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NEC3 Supply Contract (SC3)

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| --- | --- | --- |
| **Between** | **ESKOM HOLDINGS SOC Ltd**  **(Reg No. 2002/015527/30)** | |
| **and** | **[Insert at award stage]**  **(Reg No. \_\_\_\_\_\_\_\_\_\_\_ )** | |
| **for** | **The supply and delivery of grocery items on an “as and when” required basis for a period of 5 years to Peaking Sites**  Insert title of the *goods* and *services* | |
|  |  | |
| **Contents:** |  |  |
| **Part C1** | **Agreements & Contract Data** |  |
| **Part C2** | **Pricing Data** |  |
| **Part C3** | **Scope of Work** |  |
|  |  |  |
| **CONTRACT No.** | **[Insert at award stage]** | |
|  |  | |
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PART C1: AGREEMENTS & CONTRACT DATA

|  |  |  |
| --- | --- | --- |
| **Contents:** |  |  |
| **C1.1** | **Form of Offer and Acceptance**  **[to be inserted from Returnable Documents at award stage]** |  |
| **C1.2a** | **Contract Data provided by the *Purchaser*** |  |
| **C1.2b** | **Contract Data provided by the *Supplier***  **[to be inserted from Returnable Documents at award stage]** |  |
| **C1.3** | **Proforma Guarantees** |  |

C1.1 Form of Offer & Acceptance

## Offer

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

# The supply and delivery of grocery items on “an as and when” required basis for a period of 5 years

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 | **R [●]** |
|  | Value Added Tax @ 15% is | **R [●]** |
|  | The offered total of the amount due inclusive of VAT is[[1]](#footnote-1) | **R [●]** |
|  | (in words) **[●]** | |

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

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Signature(s) |  |  |  | |
| Name(s) |  |  |  | |
| Capacity |  |  |  | |
| **For the tenderer:** |  | | | |
| Name & signature of witness | *(Insert name and address of organisation)* |  | Date |  |
|  | |  | | |

## 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** | | | |
| Name & signature of witness | *(Insert name and address of organisation)* |  | 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*

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

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

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

|  |  |  |  |  |  |  |  |  |  |  |  |
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| **Clause** | | | Statement | | Data | | | | | | |
| 1 | | | General | |  | | | | | | |
|  | | | The *conditions of contract* are the core clauses and the clauses for Options | |  | | | | | | |
|  | | |  | | **X1: Price adjustment for inflation** | | | | | | |
|  | | |  | | **X2 Changes in the law** | | | | | | |
|  | | |  | | **X7: Delay damages**  **X17: Low Prefomance Damages** | | | | | | |
|  | | |  | | Z: *Additional conditions of contract* | | | | | | |
|  | | | of the NEC3 Supply Contract (April 2013) [[2]](#footnote-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. | | **[●]** | | | | | | |
|  | | | Fax No. | | **[●]** | | | | | | |
| 10.1 | | | The *Supply Manager* is (name): | | **Khangelwa Gura** | | | | | | |
|  | | | Address | | **Brackenfell Complex, M block,Section A** | | | | | | |
|  | | | Tel | | **021 980 3620** | | | | | | |
|  | | | e-mail | | **Gurak@eskom.co.za** | | | | | | |
| 11.2(13) | | | The *goods* are | | **Grocery items for Peaking sites** | | | | | | |
| 11.2(13) | | | The *services* are | | **The supply and delivery of grocery items on an “as and when” required basis for a period of 5 years to the following Peaking sites:**   * **Acacia, Ankerlig,Drakensberg,Gariep,Gourikwa,Ingula,Palmiet,Port Rex,Sere Wind Farm,Vanderkloof,Mbashe,Ncora,First Falls,Second Falls,Durbanville,Bella Rosa Offices** | | | | | | |
| 11.2(14) | | | The following matters will be included in the Risk Register | | * **Community Unrest** * **Adverse weather conditions** * **Road Conditions** * **Risk associated with legal compliance and regulatory requirements** | | | | | | |
| 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 | | * **1 week** * **Immediately for health and safety issues** | | | | | | |
| 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. | | **TBC** | | | | | | |
| 30.1 | | | The *delivery date* of the *goods* and *service*s is: | | ***goods and services*** | | | | | ***delivery date*** | |
|  | | |  | | **1** | **Will be indicated on each Purchase Order** | | | | **Will be indicated on each Purchase Order** | |
| .2 | | | The *Supplier* does not bring the *goods* to the Delivery Place more than one week before the Delivery Date. | | **[no data required]** | | | | | | |
| 31.1 | | | The *Supplier* is to submit a first programme for acceptance within | | **2 weeks of the Contract Date.** | | | | | | |
| 32.2 | | | The *Supplier* submits revised programmes at intervals no longer than | | **3 Months** | | | | | | |
| 4 | | | Testing and defects | |  | | | | | | |
| 42 | | | The *defects date* is | | **1 week after Delivery.** | | | | | | |
| 43.2 | | | The *defect correction period* is | | **2 weeks** | | | | | | |
|  | | | except that the *defect correction period* for | | **Staple food is 1 week** | | | | | | |
|  | | | and the *defect correction period* for | | **Canned food is 3 days** | | | | | | |
| 42.2 | | | The *defects access period* is | | **3 days** | | | | | | |
| 5 | | | Payment | |  | | | | | | |
| 50.1 | | | The *assessment interval* is | | **After delivery** | | | | | | |
| 51.1 | | | The *currency of this contract* is the | | **South African Rand** | | | | | | |
| 51.2 | | | The period within which payments are made is | | **30 Days** | | | | | | |
| 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. None** | | | | | | |
| 88.1 | | | The *Supplier’s* liability to the *Purchaser* for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to | | **R0.0 (zero Rand)** | | | | | | |
| 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 | | **(1) for the *Purchaser’s* existing and surrounding property in the care, custody and control of the *Supplier* the amount of the deductible (first amount payable) relevant to the event**  **and**  **(2) for all other existing *Purchaser’s* property the applicable deductible as at contract date** | | | | | | |
| 88.3 | | | The *Supplier’s* liability for Defects due to his design which are not notified before the last *defects date* is limited to: | | **Total Value of the Goods** | | | | | | |
| 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 | | **Total Value of the Goods** | | | | | | |
| 88.5 | | | The *end of liability date* is | | **1 year after Delivery of the whole of the *goods* and *service*s.** | | | | | | |
| 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**](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).** | | | | | | |
| 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.** | | | | | | |
| 10 | | | Data for Option clauses | |  | | | | | | |
| **X1** | | | **Price adjustment for inflation** | |  | | | | | | |
| X1.1 | | | The *base date* for indices is | | **Base date for escalation will be the month prior to tender closing date**  **The price will be fixed for the 12 months thereafter CPA will apply annual for the remainder of the contract period.The contract will escalate according to the SEIFSA tables.Supplier will propose more should the below table not be adequate** | | | | | | |
|  | | | The proportions used to calculate the Price Adjustment Factor are: | | **proportion** | | **linked to index for** | | **Index prepared by** | | |
|  | | |  | | **15%** | | **Fixed Portion** | |  | | |
|  | | |  | | **55%** | | **Groceries** | | **PPI: Table 1 PPI for Final Manufactured** | | |
|  | | |  | | **20%** | | **Transport** | | **SEIFSA Table L2 (A)** | | |
|  | | |  | | **10%.** | | **Labour** | | **SEIFSA Table C3** | | |
|  | | |  | | **15%** | | **Fixed Portion** | |  | | |
|  | | |  | | **1.00** | |  | |  | | |
| **X2** | | | **Changes in the law** | | **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** | | | |
|  | | |  | | On time delivery to relevant Peaking Power Station (as stated in Purchase Order).  All deliveries to be delivered as per agreed time of the contract | | | 15% of the order value per day up to a maximum of 20% of the Purchase Order value | | | |
| **X17** | | | **Low performance damages** | |  | | | | | | |
| X17.1 | | | The amounts for low performance damages are: | | **The total of Low Perfomance damages recoverable under this contract shall not exceed 10% of the Purchase Order Value**   |  |  | | --- | --- | | **amount** | **performance level** | | **R 1000.00** | **Quality and freshness standards** | | **R 1000.00** | **Delivery of expired or near-expiry**  **goods (less than 50% shelf life**  **remaining).** | | **R 500.00** | **Repeated delivery of damaged or**  **Improperly stored goods** | | **R 750.00** | **Substitution of items without**  **Written consent** | | | | | | | |
| **Z** | | | **The *additional conditions of contract* are** | | **Z1 to Z15 always apply for Eskom** | | | | | | |
|  | | |  | | | | | | | | |
| **Z1** | | **Cession delegation and assignment** | | | | | | | | | |
| Z1.1 | | The *Supplier* does notcede, 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. | | | | | | |
| 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.  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**  *Purchaser*’s property  The replacement cost where not covered by the *Purchaser’*s insurance.  The *Purchaser*’s policy deductible as at Contract Date, where covered by the *Purchaser’*s insurance.  Other property  The replacement cost  **Death of or bodily injury**  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 minimum limit 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** | | **Intellectual Property – Eskom owning Intellectual Property** | | | | | | |
| “**Intellectual Property”** | | | means (a) patents, trade marks, service marks, rights in designs, trade names, trade secrets, know how, copyrights and topography rights, in each case whether registered or not; (b) applications for registration of any of them; (c) rights under licences and consents in relation to any of them; (d) all forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world. | | | | | |
| **“Background Intellectual Property"** | | | means any and all Intellectual Property rights that are not Foreground Intellectual Property, and are owned or controlled by the relevant party or licensed to the relevant party prior to or outside of the [ *goods*] but required for the purposes of the [ *goods*]. | | | | | |
| **“Foreground Intellectual Property”** | | | means all Intellectual Property rights and other matter capable of being the subject of intellectual property rights that is conceived, first reduced to practice or writing or developed in whole or in substantial part in the course of the execution of the [*goods*] and rights which are developed substantially as a result of the [*goods*]. Any [*goods*] that will be developed, changed, modified and/or improved specifically for the Purposes will be Foreground Intellectual Property. Any data or any other information relating to [*Purchaser*]*’s* proprietary information generated from the use of the [*Supplier*]*’s* Background Intellectual Property. | | | | | |
| **Z14.1** | | | The [*Supplier*] retains ownership of all Background Intellectual Property rights made by or on behalf of the [*Supplier*] as part of the [*goods*] in information or material it uses in carrying out the [*goods*]. | | | | | |
| **Z14.2** | | | All Foreground Intellectual Property rights, contained in any developed materials which are created by the [*Supplier*] or on behalf of the [*Supplier*], for the purposes of and in support of the execution of the [*goods*] ([*Purchaser*]’s IP) vest with the [*Purchaser*]. | | | | | |
| **Z14.3** | | | Any data or any other information relating to [*Purchaser*]*’s* proprietary information generated from the use of the [*Supplier*]*’s* Background Intellectual Property, the copyright therein shall be owned by the [*Purchaser*]. | | | | | |
| **Z14.4** | | | The [*Supplier*] acknowledges that all rights, title, and interest in and to the Foreground Intellectual Property that may result or originate from or be developed in execution of the [*goods*] vests in the [*Purchaser*] and that the [*Supplier*] has no claim of any nature in and to the Foreground Intellectual Property. | | | | | |
| **Z14.5** | | | The [*Supplier*] ensures that a copyright notice is incorporated or embossed or labelled on the Foreground Intellectual Property, where the [*Purchaser*] is reflected as the owner of the Foreground Intellectual Property. | | | | | |
| **Z14.6** | | | The [*Supplier*] is obliged to provide Foreground Intellectual Property manufacturing documents, designs, processes and/or specifications to the [*Purchaser*] before/on the *[completion date / defect state]*. | | | | | |
| **Z14.7** | | | The [*Supplier*] procures that each Sub-[*Supplier*] executes all and any [*goods*], and takes all and any other actions as may be required, in order to give effect to this Agreement. | | | | | |
| **Z14.8** | | | The [*Purchaser*] retains all Background Intellectual Property rights in all documents made by or on behalf of the [*Purchaser*] including all documents and requirements provided prior to or during the execution of the [*goods*]. The [*Supplier*] does not, without the written consent, of the [*Purchaser*], copy, use or issue to a third party any of the [*Purchaser*]*’s* Background Intellectual Property documents and requirements except for the purposes of executing the [*goods*]. | | | | | |
| **Z14.9** | | | Either party procures that any third party executes confidentiality undertakings not to disclose to any other third parties, any of the [*Purchaser*]’s Background Intellectual Property and IP documents and requirements at all, in respect of the [*Purchaser*], or the Background Intellectual Property, in respect of the [*Supplier*]. | | | | | |
| **Z14.10** | | | **Third Party Claims:** | | | | | |
| **Z14.10.1** | | | In the event of any claims being made or actions brought against the [*Purchaser*], on the ground that the [*Supplier*] infringed any patent, trade mark or copyright, the [*Supplier*] is notified thereof and at its own expense, conducts all negotiations in consultation with the [*Purchaser*] for the settlement of the claim and litigation that may arise from such alleged infringement, provided that the [*Purchaser*] will not bear any financial burden or losses. | | | | | |
| **Z14.10.2** | | | Save where the [*Supplier*] fails to take over the conduct of the negotiation or litigation within a reasonable time of the notification of the alleged infringement, the [*Purchaser*] does not make any admission which might be prejudicial to the [*Supplier*]’s position. The [*Purchaser*], at the request and the cost of the [*Supplier*] affords it all reasonable technical assistance that the [*Purchaser*] is able to provide for the purpose of contesting any such claim or action. | | | | | |
| **Z14.10.3** | | | Should it be held in any such action that any such protected rights have been infringed, as definitely stated by a judgment of the court before which the action is brought, the [*Supplier*], at its own expense and in consultation with the [*Purchaser*], either:   1. procures for [Employer/Client/Purchaser] the right to continue to use the affected item or design, or 2. replaces the said affected item or design with a non-infringing item, or 3. provides a design of equivalent quality or modify such affected item or design so as to make it non-infringing without affecting the quality. | | | | | |
| **Z14.10.4** | | | Notwithstanding anything contained in this contract, the foregoing sets forth the entire responsibility of [Contractor / Consultant / Supplier] with respect to claims relating to infringement. | | | | | |
| **Z14.10.5** | | | Where it is alleged that the *[Purchaser]* has committed an infringement as intended vis-à-vis the *[Supplier]* as set out in the third party intellectual property infringement clause, the *[Purchaser]* has the same rights and obligations as the *[Supplier]*, mutatis mutandis, as regards such alleged infringement. | | | | | |
| **Z14.10.6** | | | The *[Supplier]* herewith indemnifies the *[/Purchaser]* and undertakes to keep the *[Purchaser]* indemnified against all claims of whatsoever nature, real or imagined, which may be made against the *[Purchaser]* arising from the infringement of any third party intellectual property rights. | | | | | |
|  | |  | | | | | | |
| **Z15** | | **Asbestos** | | | | | | |
| For the purposes of this Z-clause, the following definitions apply: | | | | | | | | |
| **AAIA** | | | | | | means approved asbestos inspection authority. | | |
| **ACM** | | | | | | means asbestos containing materials. | | |
| **AL** | | | | | | means action level, i.e. a level of 50% of the OEL, i.e. 0.1 regulated asbestos fibres per ml of air measured over a 4 hour period. The value at which proactive actions is required in order to control asbestos exposure to prevent exceeding the OEL. | | |
| **Ambient Air** | | | | | | means breathable air in area of work with specific reference to breathing zone, which is defined to be a virtual area within a radius of approximately 30cm from the nose inlet. | | |
| **Compliance Monitoring** | | | | | | means compliance sampling used to assess whether or not the personal exposure of workers to regulated asbestos fibres is in compliance with the Standard’s requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles. | | |
| **OEL** | | | | | | means occupational exposure limit. | | |
| **Parallel Measurements** | | | | | | means measurements performed in parallel, yet separately, to existing measurements to verify validity of results. | | |
| **Safe Levels** | | | | | | means airborne asbestos exposure levels conforming to the Standard’s requirements for safe processing, handling, storing, disposal and phase-out of asbestos and asbestos containing material, equipment and articles. | | |
| **Standard** | | | | | | means the *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**

The Parties obligations described in Incoterms for the category and term selected are now incorporated into this contract as part of the Supply Requirements and hence the Goods Information.

The obligations of seller and buyer for the selected Incoterm determine each Party's costs, risks and insurance requirements incidental to the supply and transport of the *goods* from *Supplier* to *Purchaser*.

For each of the thirteen terms, Incoterms set out obligations of the seller (the *Supplier*) in ten paragraphs identified as A1 to A10 and the corresponding obligations of the buyer (the *Purchaser*) in paragraphs B1 to B10. These obligations cover the following subjects:

|  |  |  |  |
| --- | --- | --- | --- |
| **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:

[Use these when INCOTERMS do not apply]. [Revise and complete as required]

|  |  |  |
| --- | --- | --- |
| **1. The requirements for the supply are** | The supply and delivery of grocery items on an “as and when” required basis to the Peaking sites for a period of 5 years. | |
| **2.** **The requirements for transport are** | The supplier will transport and off load the grocery items to Peaking Sites.Unit prices are inclusive of transport costs | |
| **3. The delivery place is** | Various Peaking sites | |
| **4. Actions of the Parties during supply** | **Action** | **Party which does it** |
|  | Giving notice of Delivery | *Supplier* |
|  | Checking packing and marking before dispatch | *Supplier* |
|  | Contracting for transport | *Supplier* |
|  | Pay costs of transport | *Supplier* |
|  | Arrange access to delivery place | *Purchaser* |
|  | Loading the *goods* | *Supplier* |
|  | Unloading the *goods* | *Supplier* |
| **For international procurement** | Undertake export requirements | N/A |
|  | 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 | |
| **For international procurement** | Licences, authorisations and other formalities associated with export of the *goods* | |
|  | Air Waybill or Bill of Lading with associated landing, delivery and forwarding order | |
|  | The Bill of Entry endorsed by the importation authority | |
|  | Customs work sheets, showing tax, duties and surcharges which the law of the country into which the *goods* are being imported requires the importer to pay | |
|  | Invoice from the importation clearing agent showing airline fees, landing charges, wharfage and dock dues as applicable | |
|  | Specify other import documents required by authorised officials. | |

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*

**Notes to a tendering supplier:**

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

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

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Clause | Statement | Data | | | |
| 10.1 | The *Supplier* is (Name): |  | | | |
|  | Address |  | | | |
|  | Tel No. |  | | | |
|  | 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****,**  **(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*** |
|  |  | **1** | **[●]** | **[●]** |
|  |  | **2** | **[●]** | **[●]** |
|  |  | **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 | **%** | | | |

Part 2: Pricing Data

**NEC3 Supply Contract**

|  |  |  |
| --- | --- | --- |
| **Document reference** | **Title** |  |
| C2.1 | Pricing assumptions |  |
| C2.2 | The *price schedule* |  |

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  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 *price schedule* unless later changed in accordance with this contract. |
| **Assessing the amount due** | 50.2 | The amount due is   * the Price for each lump sum item in the Price Schedule which the *Supplier* has completed, * 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, * plus other amounts to be paid to the *Supplier*, * less amounts to be paid by or retained from the *Supplier*.   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*

Attached Appendix A : Cost to include gorocery items, transport to relevant site and off loading

Part 3: Scope of Work

|  |  |  |
| --- | --- | --- |
| **Document reference** | **Title** |  |
|  | This cover page |  |
| C3.1 | *Purchaser*’s Goods Information |  |
| C3.2 | *Supplier*’s Goods Information  (insert at award stage or delete if not applicable) |  |
|  |  |  |
|  |  |  |
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|  |  |  |
|  |  |  |
|  |  |  |

C3.1: *Purchaser’s* Goods Information

**Contents**

When the document is complete, insert a ‘Table of Contents’. To do this go to: Reference, → Table of Contents. Three levels and the title (but not the subtitle) may be shown if the formats used in this template are retained. Alternatively just update the table below when the drafting of the Goods Information is complete by clicking on ‘References’ then ‘Update Table’ then ‘Update entire table’

[Part 3: Scope of Work 35](#_Toc516836411)

[C3.1: *Purchaser’s* Goods Information 36](#_Toc516836412)

[1Overview and purpose of the *goods* and *service*s 37](#_Toc516836413)

[2Specification and description of the *goods* 37](#_Toc516836414)

[2.1 *Purchaser*’s design 37](#_Toc516836415)

[2.2 Procedure for submission and acceptance of *Supplier*’s design 37](#_Toc516836416)

[2.3 Other requirements of the *Supplier*’s design 37](#_Toc516836417)

[2.4 Use of *Supplier*’s design 37](#_Toc516836418)

[2.5 Manufacture & fabrication 38](#_Toc516836419)

[2.6 Factory acceptance testing (FAT) 38](#_Toc516836420)

[2.7 Other tests and inspections and commissioning in place of use 38](#_Toc516836421)

[2.8 Operating manuals and maintenance schedules 38](#_Toc516836422)

[3Supply Requirements 38](#_Toc516836423)

[4Specification of the *service*s to be provided 38](#_Toc516836424)

[5Constraints on how the *Supplier* Provides the Goods 38](#_Toc516836425)

[5.1 Programming constraints 38](#_Toc516836426)

[5.2 Work to be done by the Delivery Date 39](#_Toc516836427)

[5.3 Marking the *goods* 39](#_Toc516836428)

[5.4 Constraints at the delivery place and place of use 39](#_Toc516836429)

[5.5 Cooperating with Others 39](#_Toc516836430)

[5.6 Services & other things to be provided by the *Purchaser* or *Supplier* 39](#_Toc516836431)

[5.7 Management meetings 39](#_Toc516836432)

[5.8 Documentation control 40](#_Toc516836433)

[5.9 Health and safety risk management 40](#_Toc516836434)

[5.10 Environmental constraints and management 40](#_Toc516836435)

[5.11 Quality 40](#_Toc516836436)

[5.12 Invoicing and payment 41](#_Toc516836437)

[5.13 Insurance provided by the *Purchaser* 41](#_Toc516836438)

[5.14 Contract change management 41](#_Toc516836439)

[5.15 Provision of bonds and guarantees 41](#_Toc516836440)

[5.16 Records of Defined Cost, payments & assessments of compensation events to be kept by the *Supplier* 41](#_Toc516836441)

[6Procurement 41](#_Toc516836442)

[6.1 Subcontracting 41](#_Toc516836443)

[6.1.1 Preferred subcontractors 42](#_Toc516836444)

[6.1.2 Limitations on subcontracting 42](#_Toc516836445)

[6.1.3 Spares and consumables 42](#_Toc516836446)

[6.1.4 Other requirements related to procurement 42](#_Toc516836447)

[6.1.5 Cataloguing requirements 42](#_Toc516836448)

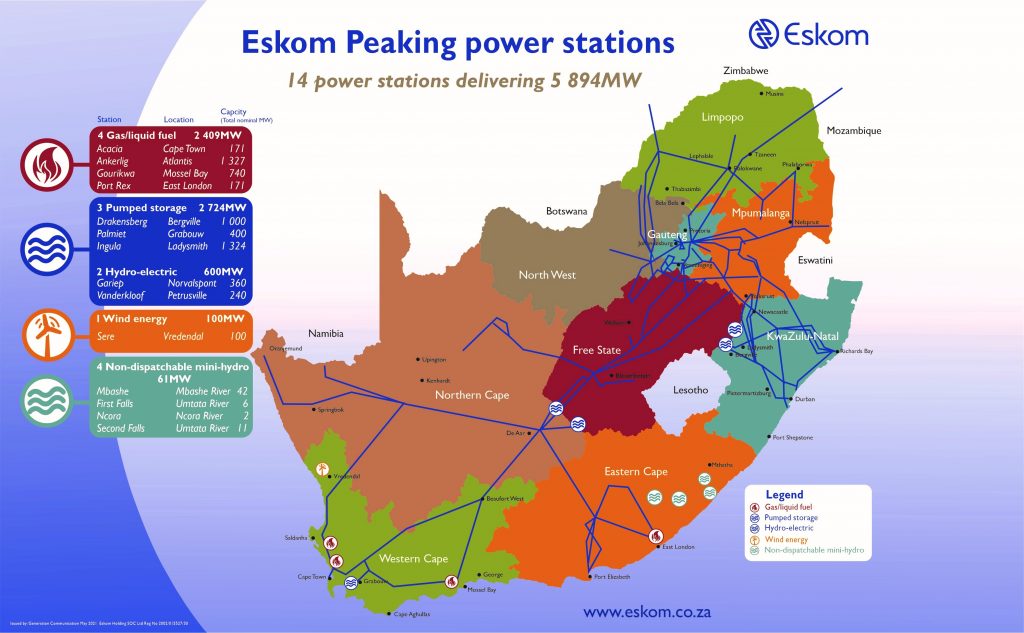
[7List of drawings 42](#_Toc516836449)

[7.1 Drawings issued by the *Purchaser* 42](#_Toc516836450)

[C3.2*Supplier*’s Goods Information 43](#_Toc516836451)

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

Supply and delivery including off-loading of groceries “on as and when” required basis to Peaking sites for for a period of 5 years. Peaking sites are as follows: Acacia,Ankerlig,Drakensberg,Gariep,Gourikwa,Ingula,Palmiet,Port Rex Sere Wind Farm,Vanderkloof,Mbashe,Ncora,First Falls,Second Falls,Durbanville and Bella Rosa Offices



Requirements of delivery including items,quantities and specific site will be indicated on each Purchase Order by the Supply Manager.

# Specification and description of the *goods*

Refer to Annexure A for grocery items to be provided.

Transportation to various Peaking stations to be provided by the *Supplier.*

*Supplier* is responsible for off-loading.

Grocery items and quantities and site to be specified by Purchaser on each purchase order.

All grocery items should be of good quality and expiry dates visible on each item.

**Delivery Times:**

Monday to Thursday 08h00 – 15h00

Friday – 08h00-11h00

Special deliveries may be requested from time to time.

In case of emergencies, the supplier will be required to be available on a 24 hour basis and be able to deliver at short notice

**Description of goods**

**Section A: Staple Foods**

* Sugar (white &brown,2.5kg/5kg)
* Salt (1kg packs)

**Section B: Canned & Preseved Foods**

* Pilchard/sardines (425g)
* Tuna (170g/340g)
* Corned beef (300g/400g)
* Canned chicken / meatballs
* Baked beans (410g)
* Lentils/ chickpeas (410g)
* Mixed vegetables (410g)
* Canned tomatoes / paste
* Canned soups (410g)
* Canned fruit (410g)

**Section C:Beverages**

* Instant coffee (Ricoffy/equivalent)
* Tea bags (Joko,Five Roses,Rooibos Freshpack-bulk packs)
* Creamer (Cremora/Ellis Brown 1 kg, or generic equivalent)
* Long-life milk (UHT cartons,full cream / low fat 1L)
* Powdered milk (bulk packs)
* Hot chocolate
* Sugar sachets
* Artificial sweetener

**Section D: Hydration & Emergency Support**

* Purified bottled water (500ml) 6 per pack
* Purified bottled water (20L drums)
* Electrolyte rehydration sachets/ powders (basic brands only)

**Section E: Miscellaneous Essentials**

* Pepper
* Instant soup sachets (chicken,beef,vegetable) bulk (box)
* Noodles (bulk ,box)

# 

# Supply Requirements

**Delivery Requirements**

* Site information: Peaking sites, each purchase order will indicate delivery address
* A purchase order will be issued to the Contractor transported on an open vehicle
* Vehicles used for transportation shall be clean, free from any orders and must be covered vehicle.
* No groceries to be transported on an open vehicle.

# Specification of the *service*s to be provided

**General Specification**

**Groceries will not be accepted if:**

* Packaging is soiled and teared off
* Moist or wet packaging
* No expiry date on the packaging

# Constraints on how the *Supplier* Provides the Goods

## 

## Programming constraints

The programme is submitted in MS Project format

*Supplier* provides the programme indicating the following:

* Date access is required for delivery

## Work to be done by the Delivery Date

Delivery to be verified physically by the client representative.

The following below list will be provided to the client representative.

* Packing list and the contents
* Copy of Tax Invoice for the goods
* Delivery Note

Items to be delivered, site to be delivered to and delivery dates will be stated on each PO.

## Constraints at the delivery place and place of use

All Peaking sites are National Key Points.All persons intending to perform work and/or attend meetings during this contract period comply with the following:

*Supplier* to adhere to all Life Savings Rules

Deliveries times for Mondays to Thursdays 08h00 to 15h30, for Fridays from 08h00 to 11h00.No deliveries on weekends and public holidays.Driver to produce drivers licence on arrival.

* No weapons may be taken on site
* No drugs allowed on site
* No explosive allowed on site
* All persons entering the *Employer’s* premises undergo a breathalyser test (including random testing). Any persons testing positive is not allowed entry. The *Employer* has a zero tolerance towards alcohol.
* Only reverse parking is allowed on site
* Parking is allowed in the dermacated areas only and should it be required to drive on site, then the following must be adhered to:
* Speed limit
* Obey all road signs
* Damage to *Employer’s* plant/propertywill be for the *Supplier’s* account.
* *Supplier* shall be subjected to searches, including vehicles,tools,equipment,objects,or materials or anything else deemed appropriate for searching,at any time when entering or exiting the *Employer’s* premises.
* *Supplier* is required to comply with the access control standard and security instructions to maintain a secure working environment at the *Employer’s* premises.

## Cooperating with Others

*Supplier* co-operates with and does not delay,impede or otherwise impair work of Others.

## Services & other things to be provided by the *Purchaser* or *Supplier*

*Supplier* provide off-loading machinery or resources.

## 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 | Adhoc | MS Teams | *Supply Manager*, *Supplier* and Others as required |
| Overall contract progress and feedback | Adhoc | MS Teams | *Supply Manager*, *Supplier* and Others as required |
| At the risk reduction meetings items as prescribed in SC3 Clause 16.2 and 16.3 are discussed.The Risk Register is updated by *Supply Manager and distributed within five days of the meeting.* | | | |

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

**General**

Each instruction, certificate, submission, proposal, record, acceptance, notification and reply is communicated in a form which can be read, copied and recorded and in the language of the Contract, within the period for reply or any other period agreed between the parties prior to its due date. Any such communiqué must bear the signature of the author; emails therefore do not conform except when used as a transmittal medium.

**Minimum requirements**

All documents shall be in simple and clear English; and always reference to applicable SC clause under (or as a result of) which it is communicated.

**Use of standard forms**

The *Supply Manager* and the *Supplier* will use the standard SC

**Communication**

All Communication is addressed to the *Supply* *Manager* as applicable to the SC. All communication makes reference to:

* The Contract Number that is issued by the *Employer (*normally a 46000…..*)*
* The Contract title;
* Any previous reference relating to the specific communique.
* The specific SC clause under which the communication is issued;
* Whether a reply is required and
* A unique letter reference number

The unique reference number to be used for written correspondence between the *Supply* *Manager* and *Supplie*r and vice versa is as follows:

* From the *Supply* *Manager* to the *Contractor:* 46000...... E/C 0xxx; and from the Supplier to the *Supply* *Manager* 46000 C/E 0xxx referring to the Contract number and the next sequential letter (channel) number

## Health and safety risk management

The *Supplier* shall comply with the health and safety requirements stated here or contained in Annexure B to this Goods Information.

The minimum requirements for the Supplier to gain access to Peaking Power Stations includes the following but not limited to

1 i) Identification document (RSA ID or equivalent)

ii) National Drivers Licence (applicable to drivers)

iii) Adherence to the Eskom Life-saving rules 3 and 4 Be Sober and Buckle up.

|  |  |
| --- | --- |
| **Rule** | **Description of rule** |
| 3 | BUCKLE UP  No person may drive any vehicle on Eskom business and/or on *Purchaser* premises:  Unless the driver and all passengers are wearing seat belts |
| 4 | BE SOBER  No person is allowed to be under the influence of intoxicating liquor or drugs while on duty |

## Environmental constraints and management

The *Supplier* shall comply with the environmental criteria and constraints [stated here or contained in Annexure \_\_\_\_\_\_\_\_ ]

## Quality

Grocery items to be provided shall conform to all quality requirements.

## 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.

1. The *Supply Manager* to be copied in on all electronic invoices emailed.
2. Failure to submit the invoice to the correct address could result in delays in payment.
3. The *Supplier’s* Tax Invoices comply with the requirements as stated in clause Z7 of the Contract Data
4. Invoices are submitted electronically to:

* Local Eskom Invoices - [invoiceseskomlocal@eskom.co.za](mailto:invoiceseskomlocal@eskom.co.za)

1. Details required when submitting invoices and additional data:

* The subject line on your email should only contain your vendor number
* Each invoice in PDF should be named with your invoice number only
* All electronic invoices are be sent in PDF format only
* Attach the proof of delivery to your invoice
* Where applicable, supporting documents are be attached to the scanned PDF invoice as one attachment
* A copy of the signed assessment certificate
* Any other appropriate documents, e.g.
* Delivery note
* Please do not attach unnecessary documents as this will make the file too large

1. Other requirements:

* Ensure compliance with the tax requirements for submitting invoices electronically
* Each PDF should contain one credit note, one debit note or one credit note only. More than one invoice can be submitted per email

1. Include the following information on the Invoice:

The *Supplier* shall address the tax invoice to

**Eskom Holdings SOC Limited**

**P O Box 1091**

**Johannesburg**

**2000**

and include on each invoice the following information

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

## Insurance provided by the *Purchaser*

Insurance will be applicable as per insurance and Z clauses in the *Employer’s* Contract Data

## Contract change management

Each change/compensation event (whether positive or negative is submitted using standard NEC SC3 forms.

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

The *Supplier* keeps all records for presentation to the *Supply Manager* for Compensation Event.Records to be provided electronically to the *Supply Manager*.

# Procurement

## Subcontracting

### Preferred subcontractors

SDL&I requirements

### Limitations on subcontracting

Supervision not to be subcontracted

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*. [↑](#footnote-ref-1)
2. Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902, www.ecs.co.za. [↑](#footnote-ref-2)
3. Either April 2013 or December 2009 Edition as stated by *Purchaser* in Contract Data part 1. [↑](#footnote-ref-3)
4. Available from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902, or [www.ecs.co.za](http://www.ecs.co.za) [↑](#footnote-ref-4)