

## NEC3 Supply Contract (SC3)

Between **ESKOM ROTTEK INDUSTRIES SOC Ltd**  
(Reg No. 1990/006897/30)

and **XXXX**  
(Reg No. ....)

for **SUPPLY OF YELLOW PLANT ON HIRING BASIS FOR  
ERI CONSTRUCTION SERVICES AT VARIOUS SITES.**

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Contract No: TBC

Documentation prepared  
by:

Eskom RoteK Industries SOC Limited Procurement  
Heritage Office Park  
Lower Germiston Road  
Rosherville

## Part C1: Agreements & Contract Data

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## C1.1 Form of Offer and Acceptance

### (a) C.1.1.1. Offer

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

#### **SUPPLY OF YELLOW PLANT ON HIRING BASIS FOR ERI CONSTRUCTION SERVICES AT VARIOUS SITES.**

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	<b>R0.00</b>
	Value Added Tax @ 15% is	<b>R0.00</b>
	The offered total of the amount due inclusive of VAT is <sup>1</sup> (XXXXX.)	<b>R0.00</b>

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:** \_\_\_\_\_

(Purchaser)

Name &  
signature of  
witness

Date

### (b) C.1.1.2. Acceptance

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

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**

Name &  
signature of  
witness

(Eskom RoteK Industries  
Rosherville, Johannesburg, 2022)

Date

Note: If a tenderer wishes to submit alternative tenders, use another copy of this Form of Offer and Acceptance.

## Section 1.02

### (a) C.1.1.3. 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		

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.

#### (i) For the tenderer:

#### (ii) For the Purchaser

Signature	_____	_____
Name	_____	_____
Capacity	_____	_____
On behalf of	_____	<b>Eskom RoteK Industrial SOC Ltd</b>
Name & signature of witness	_____	_____
Date	_____	_____

## C1.2 SC3 Contract Data

### (b) C1.2.1 Part one: Data provided by the *Purchaser*

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

Clause	Section 1.03 Statement	Section 1.04 Data
1	<b>Section 1.05 General</b>	<b>Section 1.06</b>
	The <i>conditions of contract</i> are the core clauses and the clauses for Options	<b>X1: Price adjustment for inflation</b> <b>X2: Changes in the law</b> <b>X7: Delay damages</b> <b>Z: Additional conditions of contract</b>
	of the NEC3 Supply Contract (April 2013)	
10.1	The <i>Purchaser</i> is (name):	Eskom RoteK Industries SOC Ltd (Reg no: 1990/006897/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Roshland Office Park Lower Germiston Road Rosherville
	Tel No.	011 629 8000
10.1	The <i>Supply Manager</i> is (name):	Kenny Molapisi
	Address	Rosherville, Johannesburg, 2022
	Tel	011 629 8000
	e-mail	<a href="mailto:molapiik@eskom.co.za">molapiik@eskom.co.za</a>
11.2(13)	The <i>goods</i> are	<b>Part C2.2: The Price List</b>
11.2(13)	The <i>services</i> are	<b>Supply and delivery of Yellow Plant.</b>
11.2(14)	The following matters will be included in the Risk Register	<ul style="list-style-type: none"> <li>• <b>Late Deliveries</b></li> <li>• <b>Supply of Plant not to specifications.</b></li> <li>• <b>Force Majeure</b></li> <li>• <b>Labour strike and Community Unrest</b></li> </ul>
11.2(15)	The Supply Requirements as part of the Goods Information is in	<b>Part C3: Scope of Work</b>
12.2	The <i>law of the contract</i> is the law of	<b>the Republic of South Africa</b>
13.1	The <i>language of this contract</i> is	<b>English</b>
13.3	The <i>period for reply</i> is	<b>5 working days</b>

## Section 1. **Section 1.08 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.

Section 1.1	Section 1.10 The <i>Supplier</i> submits a first plan for acceptance within	1 week of the Contract Date
Section 1.	<b>Section 1.12 Time</b>	<b>Section 1.13</b>
30.1	The <i>starting date</i> is.	<b>TBC</b>
30.1	The Supply Period is	<b>12 months</b>
30.1	The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is:	<b>Goods and services</b> <b>delivery date</b>
	<b>As and when required.</b>	As per the draw down Purchase Order (PO) TBD
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.	As per the draw down Purchase Order (PO)
31.1	The <i>Supplier</i> is to submit a first programme for acceptance within	<b>7 days after receiving the draw down Purchase Order</b>
32.2	The <i>Supplier</i> submits revised delivery schedule at intervals no longer than	<b>1 week</b>
Section 1.	<b>Section 1.15 Testing and defects</b>	<b>Section 1.16</b>
40.1	The <i>Supplier</i> submits the following tests and inspections	<b>To be agreed by both Parties</b>
40.2	The <i>Supplier</i> will provide; records, datasheets, materials, facilities and samples for all tests and inspections	<b>Service records, test certificates, technical data sheets, etc. for each vehicle.</b>
40.3	The notification period for test and inspections	<b><i>Supplier</i> will notify the <i>Supply Manager</i> five days after contract starting date</b>
40.4	Correction of a defect	<b>Defects will be corrected by the <i>Supplier</i> and Clauses 40.1 and 40.2 will apply</b>
40.6	The costs for the correction of defects will be	<b>For the <i>Supplier's</i> account – inclusive of delivery and off-loading costs</b>
41.1	The <i>Supplier</i> does not bring the goods to the Delivery Place	<b>Before inspections and testing.</b>
42	The <i>defects date</i> is	<b>N/A</b>
43.2	The <i>defect correction period</i> is	<b>2 weeks after delivery of goods and services</b>
43.2	The <i>defects access period</i> is	<b>N/A</b>
45.1	The costs for correcting defects not corrected by the <i>Supplier</i>	<b>Will be for the <i>Supplier's</i> account – inclusive of delivery and off-loading costs</b>
Section 1.	<b>Section 1.18 Payment</b>	<b>Section 1.19</b>
50.1	The <i>assessment interval</i> is	<b>Between the 25<sup>th</sup> day of each successive month</b>

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	<p>the publicly quoted prime rate of interest (calculated on a 365day 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</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.</p>
Section 1. <b>Section 1.21 Compensation events</b>		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.
Section 1. <b>Section 1.23 Title</b>		<b>Section 1.24</b> 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.
Section 1. <b>Section 1.26 Risks, liabilities, indemnities and insurance</b>		<b>Section 1.27</b>
80.1	These are additional <i>Purchaser's</i> risks	Not Applicable
84.1	The <i>Supplier</i> provides these insurances from the Insurance Table	See notes about <i>Purchaser</i> provided insurance in Annexure B to this Contract Data
	1. Insurance against	Loss of or damage to the <i>goods</i> , plant and materials.
	2.The deductibles are	See notes in data for clause 88.2 below and Annexure B
84.1	The <i>Supplier</i> provides these additional insurances	See notes in Annexure B
84.2	The minimum limit of indemnity for insurance in respect of loss of or	Whatever the <i>Supplier</i> deems necessary in addition to that provided by the <i>Purchaser</i> for any



	<p>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 for any one event is:</p>	<p>one event with cross liability so that the insurance applies to the Parties separately.</p> <p>However if the <i>Supplier</i> is exposed to damage to the <i>Purchaser's</i> property the cover limit amount is not less than</p> <ul style="list-style-type: none"> <li>• R15 million (fifteen million Rand) for exposure to Generation Division property;</li> <li>• R7.5 million (seven million five hundred thousand Rand) for exposure to Transmission Division property and;</li> <li>• R1 million (one million Rand) for exposure to Distribution Division and all other <i>Purchaser's</i> property</li> </ul> <p>for any one occurrence or series of occurrences arising out of one event but unlimited during the period of insurance.</p>
84.2	<p>The minimum limit of indemnity for insurance in respect of 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 for any one event is:</p>	<p>As prescribed by the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the <i>Contractor's</i> 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).</p>
88.1	<p>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</p>	<p>(Zero Rand)</p>
88.2	<p>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</p>	<p>(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 described in the "Format A" / "Format B" / "Format Dx" insurance policy available on <a href="http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx">http://www.eskom.co.za/Tenders/InsurancePolicies/Procedures/Pages/EIMS_Policies_From_1_April_2014_To_31_March_2015.aspx</a></p> <p>and</p> <p>(2) for all other existing <i>Purchaser's</i> property the highest applicable deductible (first amount payable) namely:</p> <ul style="list-style-type: none"> <li>• R15 million (fifteen million Rand) for Generation Division property;</li> <li>• R7.5 million (seven million five hundred thousand Rand) for Transmission Division property and;</li> <li>• R1 million (one million Rand) for Distribution Division and all other <i>Purchaser's</i> property</li> </ul> <p>See notes in Annexure B</p>

## Section 1 Section 1.29 Termination and dispute resolution

94.1	<p>The <i>Adjudicator</i> is</p>	<p>the person selected from the ICE-SA Division (or</p>
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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](http://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

1st Floor, Maisels Chamber, 4 Protea Place, Sandton

Tel No.

011 320 0600

Fax No.

011 320 0533

e-mail

info@arbitration.co.za

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](http://www.ice-sa.org.za))

94.4(2) The *tribunal* is:

Arbitration

94.4(5) The *arbitration procedure* is

the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.

94.4(5) The place where arbitration is to be held is

South Africa

The person or organisation who will choose an arbitrator

- if the Parties cannot agree a choice or
- if the arbitration procedure does not state who selects an arbitrator, is

the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.

## Section 1 Section 1.31 Data for Option 0 clauses

## Section 1.32

X1 Price Adjustment for inflation

Prices will be fixed for the first twelve months (the month prior to tender closing is used as the base date) thereafter CPA will be applicable for the rest of the contract period.

X1.1 The *base date* for indices is

N/A

The proportions used to calculate the Price Adjustment Factor are:

X2 Changes in the Law

X2.1 A Change in the law in

South Africa, this is a compensation event if the change happens after the Contract Date

X7 Delay damages

X7.1 The amounts for low performance damages per Purchase Order/Power Station are:

amount

R2 500.00

performance level

Per purchase order of goods/materials delivered are incorrect or of poor quality or

		supplied not in accordance with specifications.
<b>Z</b>	<b>The <i>additional conditions of contract</i> are</b>	<b>Z1 to Z15 always apply for Eskom</b>

## **Z1 Cession delegation and assignment**

- Z1.1 The *Supplier* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Purchaser*.
- Z1.2 Notwithstanding the above, the *Purchaser* may on written notice to the *Supplier* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

## **Z2 Joint ventures**

- Z2.1 If the *Supplier* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Purchaser* for the performance of this contract.
- Z2.2 Unless already notified to the *Purchaser*, the persons or organisations notify the *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Supplier* on their behalf.
- Z2.3 The *Supplier* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Purchaser* having been given to the *Supplier* in writing.

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

- Z3.1 Where a change in the *Supplier's* legal status, ownership or any other change to his business composition or business dealings results in a change to the *Supplier's* B-BBEE status, the *Supplier* notifies the *Purchaser* within seven days of the change.
- Z3.2 The *Supplier* is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the *Supply Manager* within thirty days of the notification or as otherwise instructed by the *Supply Manager*.
- Z3.3 Where, as a result, the *Supplier's* B-BBEE status has decreased since the Contract Date the *Purchaser* may either re-negotiate this contract or alternatively, terminate the *Supplier's* obligation to Provide the Goods and Services.
- Z3.4 Failure by the *Supplier* to notify the *Purchaser* of a change in its B-BBEE status may constitute a reason for termination. If the *Purchaser* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

## **Z4 Confidentiality**

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

clause are complied with by the recipient.

- Z4.2 If the *Supplier* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*.
- Z4.3 In the event that the *Supplier* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Supplier*, to the extent permitted by law prior to disclosure, notifies the *Purchaser* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Supplier* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *goods* or any portion thereof, in the course of Providing the Goods and Services and after Delivery, requires the prior written consent of the *Supply Manager*. All rights in and to all such images vests exclusively in the *Purchaser*.
- Z4.5 The *Supplier* ensures that all his subcontractors abide by the undertakings in this clause.

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

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

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

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

Without limitation the *Supplier*:

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

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

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

- Z7.1 Within one week of receiving a payment certificate from the *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser's* procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z7.2 If the *Supplier* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Purchaser* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Purchaser* in terms of core

clause 51.2 is then calculated from the delayed date by when payment is to be made.

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

**Z8 Notifying compensation events**

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

**Z9 Purchaser's limitation of liability**

- Z9.1 The *Purchaser's* liability to the *Supplier* for the *Supplier's* indirect or consequential loss is limited to R0.00 (zero Rand)
- Z9.2 The *Supplier's* entitlement under the indemnity in 83.1 is provided for in 60.1(12) and the *Purchaser's* liability under the indemnity is limited.

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

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

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

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

**Z12 Ethics**

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

Affected Party means, as the context requires, any party, irrespective of whether it is the Supplier or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,

Coercive Action means, to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,

Collusive Action means, where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,

Committing Party means, as the context requires, the Supplier, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,

Corrupt Action means, the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,

Fraudulent Action means, any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,

Obstructive Action means, a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action and

Prohibited Action means, any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

- Z 12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z 12.2 The Purchaser may terminate the Supplier's obligation to Provide the Goods and Services if a Committing Party has taken such Prohibited Action and the Supplier did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the Purchaser has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the Purchaser can terminate the Supplier's obligation to Provide the Goods and Services for this reason.
- Z 12.3 If the Purchaser terminates the Supplier's obligation to Provide the Goods and Services for this reason, the procedures and amounts due on termination are respectively P1, P2 and P3, and A1 and A3.
- Z 12.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the Purchaser does not have a contractual bond with the Committing Party, the Supplier ensures that the Committing Party co-operates fully with an investigation.

## Z13Insurance

### Z \_\_13.1 Replace core clause 84 with the following:

<b>Insurance cover</b>	<b>84</b>	
	<b>84.1</b>	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.
	<b>84.2</b>	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**

<b>Insurance against</b>	<b>Minimum amount of cover or minimum limit of indemnity</b>
Loss of or damage to the <i>goods</i> , plant, and materials	<p>The replacement cost where not covered by the <i>Purchaser's</i> insurance.</p> <p>The <i>Purchaser's</i> policy deductible as at Contract Date, where covered by the <i>Purchaser's</i> insurance.</p>
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	<p><b><u>Loss of or damage to property</u></b>  <b><u>Purchaser's property</u></b>  The replacement cost where not covered by the <i>Purchaser's</i> insurance.</p> <p>The <i>Purchaser's</i> policy deductible as at Contract Date, where covered by the <i>Purchaser's</i> insurance.</p> <p><b><u>Other property</u></b>  The replacement cost</p> <p><b><u>Death of or bodily injury</u></b>  The amount required by the applicable law.</p>
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**

<b>Insurance against or name of policy</b>	<b>Minimum amount of cover or minimum limit of indemnity</b>
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:

<b>AAIA</b>	means approved asbestos inspection authority.
<b>ACM</b>	means asbestos containing materials.
<b>AL</b>	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.
<b>Ambient Air</b>	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.
<b>Compliance Monitoring</b>	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.
<b>OEL</b>	means occupational exposure limit.
<b>Parallel Measurements</b>	means measurements performed in parallel, yet separately, to existing measurements to verify validity of results.
<b>Safe Levels</b>	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.
<b>Standard</b>	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.
<b>SANAS</b>	means the South African National Accreditation System.
<b>TWA</b>	means the average exposure, within a given workplace, to airborne asbestos fibres, normalized 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.

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

<b>1. The requirements for the supply are</b>	Supplier supplies, as SANS and Eskom Specifications	
<b>2. The requirements for transport are</b>	The Supplier is responsible for transporting the goods to site. The Supplier takes responsibility of the goods while in transit i.e. insurances etc.	
<b>3. The delivery place is</b>	Eskom Rotek Industries Sites.	
<b>4. Actions of the Parties during supply</b>	<b>Action</b>	<b>Party which does it</b>
	Drafting of an Inspection Test Plan (ITP)	Supplier
	Acceptance of the ITP	Employer/ Purchaser
	Inspections to be followed and witnessed as per the ITP	Supplier/ Employer/ Purchaser
	Pre-Delivery Inspection	Supplier/ Employer/ Purchaser
	Pre-Release Inspection	Supplier/ Employer/ Purchaser
	Giving notice of Delivery	Supplier
	Checking packing and marking before dispatch	Supplier/ Employer/ Purchaser
	Contracting for transport	Supplier
	Pay costs of transport	Supplier
	Arrange access to delivery place	Purchaser
	Loading the <i>goods</i>	Supplier
	Off-loading the <i>goods</i>	Supplier
<b>5. Information to be provided by the Supplier</b>	<b>Title of document</b>	
	Packaging labels.	
	Copy of invoice for the <i>goods</i>	
	Delivery Note	
	All test results and quality documentation and reports – Data Books	

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

## **Annexure B: Insurance provided by the *Purchaser***

*These notes are provided as guidance to tendering Suppliers and the Supplier about the insurance provided by the Purchaser. These notes are not part of this contract. The Supplier must obtain its own advice.*

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

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

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

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

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

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

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

### **All other insurance**

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

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

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

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

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

[http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS\\_Policies](http://www.eskom.co.za/Tenders/InsurancePoliciesProcedures/Pages/EIMS_Policies)  
From\_1\_April\_2014\_To\_31\_March\_2015.aspx

### (a) C1.2.2 Part two: Data provided by the *Supplier*

#### Notes to a tendering Supplier:

1. Please read both the NEC3 Supply Contract (SC3)<sup>2</sup> and the relevant parts of its Guidance Notes (SC3-GN)<sup>3</sup> 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.

Section clause	Section 1.34 Statement	Section 1.35 Data
10.1	The <i>Contractor</i> is (Name):  Address  Tel No.  Fax No.	
11.2(8)	The Goods Information is in:	<b>Annexure A - Supply Requirements</b>
11.2(11)	The tendered total of the Prices is	<b>R0.00 excluding VAT</b>
11.2(12)	The <i>price schedule</i> is in:	<b>C2.2 the price schedule</b>
11.2(14)	The following matters will be included in the Risk Register	<b>TBC</b>
25.2	The restrictions to access for the <i>Supply Manager</i> and Others to work being done for this contract are	<b>As per the Purchase Order</b>
30.1	The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is:	<div> <div><i>goods and services</i></div> <div><b>TBD</b></div> </div> <div> <div>1</div> <div>As per Purchase Order</div> <div>As per Purchase Order</div> </div>
31.1	The programme identified in the Contract Data is contained in:	<b>As per the Purchase Order</b>

<sup>2</sup> April 2013 Edition as stated by *Purchaser* in Contract Data part 1.

<sup>3</sup> Available from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902, or [www.ecs.co.za](http://www.ecs.co.za)

## PART C2: PRICING DATA

### NEC3 Supply Contract

Document reference	Title	Pages
	This Cover Page	[1]
C2.1	Pricing assumptions	[2]
C2.2	The <i>price schedule</i>	[1]

## C2.1 Pricing assumptions:

### Article II. How *goods* and *services* are priced and assessed for payment

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

<b>Identified and defined terms</b>	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.
<b>Assessing the amount due</b>	50.2	The amount due is
		<ul style="list-style-type: none"> <li>the Price for each lump sum item in the Price Schedule which the <i>Supplier</i> has completed,</li> <li>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,</li> <li>plus other amounts to be paid to the <i>Supplier</i>,</li> <li>Less amounts to be paid by or retained from the <i>Supplier</i>.</li> </ul>
		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.

### Article III. 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.

### Article IV. 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.
- All inspections and testing are included in the prices.
- Spread the cost of doing work he chooses not to list as separate items in the *price schedule* across other

Prices and rates 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 because 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 because of a compensation event.

#### **Section 4.01 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 List

Item	Description	Unit	Total Quantity		Rate	Amount
	<b>Establishment/Disestablishment</b>					
1.1	140 H Grader or similar	Trip	48		R	R
1.2	966 FEL or similar	Trip	18		R	R
1.3	30 T Excavator	Trip	52		R	R
1.4	4 x 4 TLB	Trip	36		R	R
1.5	D8 Dozer	Trip	14		R	R
1.6	D6 Dozer	Trip	22		R	R
1.7	19T Smooth drum roller	Trip	26		R	R
1.8	19T Padfoot roller	Trip	28		R	R
1.9	10m3 Tipper	Trip	186		R	R
1.10	15 to 25m3 Tipper	Trip	10		R	R
1.11	18000L Watercart for dust suppression	Trip	76		R	R
1.12	10000L Diesel bowser	Trip	12		R	R
1.13	Recycler	Trip	10		R	R
1.14	Screening plant	Trip	2		R	R
1.15	Jaw crusher machine	Trip	2		R	R
	<b>Rental</b>					<b>R</b>
2.1	140 H Grader or similar	Hrs	21	48384	R	R
2.2	966 FEL or similar	Hrs	9	20736	R	R
2.3	30 T Excavator	Hrs	22	50688	R	R
2.4	4 x 4 TLB	Hrs	18	41472	R	R
2.5	D8 Dozer	Hrs	7	16128	R	R
2.6	D6 Dozer	Hrs	12	27648	R	R
2.7	19T Smooth drum roller	Hrs	13	29952	R	R
2.8	19T Padfoot roller	Hrs	14	32256	R	R
2.9	10m3 Tipper	Hrs	60	138240	R	R
2.10	15 to 25m3 Tipper	Hrs	5	11520	R	R
2.11	18000L Watercart for dust suppression	Hrs	28	64512	R	R
2.12	10000L Diesel bowser	Hrs	8	18432	R	R
2.13	Recycler	Hrs	5	11520	R	R
2.14	Screening plant	Hrs	1	2304	R	R
2.15	Jaw crusher machine	Hrs	1	2304	R	R
2.16	Drill Rig	Hrs	2	4608	R	R
2.17	Mobile Crane 90ton	Hrs	5	14000	R	R
2.18	Bobcat- bucket/broom/forks	Hrs	5	41472	R	R
						<b>R</b>

**Total (Excl VAT)**
**R**
**VAT @ 15%**
**R**
**R**

## PART C3: SCOPE OF WORK

Document reference	Title	Pages
C3.1	This cover page	[1]
	<i>Purchaser's Works Information</i>	[6]
	Confidentiality Agreement	[3]

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

#### **1. Introduction**

1.1 Substations and Overhead Powerlines play a crucial role in the development and maintenance of the electricity grid, evacuating power from power stations to various locations. Construction Services Powerline Portfolio has various projects which are nationwide involving the development and maintenance of Overhead Transmission Powerlines. The overall scope of the works for the projects entails:

- Soil Nomination and Foundation Designs
- Bush clearing
- Construction of Foundations,
- Assembly and Erection of Structure
- Stringing and regulation
- Terrace construction
- Access Roads
- Oil dams and Bund Walls

1.2 Ash Disposal Facility is a critical infrastructure at a coal fired power station and requires continuous monitoring. The ADF extension phases 1 and 2 will ensure that Medupi Power Station has enough space to dispose ash that is generated from burning coal.

The work involves clearing, overburden removal, cutting and filling in some areas. Fill layers require compaction to specified densities. In addition, three new pollution control dams are required to be constructed. To complete the works, various pieces of yellow mobile plant are needed. The mobile yellow plant is required on hiring basis and should come with competent operators.

#### **2. Supporting clauses**

##### **2.1 Scope**

- The scope of work entails the hiring and delivery of yellow plant on hiring basis to ERI SC C Portfolio, ADF projects, powerlines and substation.
- 
- The requirements are set out in section 3.1 of this document.

##### **2.1.1 Purpose**

- The purpose of this document is to provide the requirements for the scope of works for the supply of yellow plant on hiring basis to Eskom RoteK Industries construction services at various sites

##### **2.1.2 Applicability**

This document shall apply to Eskom RoteK Industries

## 2.2 Normative/Informative References

### 2.2.1 Normative

The applicable reference documents are listed below. These documents (latest revision) form part of this specification to the extent as specified in this specification. In the event of a conflict between the text of this specification and the applicable parts of the Eskom documents listed below, the text of this specification takes precedence. However, this specification does not supersede applicable laws and regulations (including the SANS standards), unless a specific exemption has been obtained from the relevant authorities.

- [1] 240-53665024: Engineering Quality Manual.
- [2] ISO 9001: Quality Management Systems.
- [3] OHS Act: Driven Machinery Regulations 2015.
- [4] ERI SHE Specification
- [5] Occupational Health and Safety Act and Regulations (85 of 1993)
- [6] 240-62196227\_Eskom Life Saving Rules

### 2.2.2 Informative

- [7] QM58 – Eskom Quality Specification
- [8] Yellow Plant Bill of Quantities

## 2.3 Definitions

Definition	Description
Mobile Plant	Any plant that is provided with some form of self-propulsion that is ordinarily under direct control of an operator.

### 2.3.1 Disclosure Classification

Controlled Disclosure: **Controlled Disclosure to external parties (either enforced by law, or discretionary)**

## 2.4 Abbreviations

Abbreviation	Description
ERI	Eskom RoteK Industries
CS	Construction Services
PCD	Pollution Control Dam
SANAS	South African National Accreditation System
OEM	Original Equipment Manufacturer
QMS	Quality Management System

PPE	Personal Protective Equipment
FEL	Front End Loader
DMR	Driven Machinery Regulations
TLB	Tractor Loader Back actor
ADT	Articulated Dump Truck

## 2.5 Roles and Responsibilities

### 2.5.1 Eskom RoteK Industries

- Ensure that supplier has the relevant Eskom Standard Specifications governing the supply of the equipment.
- Ensure that the plant is inspected and comply with requirements before delivery to site.
- Ensure that the supplier owns the plant
- Ensure that the yellow plant is operated and serviced as per manual.

### 2.5.2 Eskom RoteK Industries – Site Supervisor/Quality Controller

- Ensure that checks are done, and records are kept of all inspections on the equipment on site.
- The machines to have drip trays
- Ensure that the machines are operated within its parameters/capacity.
- Ensure equipment is operated by a competent and appointed operator only.
- Ensure that the plant timesheets are signed at the end of each shift.
- 

### 2.5.3 Supplier

- Ensure that the supply of yellow plant meets site requirements.
- Ensure timely delivery, efficient and reliable yellow plant to ERI.
- Ensure that the plant is serviced regularly as per intervals
- Ensure that each plant is operated by a competent final cutting level grader operator

## 2.6 Process for monitoring

The schedule and target delivery date of the plant will be communicated by the supplier, in writing to Eskom RoteK Industries after contract signing with dates.

## 2.7 Related/Supporting Documents

OHS Act; Driven Machinery Regulations 2015.

## 3. Works INFORMATION:

### SUPPLY OF YELLOW PLANT ON HIRING BASIS AT VARIOUS CONSTRUCTION SERVICE SITES

#### 3.1 General

The following are the types of yellow plant are required

#### Ash Dump Facility

Item	Description	Quantity Required
1	140 H Grader or similar	20
2	966 FEL or similar	7
3	30T Excavator	12
4	4 x 4 TLB	7
5	D8 Dozer	3
6	D6 Dozer	9
7	19T Smooth Drum Roller	11
8	19T Padfoot Roller	12
9	10m <sup>3</sup> Tipper	54
10	15 to 25m <sup>3</sup> Tipper	5
11	18000L Watercart for dust suppression	22
12	10000L Diesel Bowser	3
13	Recycler	5
14	Screening plant	1
15	Bobcat- bucket/broom/forks	
16	Concrete Pump Truck	
17	Jaw Crusher machine	1

### **Power Lines**

TLB	7
Bucket Excavator 30ton	4
Pecker Excavator 30ton	2
Concrete Truck	2
SD Roller	2
Padfoot roller	1
140H Grader	1
D6 Dozer	2
D8 Dozer	1
D9 Dozer	0
Tipper Truck 10m3	4
966 FEL with Mulcher	2
Mobile Crane 90ton	2
18000 Liter Water Truck	4
Diesel Bowser	2

### **Substations**

TLB	4
MINI EXCAVATOR (1.7T)	4
20T EXCAVATOR with pecker	2
25T EXCAVATOR with pecker	2
BOBCAT/SKIDSTEER – 226 (With broom)	6
D6 Dozer	2
Padfoot roller	2
30 T Mobile Crane	1
10 000L Water Tank	2

Scope of works for the supply of yellow plant to Construction Services at Various Sites

#### **3.1.2 ELECTRICAL**

N/A.

#### **3.2 REQUIRED INFORMATION**

- Driven Machinery Regulations.

#### **3.3 Conformance**

- Conformance to OHS Act Driven Machinery Regulations; 2015.
- Conformance to Life Saving Rules

**4. AUTHORIZATION**

This document has been seen and accepted by:

Name and Surname	Designation
Kenny Molapisi	Senior Project Manager (Acting)
Patricia Modiba	Senior Project Manager

**5. Revisions**

Date	Rev.	Compiler	Remarks
14/03/2025	0	Renias Murawo	First Draft

**6. DEVELOPMENT TEAM**

- Renias Murawo
- Patricia Modiba

**7. acknowledgement**

None



## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ('Agreement') is entered into between the *Purchaser* and the *Supplier*.

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

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

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

1. The parties contemplate an exchange, either orally, in writing or by inspection, of certain confidential proprietary information possessed or owned separately by them and not readily available or otherwise known to the public and which may be helpful in evaluating further business dealings. Such confidential information (the 'Subject Information') may include but not be limited to the parties' inventions, trade secrets, know-how, technical information on products and manufacturing processes, and information concerning their business assets, financial condition, operations, plans and prospects.
2. The purpose of the exchange of Subject Information is to enable the parties to evaluate the Subject information for the purpose only of considering further business dealings with each other.
3. The parties each agree that they shall maintain in secrecy in accordance with the terms of this Agreement all of the Subject Information each party receives (the 'Receiving Party') from the other party (the 'Proprietor') and shall not disclose or use other than for the purpose specified herein the Subject Information without the written consent of the Proprietor of the Subject Information. All Subject Information communicated from one party to the other shall be deemed to be proprietary and confidential to the Proprietor whether marked or identified as such or not.
4. The duty of care to safeguard Subject Information shall be the same as that which the parties each use to safeguard their own respective proprietary and confidential information.
5. The Receiving Party of Subject Information shall not be obligated to maintain Subject Information received from its Proprietor in secrecy or refrain from using it to the extent that any such information is or rightfully becomes publicly available information other than through a breach of this Agreement, or which the Receiving Party later obtains lawfully from anyone else who is not known by the Receiving

Party to be obligated under any secrecy agreement with Proprietor to maintain the information in secrecy. The Receiving Party also shall not be obligated to maintain in secrecy any information it receives from the Proprietor which it can demonstrate was already in its possession when the information was disclosed to the Receiving Party by the Proprietor.

6. The Receiving Party shall promptly return to its Proprietor any Subject Information in tangible form it has received from the Proprietor immediately upon the Proprietor's request, without retaining any copies, summaries, analyses or extracts thereof. All documents, memoranda, notes and other writings prepared by the parties, or their advisors, based on the Subject Information of each other, shall be destroyed, and such destruction shall be certified in writing by an authorised officer supervising such destruction.
7. If a party, with the written consent of the Proprietor of Subject Information, discloses any Subject Information received from its Proprietor to any third party, it shall do so only under a secrecy agreement having a scope similar to and which is consistent with this Agreement, and the disclosing party shall be primarily responsible for any compromise of the secrecy of Subject Information by such third party
8. Each party agrees that it shall not, while and for so long as it is obligated to maintain Subject Information in secrecy, use for its own benefit, or for the benefit of others or exploit, commercialise, develop, test promote, sell, lease, market or otherwise dispose of any products or services using, incorporating or relying on Subject Information received from its Proprietor without the written consent of the Proprietor.
9. The obligations of the party receiving Subject Information pursuant to this Agreement shall be effective with respect of each item of Subject Information for a term of five (5) years from the date of submission of the Subject Information to the Receiving Party by its Proprietor, unless the Proprietor agrees otherwise in writing.
10. For purposes of this Agreement, each party shall include (to the extent applicable) the officers, directors, employees, agents, representatives, attorneys, joint ventures, partnerships, affiliates, subsidiaries, and divisions of the party, and any other entity or entities which such party controls or which controls it, and, further, shall include any transferee, successor and assign of the assets of the party.
11. This Agreement shall be construed (both as to validity and performance) and enforced in accordance with, and governed by, the laws of Republic of South Africa.
12. Neither this Agreement nor the exchange of Subject Information between the parties shall create or be relied on by either party as a basis for creating any license between the parties under any patent, or

other industrial or intellectual property rights of the Proprietor of the Subject Information, or any other license between the parties in the absence of any express written license agreement between them

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

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