product obsolescence.
- Growing demand for smart grid, digital substation, and SF6-free technologies may require ongoing supplier investment.
- Limited testing and certification capacity may extend lead times.

Supply Chain Risks

- Global supply chain disruptions and extended manufacturing lead times.
- Shortages of critical electrical components.
- Shipping delays, port congestion, and supplier financial instability may affect continuity of supply.

| | | |
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| | | The estimated number of Local Suppliers and Manufacturers is approximately 12. At least 9 suppliers exists in the international market.<br><br>The market assessment indicates a competitive market with multiple local and international suppliers capable of meeting Eskom's technical requirements. |
| 84.1 | The *Purchaser* provides these insurances from the Insurance Table | **See notes about *Purchaser* provided insurance in Annexure B to this Contract Data** |
| | 1. Insurance against | **Loss of or damage to the *goods*, plant and materials.** |
| | Cover / indemnity is | **Overseas shipment / transit insurance (only) to cover events at the *Supplier*'s risk (if any) after the *goods* have left the *Supplier*'s overseas premises. See notes in Annexure B** |
| | The deductibles are | **R100 000.00 (one hundred thousand Rand for Marine Transit** |
| 84.1 | The *Supplier* provides these additional insurances | **Whatever the Supplier deems necessary in addition to insurance supplied by the Employer.**<br><br>**Whatever the Supplier deems necessary in respect to the Supplier's Product guarantee and Product liability.** |
| 84.2 | The minimum amount of cover for loss of or damage to any plant and materials provided by the *Purchaser* is: | **The estimated value of plant & material to be provided by the Purchaser.** |
| 84.2 | The minimum limit of indemnity for insurance in respect of loss of or damage to property (except the *goods*, plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the *Supplier*) caused by activity in connection with this contract for any one event is: | **whatever the *Supplier* deems necessary in addition to that provided by the *Purchaser* for any one event with cross liability so that the insurance applies to the Parties separately.**<br><br>**However if the *Supplier* is exposed to damage to the *Purchaser*'s property the cover limit amount is not less than**<br><br>• **R 25 million (twenty five million Rand(**<br>• **for exposure to Generation Division property;**<br>• **R7.5 million (seven million five hundred thousand Rand) for exposure to Transmission Division property and;**<br>• **R 2million (two million Rand )for exposure to Distribution Division and all other *Purchaser*'s property**<br>**for any one occurrence or series of occurrences arising out of one event but unlimited during the period of insurance.** |
| 84.2 | The minimum limit of indemnity for insurance in respect of death of or bodily | **As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130** |

| | | |
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| | injury to employees of the *Supplier* arising out of and in the course of their employment in connection with this contract for any one event is: | **of 1993 and the *Contractor's* common law liability for people falling outside the scope of the Act with a limit of Indemnity of not less than R500 000 (five hundred thousand Rand).** |
| 88.1 | The *Supplier's* liability to the *Purchaser* for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to | **R0.00** |
| 88.2 | For any one event, the *Supplier's* liability to the *Purchaser* for loss of or damage to the *Purchaser's* property is limited to | **for all other existing *Purchaser's* property the highest applicable deductible (first amount payable) namely:**<br>• **R25million ( twenty five million Rand) for Generation Division property;**<br>• **R7.5 million (seven million five hundred thousand Rand) for Transmission Division property and;**<br>• **R2 million ( two million Rand) for Distribution Division and all other *Purchaser*'s property** |
| 88.3 | The *Supplier's* liability for Defects due to his design which are not notified before the last *defects date* is limited to: | **The total value of the defective item, plus amount of the deductibles payable in terms of the Purchaser's Asset All Risk Insurance policy in respect of the resultant damage.** |
| 88.4 | The *Supplier's* total liability to the *Purchaser*, for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | **The total of the Price of the contract, plus the amount of the additional excluded items namely:**<br>• **Defects due to design, plan and specification,**<br>• **Defects due to manufacture and, or fabrication outside of site,**<br>• **Infringement on intellectual property rights.** |
| 88.5 | The *end of liability date* is | **Ten (10) years after delivery of the whole of the *goods*.** |
| **9** | **Termination and dispute resolution** | |
| 94.1 | The *Adjudicator* 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).** |
| 94.2(3) | The *Adjudicator nominating body* is: | **the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za)** |

| | | |
|---|---|---|
| 94.4(2) | The *tribunal* is: | **arbitration** |
| 94.4(5) | The *arbitration procedure* is | **the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.** |
| 94.4(5) | The place where arbitration is to be held is | **Midrand, South Africa** |
| | The person or organisation who will choose an arbitrator<br>- if the Parties cannot agree a choice or<br>- if the arbitration procedure does not state who selects an arbitrator, is | **the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.** |

## 10 Data for Option clauses

| | | |
|---|---|---|
| **X1** | **Price adjustment for inflation** | |
| X1.1 | The proportions used to calculate the Price Adjustment Factor are: | **1 month before Tender Closes**<br><br>**(CPA proposals to be provided by Suppliers and concluded in negotiations)** |

| | | | |
|---|---|---|---|
| **X2** | **Changes in the law** | | |
| X2.1 | A change in the law of | **Country stated in the Contract Data is a compensation event if it occurs after the Contract Date** | |
| **X4** | **Parent company guarantee** | **There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.** | |
| **X7** | **Delay damages** | | |
| X7.1 | Delay damages for Delivery are | **Delivery of** | **amount per day** |
| | **Late delivery / Changes in the lead time** | **Various Circuit breakers** | **R5 000.00** |
| **X13** | **Performance bond** | | |
| X13.1 | The amount of the performance bond is | **40% of the total contract value.** | |

| **Z** | **The *additional conditions of contract* are** | **Z1 to Z15 always apply for Eskom** |
|---|---|---|

**Z1 Cession delegation and assignment**

Z1.1 The *Supplier* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Purchaser.*

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

**Z2 Joint ventures**

Z2.1 If the *Supplier* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Purchaser* for the performance of this contract.

Z2.2 Unless already notified to the *Purchaser*, the persons or organisations notify the *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Supplier* on their behalf.

Z2.3 The *Supplier* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Purchaser* having been given to the *Supplier* in writing.

**Z3 Change of Broad Based Black Economic Empowerment (B-BBEE) status**

Z3.1 Where a change in the *Supplier's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Supplier*'s B-BBEE status, the *Supplier* notifies the *Purchaser* within seven days of the change.

Z3.2 The *Supplier* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Supply Manager* within thirty days of the notification or as otherwise instructed by the *Supply Manager*.

Z3.3 Where, as a result, the *Supplier's* B-BBEE status has decreased since the Contract Date the *Purchaser* may either re-negotiate this contract or alternatively, terminate the *Supplier*'s obligation to Provide the Goods and Services.

Z3.4 Failure by the *Supplier* to notify the *Purchaser* of a change in its B-BBEE status may constitute a reason for termination. If the *Purchaser* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

**Z4 Confidentiality**

Z4.1 The *Supplier* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Supplier*, enters the public domain or to information which was already in the possession of the *Supplier* at the time of disclosure (evidenced by written records in existence at that time). Should the *Supplier* disclose information to Others in terms of clause 23.1, the *Supplier* ensures that the provisions of this clause are complied with by the recipient.

Z4.2 If the *Supplier* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*.

Z4.3 In the event that the *Supplier* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Supplier*, to the extent permitted by law prior to disclosure, notifies the *Purchaser* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Supplier* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.

Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *goods* or any portion thereof, in the course of Providing the Goods and Services and after Delivery, requires the prior written consent of the *Supply Manager*. All rights in and to all such images vests exclusively in the *Purchaser*.

Z4.5 The *Supplier* ensures that all his subcontractors abide by the undertakings in this clause.

**Z5 Waiver and estoppel: Add to core clause 12.3:**

Z5.1 Any extension, concession, waiver or relaxation of any action stated in this contract by the Parties, the *Supply Manager* or the *Adjudicator* does not constitute a waiver of rights, and does not give rise to an estoppel unless the Parties agree otherwise and confirm such agreement in writing.

**Z6 Health, safety and the environment: Add to core clause 25.4**

Z6.1 The *Supplier* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the provision of the *goods* and execution of the *services*.

Without limitation the *Supplier*:

- warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with all applicable health & safety laws and regulations and the health and safety rules, guidelines and procedures provided for in this contract and generally for the proper maintenance of health & safety in and about the execution of supply and
- undertakes, in and about the execution of the supply, to comply with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Supplier's* direction and control, likewise observe and comply with the foregoing.

Z6.2 The *Supplier*, in and about the execution of the supply, complies with all applicable environmental laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and others under the *Supplier's* direction and control, likewise observe and comply with the foregoing.

**Z7 Provision of a Tax Invoice and interest. Add to core clause 51**

Z7.1 Within one week of receiving a payment certificate from the *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser*'s procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate.

Z7.2 If the *Supplier* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Purchaser* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Purchaser* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be

made.

Z7.3 The *Supplier* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Purchaser*'s VAT number 4740101508 on each invoice he submits for payment.

**Z8 Notifying compensation events**

Z8.1 Delete from the last sentence in core clause 61.3 the words, "unless the event arises from the *Supply Manager* giving an instruction, changing an earlier decision or correcting an assumption".

**Z9 *Purchaser's* limitation of liability**

Z9.1 The *Purchaser's* liability to the *Supplier* for the *Supplier's* indirect or consequential loss is limited to R0.00 (zero Rand)

Z9.2 The *Supplier*'s entitlement under the indemnity in 83.1 is provided for in 60.1(12) and the *Purchaser*'s liability under the indemnity is limited.

**Z10 Termination: Add to core clause 91.1, at the second main bullet point, fourth sub-bullet point, after the words "against it":**

Z10.1 or had a business rescue order granted against it.

**Z11 Addition to secondary Option X7 Delay damages (if applicable in this contract)**

Z11.1 If the amount due for the *Supplier*'s payment of delay damages reaches the limits stated in this Contract Data for Option X7, the *Purchaser* may terminate the *Supplier*'s obligation to Provide the Goods and Services using the same procedures and payment on termination as those applied for reasons R1 to R15 or R18 stated in the Termination Table.

**Z12 Ethics**

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

| | |
|---|---|
| **Affected Party** | means, as the context requires, any party, irrespective of whether it is the *Supplier* or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends, |
| **Coercive Action** | means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally, |
| **Collusive Action** | means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally, |
| **Committing Party** | means, as the context requires, the *Supplier*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees, |
| **Corrupt Action** | means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party, |
| **Fraudulent** | means any unlawfully or illegally intentional act or omission that misleads, or attempts |

**Action** 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.

## Z13 Insurance

**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 *Supplier* provides the insurances stated in the Insurance Table A for events which are at the *Supplier*'s risk from the *starting date* until the last *defects date* 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 *goods*, plant and materials | The replacement cost where not covered by the *Purchaser*'s insurance.<br><br>The *Purchaser*'s policy deductible as at Contract Date, where covered by the *Purchaser*'s insurance. |
| Liability for loss of or damage to property (except the *goods*, plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the *Supplier*) caused by activity in connection with this contract | **Loss of or damage to property**<br>*Purchaser*'s property<br>The replacement cost where not covered by the *Purchaser*'s insurance.<br><br>The *Purchaser*'s policy deductible as at Contract Date, where covered by the *Purchaser*'s insurance.<br><br>Other property<br>The replacement cost<br><br>**Death of or bodily injury**<br>The amount required by the applicable law. |
| Liability for death of or bodily injury to employees of the *Supplier* arising out of and in the course of their employment in connection with this contract | 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 minimu 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 |

## Z14 Nuclear Liability

Z14.1 The *Purchaser* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.

Z14.2 The *Purchaser* is solely responsible for and indemnifies the *Supplier* or any other person against any and all liabilities which the *Supplier* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Supplier* or any other person or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.

Z14.3 Subject to clause Z14.4 below, the *Purchaser* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Supplier* or any other person, or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.

Z14.4 The *Purchaser* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.

Z14.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

## 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 *Purchaser*'s 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 effected 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.

# Annexure A: Supply Requirements

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

*[Should there be a need to amplify any of the published obligations listed above for the chosen INCOTERM, add them here.]*

All other information NOT pertinent to the above is given in the balance of the Goods Information

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

| | |
|---|---|
| **1. The requirements for the supply are** | **CONTRACTUAL REQUIREMENTS**<br><br>Additional Contractual Requirements must only be stipulated if applicable. These may include: -<br><br>• SHEQ requirements<br>• Commercial requirements<br>• SDL&I Requirements (see attached SDL&I requirements)<br>• Financial viability analysis (including submission of relevant Financial statements)<br><br>Suppliers tendering for contracts with Eskom will be required to provide evidence of their compliance with SHEQ requirements. Safety & Health, Environmental and Quality (SHEQ) is a legal or contractual requirement for the execution of the ensuing contract, all legal and contractual requirements pertaining to SHEQ must be demonstrated to be in place and legally valid.<br><br>These requirements for the purposes of this contract are not evaluation criteria, however they are required to be assessed and fully met after the evaluation and ranking of the tenders found to be technically viable.<br><br>The tenderer will be allowed a period not exceeding 7 working days only once, after the first evaluations to resubmit the requirements which were not fully met following the tender submission.<br><br>Failure to meet stipulated Contractual Requirements by the stipulated deadlines may result in the tenderer being regarded as non-responsive and ineligible for contract award.<br><br>If the tenderer does not meet a contractual requirement, mitigating factors, if they exist, may be agreed to and made terms and requirements of the contract. If the tenderer does not agree with the mitigating factors or if there are insufficient suitable mitigating factors or if the risk is deemed too high, the tender may be awarded to a tenderer other than the highest-ranked / preferred tenderer<br><br>**SHEQ REQUIREMENTS**<br><br>• The Safety requirements are applicable and are attached separately.<br>• The Quality requirements are applicable and are attached separately.<br>• The Environmental requirements are applicable and are attached separately. |

**CONTRACTUAL MANDATORY COMMERCIAL REQUIREMENTS**

- Proof of National Treasury Central Supplier Database (CSD) with a tax compliant status at contract award

**COMMERCIAL CONTRACTUAL REQUIREMENTS**

- Valid B-BBEE certificate or sworn affidavit
- Tax Compliance Status (TCS) e-filing PIN from SARS.
- Valid Letter of Good Standing with the compensation body/ FEMA (Federated employer's mutual assurance)/RMA (Rand mutual Assurance).

**SDL&I REQUIREMENTS**

See attached SDL&I requirements

**FINANCIAL ANALYSIS**

A financial analysis will be conducted. The service providers will be required to the following:

Background to the company;

- A signed director's report;
- A signed auditor's / reviewer's / compiler's / accounting officer's report;
- Statement of financial position;
- Statement of comprehensive income;
- Statement of changes in equity;
- Statement of cash flows (if applicable); and Notes to the financial statements.

Financial analysis cannot be performed for entities who do not submit all required documentation.

Risk mitigation factors may include:

- Obtaining a performance bond from a financial institution that has been pre- approved by Eskom Treasury department;
- A parent Company Guarantee, provided that the parent company is financially sound enough to stand as surety for the subsidiary tendering for the contract. The parent

| | | |
|---|---|---|
| | company's latest and approved AFS must be submitted for financial analysis;<br>• A reduced contract may be recommended; or<br>• Payment upon delivery of a milestone activity or milestone goods.<br>Tenders that do not meet Eskom's Contractual requirements will not be evaluated further.<br>Table of information and evaluation criteria will be added as an annexure. | |
| **2. The requirements for transport are** | Delivery will be done by Rotran or the supplier where feasible. | |
| **3. The delivery place is** | Delivery will be done by Rotran or the supplier where feasible.<br>Delivery place not applicable | |
| **4. Actions of the Parties during supply** | **Action** | **Party which does it** |
| | Giving notice of Delivery | |
| | Checking packing and marking before dispatch | |
| | Contracting for transport | |
| | Pay costs of transport | |
| | Arrange access to delivery place | |
| | Loading the *goods* | |
| | Unloading the *goods* | |
| **For international procurement** | Undertake export requirements | |
| | Undertake import requirements | |
| **5. Information to be provided by the *Supplier*** | **Title of document** | |
| | Packing lists for cases and their contents | |
| | Copy of invoice for the *goods* | |
| | Delivery Note | |
| | Test results and maintenance manuals | |

All other information NOT pertinent to the above is given in the balance of the Goods Information

# C1.2 Contract Data

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

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

| Clause | Statement | Data |
|---|---|---|
| 10.1 | The *Supplier* is (Name):<br>Address<br>Tel No.<br>Fax No. | |
| 11.2(8) | The Goods Information for the *Supplier's* design is in: | |
| 11.2(11) | The tendered total of the Prices is | **R ,**<br>**(in words)** |
| 11.2(12) | The *price schedule* is in: | |
| 11.2(14) | The following matters will be included in the Risk Register | |
| 25.2 | The restrictions to access for the *Supply Manager* and Others to work being done for this contract are | |
| 30.1 | The *delivery date* of the *goods* and *service*s is: | ***goods and services*** / ***delivery date***<br>**1** **[•]** **[•]**<br>**2** **[•]** **[•]**<br>**3** **[•]** **[•]** |
| 31.1 | The programme identified in the Contract Data is contained in: | |
| 63.2 | The *percentage for overheads and profit* added to the Defined Cost is | **%** |

# C1.3 Forms of Securities

## Pro formas for Bonds & Guarantees

For use with the NEC3 Supply Contract (SC3)

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

These Options require a bond or guarantee “in the form set out in the Goods Information”.
Pro forma documents for these bonds and guarantees are provided here for convenience but are to be treated as part of the Goods Information.

The organisation providing the bond / guarantee does so by copying the pro forma document onto it’s letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Purchaser* within the time stated in the contract.

# Pro forma 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 Johannesburg** (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 *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 *goods* and *service*s, entered into between the *Purchaser* and the *Supplier*, on or about the [●] day of [●] 200[●] (Contract Reference No. [●]) as amended, varied, restated, novated or substituted from time to time; |
| 1.4 | "*Supplier*" means | [●] a company registered in accordance with the laws of [●] under Registration No [●]. |
| 1.5 | "*Purchaser*" means | Eskom Holdings SOC Ltd a company registered in accordance with the laws of the Republic of South Africa under Registration Number [●] |
| 1.6 | "Expiry Date" means | the earlier of<br>• the date that the Bank receives a notice from the *Purchaser* stating that all amounts due from the *Supplier* as certified in terms of the contract have been received by the *Purchaser* and that the *Supplier* has fulfilled all his obligations under the Contract, or<br>• the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by the *Purchaser*. |
| 1.7 | "Guaranteed Sum" means | the sum of R[●], ([●] Rand) |
| 1.8 | "*goods* and *service*s" 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 | | |

# PART 2: PRICING DATA

## NEC3 Supply Contract


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

# C2.1 Pricing assumptions

## How *goods* and *service*s are priced and assessed for payment

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

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

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

## Function of the Price Schedule

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

## Preparing the *price schedule*

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

It will be assumed that the tendering supplier has

- Read Pages 8, 11, 12 and Appendix 5 of the SC3 Guidance Notes before preparing the *price schedule;*
- Included in his Prices and rates for correction of Defects (core clause 43.1) as there is no compensation event for this unless the Defect is due to a *Supplier’s* risk;

- Spread the cost of doing work he chooses not to list as separate items in the *price schedule* across other Prices and rates in order to fulfil the obligation to Provide the Goods and Services for the tendered total of the Prices;
- Understood that there is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item later turns out to be different to that which the *Supplier* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event per clause 60.1;
- Understood that the *Supplier* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event.

## Format of the *price schedule*

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

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

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

If the *Supplier* is to be paid an amount for an item proportional to the length of time for which the *goods* and *service*s are provided, a unit of time is stated in the Unit column and the length of time (as a quantity of the stated units of time) is stated in the Quantity column.

# C2.2 the *price schedule*

Stage 2: The manufacturers will be requested to submit the price quotation during the RFQ process as per the below price list:

| Material | Short Text | Price |
|---|---|---|
| 0165280 | CB 250A 400V 20Ka 3P J25S/EQUIV. D3034 | |
| 0165318 | CB 300A 400V 20Ka 3P L20B/EQUIV.D3034 | |
| 0165299 | CB 40A 230V 5Ka 1P D3034 | |
| 0165301 | CB 40A 400V 5Ka 3P D3034 | |
| 0165302 | CB 80A 400V 5Ka 3P D3034 | |
| 0165265 | CB 100A 400V 5Ka 3P D3034 | |
| 0165306 | CB 150A 400V 20Ka 3P J25S/EQUIV. D3034 | |
| 0165317 | CB 225A 400V 20Ka 3P J25S/EQUIV. D3034 | |
| 0186796 | CB 350A 400V 20Ka 3P L20B/EQUIV. D3034 | |
| 0165199 | CB 450A 400V 20Ka 3P L20B/EQUIV. D3034 | |
| 0165307 | CB 600A 400V 20Ka 3P L20B/EQUIV. D3034 | |
| 0165305 | CB 80A 230V 5Ka 1P D3034 | |
| 0165294 | CB MINI 50A 230V 5Ka POLE TOP BOX D3083 | |
| 0165295 | CB MINI 63A 230V 5Ka POLE TOP BOX D3083 | |
| 0165298 | CB MINI 120/125A 230V 5Ka P/TP BOX D3083 | |
| **KM Rates** | | |

The total of the Prices

# PART 3: SCOPE OF WORK


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# C3.1: *PURCHASER'S* GOODS INFORMATION

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## Overview and purpose of the *goods* and *service*s

The need for the supply and delivery of Circuit Breakers in the Gauteng Cluster originates from Materials Management Department Gauteng Cluster. Circuit breakers are required for breakdowns and maintenance and to ensure continuous supply to the region.

## Specification and description of the *goods*

The scope entails manufacturing, supply, and delivery of various circuit breakers for all Distribution Clusters.

The technical specification documentation for various circuit breakers is available as an annexure.

### *Purchaser*'s design

The embedded documents contain the Purchasers specification.

### Procedure for submission and acceptance of *Supplier*'s design

The detailed technical specifications and technical evaluation criteria accompanied by the mandatory Annexture's schedules are attached separately.

### Other requirements of the *Supplier*'s design

The detailed technical specifications and technical evaluation criteria accompanied by the mandatory Annexture's schedules are attached separately.

### Manufacture & fabrication

The *Purchaser* does not usually prescribe how the *goods* are to be manufactured and fabricated, however the *Supplier* is advised to adhere to the provided specification for the *goods* required.

### Factory acceptance testing (FAT)

The detailed technical specifications and technical evaluation criteria accompanied by the mandatory Annexture's schedules are attached separately.

### Other tests and inspections and commissioning in place of use

The detailed technical specifications and technical evaluation criteria accompanied by the mandatory Annexture's schedules are attached separately.

### Operating manuals and maintenance schedules

The detailed technical specifications and technical evaluation criteria accompanied by the mandatory Annexture's schedules are attached separately.

# Supply Requirements

The Supply Requirements for this contract are in an Annexure to the Contract Data provided by the *Purchaser*.

# Constraints on how the *Supplier* Provides the Goods

## Programming constraints

Regular production meetings will be held to discuss manufacture and delivery to obtain Supplier feedback.

## Work to be done by the Delivery Date

The detailed technical specifications and technical evaluation criteria accompanied by the mandatory Annexture's schedules are attached separately.

## Marking the *goods*

The detailed technical specifications and technical evaluation criteria accompanied by the mandatory Annexture's schedules are attached separately.

## Constraints at the delivery place and place of use

- The delivery place, the hours of access to the delivery place and other information to be provided by the *Supplier* at the time of Delivery such as the delivery note, which notifies the actual delivery date.
- The delivery place is Eskom Gauteng Cluster, Rosherville Warehouse, Lower Germiston Road, Rosherville.

## Management meetings

Regular meetings of a general nature may be convened and chaired by the *Supply Manager* as follows:

| Title and purpose | Approximate time & interval | Location | Attendance by: |
|---|---|---|---|
| Risk register and compensation events | Weekly on Friday at 09:00 | MS Teams | All stakeholders |
| Overall contract progress and feedback | Monthly on last day of the month at 09:00 | MS Teams | *Purchaser*, *Supplier*, and all other stakeholders |

Meetings of a specialist nature may be convened as specified elsewhere in this Goods Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the manufacture of the *goods*. Records of these meetings shall be submitted to the *Supply Manager* by the person convening the meeting within five days of the meeting.

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

## Documentation control

All contractual communications will be in the form of properly compiled letters or forms attached to emails and not as a message in the email itself. All communication from the *Supplier* must be addressed to the *Purchaser*, where relevant and distributed to all other stakeholders.

Escalation protocols from either party must also be stated and agreed at the kick off meeting.

## Health and safety risk management

The *Supplier* shall comply with the health and safety requirements in accordance with the Occupational Health & Safety Act, No. 85 of 1993.

Requirements attached as an annexure

## Environmental constraints and management

The *Supplier* shall comply with the environmental criteria and constraints in line with the Environmental Legislation and by-laws.

Requirements attached as an annexure

## Quality

The *Supplier* to be ISO-9001 compliant and to comply with the Eskom's Supplier Quality Management Specification, 240-105658000.

Requirements attached as an annexure

## 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's* certificate.

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

- Name and address of the *Supplier* and the *Supply Manager;*
- The contract number and title;
- *Supplier*'s VAT registration number;
- The *Purchaser*'s VAT registration number.
- Description of *goods* and *service*s provided for each item invoiced based on the Price Schedule;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT; and
- Goods Receipt Number

## Insurance provided by the *Purchaser*

The *Supplier* provides the insurances stated in the Insurance Table except any insurance which the *Purchaser* is to provide as stated in the Contract Data. The *Supplier* provides additional insurances as stated in the Contract Data.

The insurances provide cover for events which are at the *Supplier*'s risk from the *starting date* until the last *defects date* or a termination certificate has been issued.

## Contract change management

**Use of standard forms**

- The *Supplier* and the *Purchaser* to give an early warning by notifying the other as soon as either becomes aware of any matter which could increase the total of the Prices, interfere with the timing of the delivery of the goods and impair the effectiveness of the delivery.
- The *Supplier* may give an early warning by notifying the *Purchaser* of any other matter which could increase the total cost.
- The *Supplier* enters early warning matters in the Risk Register.
- Early warning of a matter for which a compensation event has previously been notified is not required.

## Provision of bonds and guarantees

The form in which a bond or guarantee required by the *conditions of contract* (if any) is to be provided by the *Supplier* is given in Part 1 Agreements and Contract Data, document C1.3, Sureties.

The *Purchaser* may withhold payment of amounts due to the *Supplier* until the bond or guarantee required in terms of this contract has been received and accepted by the person notified to the *Supplier* by the *Supply Manager* to receive and accept such bond or guarantee. Such withholding of payment due to the *Supplier* does not affect the *Purchaser*'s right to termination stated in this contract.

### Records of Defined Cost, payments & assessments of compensation events to be kept by the *Supplier*

For other compensation events, the changes to the Prices are assessed as the effect of the compensation event upon

- the actual Defined Cost of the work already done,
- the forecast Defined Cost of the work not yet done and
- the resulting amount calculated by applying the *percentage for overheads and profit* to the Defined Cost of the work.

Effects on Defined Cost are assessed separately for

- people,
- equipment,
- plant and materials included in the *goods*,
- work subcontracted by the *Supplier* and
- transport.

The *Supplier* shows how each of these effects is built up in each quotation for a compensation event.

If the compensation event arose from the *Supply Manager* giving an instruction, changing an earlier decision or correcting an assumption, the date which divides the work already done from the work not yet done is the date of that communication. In all other cases, the date is the date of the notification of the compensation event.

The *percentage for overheads and profit* is applied to the assessed effect of the event on Defined Cost except that it is not applied to any tax charges for

- customs clearance and
- export and import.

The date when the *Supply Manager* instructed or should have instructed the *Supplier* to submit quotations divides the work already done from the work not yet done.

# Procurement

## Subcontracting

### Preferred subcontractors

The *Supplier* is to subcontract to one or more of the following designated groups:

(i) an EME or QSE which is at least 51% owned by black people who are youth;
(ii) an EME or QSE which is at least 51% owned by black people who are women;
(iii) an EME or QSE which is at least 51% owned by black people with disabilities;
(iv) an EME or QSE which is 51% owned by black people living in rural or underdeveloped areas or townships;
(v) a cooperative which is at least 51% owned by black people.

### Limitations on subcontracting

The *Supplier* shall not subcontract 100% of the whole of the Scope of Work. A supplier awarded a contract may not subcontract more than 25% of the value of the contract to any other entity that does not have an equal or higher B-BBEE status level of a contributor than the supplier concerned unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

### Spares and consumables

The contract may need to include provision for the supply of a minimum category of spares or other consumables which the *Purchaser* may need at or just after delivery or commissioning of the *goods.* This is to be negotiated prior to contract award.

### SDL&I Undertaking

Suppliers are obligated to contribute towards the six elements of SD&L, namely: B-BBEE, Localisation, Industrialisation, Skills Development, Job Creation and Supplier Development for the duration of the contract.

**1. B-BBEE**

Eskom prefers to do business with companies that are more than 50% Black Owned; this includes Black Woman Owned (BWO), Black Youth Owned (BYO), and Black People Living with Disability (BPLwD).

In this contract the preference will be given to suppliers that are Black Owned and has a B-BBEE Level of 1 to 3 as per Eskom's preference.

The existing Panellists members will maintain or improve upon their current B-BBEE level to level 1-3 during the life contract. The Panellists members that are less than 51% BO will also improve on the Black Ownership of the companies/institutions as per Eskom preference (if applicable), for future business relationship with Eskom. The Panellists members will be required to submit a new certificate should ownership of the company change during the life of the contract.

Local suppliers will be allocated points in accordance with the B-BBEE Evaluation Scorecard (figure 1) shown below:

***Note:** the following element (A, 2, 3,4,5,6 & 7) will form part of the Eskom's objectives and they will be negotiated with the successful supplier(s)*

### *A. Specific goals*

Specific Objective of Tender (Application of other criteria in terms of section 2(1)(d-f) of PPPFA)

The objective criteria for this tender are the following:

- Transforming this industry by appointing small emerging black businesses with 51% black ownership (further preference will be given to BYO/BPLwD),
- Job creation for previously disadvantaged people.

To achieve the above the following aspects will apply

- Appoint companies with 51% black ownership, or
- In the event where the contract is awarded to a **Generic firm**, 20% will be sub-contracted/incubate to emerging BYO/BPLwD… (100% shareholding) with the purpose of supplier development (where necessary) or
- Joint venture where the lead firm is 51% black owned.

NB. The joint venture may be:

i) Black Owned Company and Black Owned Company or

ii) Black Owned Company (Majority shareholder) and non- Black Owned Company or

iii) Black Women Owned Company and Black Owned Company or

iv) Black Women Owned Company(Majority shareholder) and non- Black Owned Company

The Procurement spend on entities with a minimum 51% black ownership

The winning tenderer is encouraged to procure/spend on designated groups on the following paid invoices for both:

- the indirect expenses (e.g. overheads) on goods and services supplied to the contractor/supplier by designated groups; and
- direct spend on goods and services supplied by the subcontractors for the execution of the scope of work.

Activities, as a proportion of the local procurement content, which may be subcontracted to designated black owned enterprises must be submitted in a table below.

| Procurement from Designated Group | Eskom Target | Supplier Proposal |
|---|---|---|
| Black Owned | 4.0% | |
| Black Women Owned | 3.0% | |
| Black Youth Owned | 2.0% | |
| Black Persons with Disability | 1.0% | |

**Figure 1: B-BBEE Evaluation Scorecard (90/10 application)**

| B-BBEE | Qualification | Number of Points (80/20 system) | Number of Points (90/10 system) |
|---|---|---|---|
| 1 | ≥ 100 points | 20 | 10 |
| 2 | ≥ 85 points < 100 points | 18 | 9 |
| 3 | ≥ 75 points < 85 points | 16 | 8 |
| 4 | ≥ 65 points < 75 points | 12 | 5 |
| 5 | ≥ 55 points < 65 points | 8 | 4 |
| 6 | ≥ 45 points < 55 points | 6 | 3 |
| 7 | ≥ 40 points < 45 points | 4 | 2 |
| 8 | ≥ 30 points < 40 points | 2 | 1 |
| Non-compliant | < 30 points | 0 | 0 |

**Note :**

**Eskom prefers to contract with but is not limited to compliant BBEEE level 1-3 contractors. Any tenderer who does not comply with this criterion should provide a migration plan that will form part of the contractual obligation. The terms and conditions will be negotiated ad agreed prior to contract award. The migration plan will be accepted based on partial fulfilment or as a whole depending on the time period allocated for the transaction/s.**

**Where there is a partial acceptance of a migration plan, should the same tenderer be awarded further contracts with Eskom the agreed migration plan must be shared with Eskom officials responsible for the tender for continued compliance monitoring.**

**Eskom will not contract with any supplier without a valid BBBEE certificate.**

## 2. Localisation

Eskom requires suppliers to purchase all their materials, products or any other services required within the borders of South Africa. The Local Content to South Africa will be 100% because Eskom do not expect any skills to be imported for these services and the industry is matured enough to possess all the skills required.

### 2.1 The supplier will comply with the Local Designated material threshold for the duration of the contract.

| Commodity | Local Content Threshold |
|---|---|
| Circuit Breakers (under Switchgear designation) | 100% |

Declaration Certificates for Local Production and Content for designated sectors (SBD 6.2) and National Treasury Instruction on: Invitation and evaluation of bids based on a stipulated minimum threshold for local production and content hereto as evidence of compliance with this requirement.

The implication of the local production and content drive, should your transaction include products of a specific designation as proposed by Eskom, the following needs to be done:

**3. Industrialisation**

There is no requirement for industrialisation as all resources are sourced from within South Africa.

## 4. Subcontracting

The below Requirements to be achieved:

Mandatory subcontracting on contracts above R30 million as a condition for contract award

To subcontract for a contract above R30 million, Eskom:

a) must apply subcontracting to previously designated groups.

b) must advertise the tender with a specific condition for contract award that the successful tenderer must subcontract a minimum of 30% of the value of the contract to:

c) an EME or QSE, which is at least 51% owned by black people;

d)an EME or QSE, which is at least 51% owned by black people who are youth;

e) an EME or QSE, which is at least 51% owned by black people who are women;

f) an EME or QSE, which is at least 51% owned by black people with disabilities;

g) an EME or QSE, which is 51% owned by black people living in rural or underdeveloped areas or townships;

h) a cooperative, which is at least 51% owned by black people;

i) an EME or QSE, which is at least 51% owned by black people who are military veterans;

or

j) more than one of the categories referred to in paragraphs (a) to (i).

The tenderer will propose any other related opportunities that are contract specific related.

The sub-contractor- Returnable documents

- Proof of a sub-contract agreement/s must be submitted.

- CSD report of subcontractors
- Sub-contractor/s B-BBEE certificate / sworn affidavit must be submitted.

Subcontracting, in this instance, will be treated as a condition for contract award. A supplier awarded a contract may not subcontract more than 25% of the value of the contract to any other entity that does not have an equal or higher B-BBEE status level of a contributor than the supplier concerned unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

**SDL&I Objectives in line with Reconstruction and Development Programme (RDP) Goals**

**5. Skills Development**

Successful supplier will be obligated submit a proposal to train **1** candidate for every **2 Million Rand** cumulated through task order awarded to the supplier; this obligation will be for the duration of the contract. The duration of the task order will not be linked with the supplier's obligation to train; therefore the supplier will have to ensure that the skills committed are successfully achieved by the end of the contract period. Skills candidates will be sourced from previously disadvantage groups in South Africa. The purpose is to provide these candidates with skills and workplace experience in order to increase the opportunity for them to be employable within the industry. The supplier may develop the candidates directly, through their supply network or through the SETA accredited training providers. This requirement is supported by the list of occupations in high demand 2018 as stipulated in the Government Gazette 41728.

Skills development candidates should be currently unemployed graduates from FET Colleges and universities and/or matriculants. The composition of the candidates will be representative of the population demographics of South Africa. The supplier will be provided will the list of skills as per respective discipline to choose from, this will mean this supplier will train candidate with skill type that is relevant to their area of expertise.

## 5.1 Skills development

## List of proposed skills (only critical, scarce and core ) that are scope specific.

| Skills type | Proposed no. | Intake | Outcome |
|---|---|---|---|
| Artisan | 1 | Post / undergraduate | Certificate of completion |
| Logistics managers | 1 | Post / undergraduate | Certificate of completion |
| Project managers | 1 | | |
| SHEQ officers | 1 | Post / undergraduate | Certificate of completion |

1. Completion certificate to be issued at the end of the project
2. Compile a training program.
3. Submit a signed contract with the selected candidates.

**6. Job Opportunities**

The existing Panellists members will propose the number of jobs to be created as a direct result of this contract. The Suppliers must also propose the number of jobs to be retained as a direct result of this contract. The proposals will be recorded on the implementation schedule at contract award.

The supplier to indicate number of Jobs to be created and/or retained from this contract;

Figure 2

| Number of Jobs to be created | Number of Jobs to be retained |
|---|---|
| | |

The below Job opportunities were proposed by the supplier and is bound to comply.

The following Local recruitment requirements targets will apply:

| Type of jobs | Target set (local-to-site) | Suppliers Proposal |
|---|---|---|
| General workers | 100% | |
| Semi-skilled | 30% | |
| Skilled | 50% | |

## 7. Supplier Development

The contractor should be able to close potential gaps identified on subcontracting by initiating supplier development programs. This could be achieved by creating incubator or any other related training programs.

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- **SDL&I Retention**

SDL&I has a mandate to achieve maximum and sustainable local development impact through leveraging Eskom's procurement spend in a manner that allows flexibility within the business to contribute towards addressing the socio-economic ills like unemployment, poverty, and economic growth, through government local development initiatives and policies.

Suppliers will be required to report progress towards achieving SDL&I's contractual obligations, on a quarterly basis. The SDL&I retention is to encourage and ensure that the Suppliers implement the agreed targets.

Failure to comply with the contracted SDL&I obligations will enforce the application of the 2% penalty at the end of the contract.

- **Monitoring and Reporting of SDL&I Commitments**

a. Panel suppliers that have been awarded task orders with SDL&I commitments will submit reports on their SDL&I performance in accordance with the SDL&I function Data Collection Template.

b. Eskom will review the quarterly reports submitted by the suppliers within fifteen (15) days of receipt of the reports and notify the suppliers in writing if their SDL&I obligations have not been met.

c. Upon notification by Eskom that the suppliers have not met their SDL&I obligations, suppliers will be required to implement corrective measures to meet those SDL&I obligations.

**8.Concluding**

The commitment of any of SD&L elements will form part of the NEC contract and will be monitored throughout the duration of the contract to ensure all the obligations and undertakings are fulfilled.

**Cataloguing requirements by the *Supplier***

The required goods already have SAP numbers which the Supplier have to indicate at all times.

# List of drawings

## 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.