

C1.2 SC3 Contract Data

Part one - Data provided by the *Purchaser*

| Clause | Statement | Data |
|--------|---|---|
| 1 | General | |
| | The <i>conditions of contract</i> are the core clauses and the clauses for main Option: | |
| | | A: Priced contract with price list |
| | dispute resolution Option | W1: Dispute resolution procedure |
| | and secondary Options | X1: Price adjustment for inflation |
| | | X2: Changes in Law |
| | | X3: Multiple Currency |
| | | X4: Current Company Guarantee (if applicable) |
| | | X7: Delay Damages |
| | | X13: Performance Bond (if applicable) |
| | | Z: Additional conditions of contract |
| | of the NEC3 Supply Contract (April 2013) ¹ | |
| 10.1 | The <i>Purchaser</i> is (name): | Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa |
| | Address | Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg |
| | Tel No. | 011 800 8111 |
| | Fax No. | 011 800 4299 |
| 10.1 | The <i>Supply Manager</i> is (name): | {At Award} |
| | Address | {At Award} |
| | Tel | {At Award} |
| | Fax | N/A |
| | e-mail | {At Award} |

¹ Available from Engineering Contract Strategies Tel 011 803 3008 Fax 086 539 1902, www.ecs.co.za.

Supply of estimated quantities of power quality monitoring meters on an "as and when required" basis for a period of five (5) years.

| | | | |
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| 11.2(13) | The <i>goods</i> are | Power Quality Monitoring Meters | |
| 11.2(13) | The <i>services</i> are | Supply of estimated quantities of power quality monitoring meters on an "as and when required" basis for a period of five (5) years. | |
| 11.2(14) | The following matters will be included in the Risk Register | Late deliveries | |
| 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 <i>law of the contract</i> is the law of | the Republic of South Africa | |
| 13.1 | The <i>language of this contract</i> is | English | |
| 13.3 | The <i>period for reply</i> is | 5 working days | |
| 2 | The Supplier's main responsibilities | Data required by this section of the core clauses is provided by the <i>Supplier</i> in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data. | |
| 3 | Time | | |
| 30.1 | The <i>starting date</i> is. | 5 years | |
| 30.1 | The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is: | <i>goods and services</i> | <i>delivery date</i> |
| | | 1 | As stated on each purchase order |
| | | Power Quality Monitoring Meters | |
| 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. | no data required | |
| 31.1 | The <i>Supplier</i> is to submit a first programme for acceptance within | 1 week after receipt of purchase order. | |
| 32.2 | The <i>Supplier</i> submits revised programmes at intervals no longer than | 4 weeks. | |
| 4 | Testing and defects | | |
| 42 | The <i>defects date</i> is | 5 years after Delivery. | |
| 43.2 | The <i>defect correction period</i> is | 4 weeks | |
| 42.2 | The <i>defects access period</i> is | 2 days | |

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| 5 | Payment | |
| 50.1 | The <i>assessment interval</i> is | between the 30th day of each successive month. |
| 51.1 | The <i>currency of this contract</i> is the | South African Rand |
| 51.2 | The period within which payments are made is | Within 30 days from date of receipt of a valid tax invoice and all necessary documentation as required by Purchaser's Account Payable Section to the Supplier's nominated bank account. |
| 51.4 | The <i>interest rate</i> is | <p>the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</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> |
| 6 | Compensation events | There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data. |
| 7 | Title | There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data. |
| 8 | Risks, liabilities, indemnities and insurance | |
| 80.1 | These are additional <i>Purchaser's</i> risks | <p>1. Security of supply</p> <p>2. Late deliveries</p> <p>3. On time payment for suppliers</p> |

4. Transportation damages

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| 88.1 | The <i>Supplier's</i> liability to the <i>Purchaser</i> for indirect or consequential loss, including loss of profit, revenue and goodwill is limited to | R0.0 (zero Rand) |
| 88.2 | For any one event, the <i>Supplier's</i> liability to the <i>Purchaser</i> for loss of or damage to the <i>Purchaser's</i> property is limited to | (1) for the <i>Purchaser's</i> existing and surrounding property in the care, custody and control of the <i>Supplier</i> the amount of the deductible (first amount payable) relevant to the event and (2) for all other existing <i>Purchaser's</i> property the applicable deductible as at contract date |
| 88.3 | The <i>Supplier's</i> liability for Defects due to his design which are not notified before the last <i>defects date</i> is limited to: | The total of the prices, plus the amount of the deductibles payable in respect of the Employer's Asset All Risk Insurance Policy in respect of the resultant damages caused by the defective equipment. |
| 88.4 | The <i>Supplier's</i> total liability to the <i>Purchaser</i> , for all matters arising under or in connection with this contract, other than the excluded matters, is limited to | The total value of the defective equipment |
| 88.5 | The <i>end of liability date</i> is | 10 years after Delivery of the whole of the <i>goods and services</i> . |

9 Termination and dispute resolution

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| 94.1 | The <i>Adjudicator</i> is | the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA). |
| 94.2(3) | The <i>Adjudicator nominating body</i> is: | the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za) |
| 94.4(2) | The <i>tribunal</i> is: | arbitration |
| 94.4(5) | The <i>arbitration procedure</i> is | the latest edition of Rules for the Conduct of |

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| | | 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 The person or organisation who will choose an arbitrator <ul style="list-style-type: none">- if the Parties cannot agree a choice or- if the arbitration procedure does not state who selects an arbitrator, is | South Africa 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 <i>base date</i> for indices is | |

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| X2 | Changes in the law | | |
| X2.1 | A change in the law of | South Africa is a compensation event if it occurs after the Contract Date. | |
| X3 | Multiple currencies | | |
| X3.1 | The Purchaser will pay for these items in the currencies stated | Items | Other currency |
| | | | Total maximum payment in the currency |
| | | [Inert at award] | [Inert at award] |
| | | | [Insert at award] |
| X3.1 | The exchange rates are those published in [•] on [•] (date) | | |
| | The items will be paid in the other currency - to a foreign Bank account nominated by the Supplier - to a valid SARB approved CFC account in South Africa - in accordance with an alternative payment method agreed with the Purchaser before the Contract Date. | | |
| X4 | Parent company guarantee (If applicable) | 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 |
| | | Power Quality Monitoring meters | 0.5 per day or R1000 per day up to a limit of 10% of the affected goods. |
| X13 | Performance bond | | |
| X13.1 | The amount of the performance bond is | R [•] | |

| Z | The <i>additional conditions of contract</i> are |
|-----------|--|
| | Z1 to Z15 always apply for Eskom |
| Z1 | Cession delegation and assignment |
| Z1.1 | The <i>Supplier</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Purchaser</i> . |
| Z1.2 | Notwithstanding the above, the <i>Purchaser</i> may on written notice to the <i>Supplier</i> cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry. |
| Z2 | Joint ventures |
| Z2.1 | If the <i>Supplier</i> 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 <i>Purchaser</i> for the performance of this contract. |
| Z2.2 | Unless already notified to the <i>Purchaser</i> , the persons or organisations notify the <i>Supply Manager</i> within two weeks of the Contract Date of the key person who has the authority to bind the <i>Supplier</i> on their behalf. |
| Z2.3 | The <i>Supplier</i> does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the <i>Purchaser</i> having been given to the <i>Supplier</i> in writing. |
| Z3 | Change of Broad Based Black Economic Empowerment (B-BBEE) status |
| Z3.1 | Where a change in the <i>Supplier's</i> legal status, ownership or any other change to his business composition or business dealings results in a change to the <i>Supplier's</i> B-BBEE status, the <i>Supplier</i> notifies the <i>Purchaser</i> within seven days of the change. |
| Z3.2 | The <i>Supplier</i> is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the <i>Supply Manager</i> within thirty days of the notification or as otherwise instructed by the <i>Supply Manager</i> . |
| Z3.3 | Where, as a result, the <i>Supplier's</i> B-BBEE status has decreased since the Contract Date the <i>Purchaser</i> may either re-negotiate this contract or alternatively, terminate the <i>Supplier's</i> obligation to Provide the Goods and Services. |
| Z3.4 | Failure by the <i>Supplier</i> to notify the <i>Purchaser</i> of a change in its B-BBEE status may constitute a reason for termination. If the <i>Purchaser</i> 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 <i>Supplier</i> 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 <i>Supplier</i> , enters the public domain or to information which was already in the possession of the <i>Supplier</i> at the time of disclosure (evidenced by written records in existence at that time). Should the <i>Supplier</i> disclose information to Others in terms of clause 23.1, the <i>Supplier</i> ensures that the provisions of this clause are complied with by the recipient. |
| Z4.2 | If the <i>Supplier</i> is uncertain about whether any such information is confidential, it is to be regarded |

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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.

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- 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:

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

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Action 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.

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Annexure A: Supply Requirements

The Supply Requirements for this contract are based on the use of INCOTERMS:

The *Supplier* supplies the *goods* in accordance with INCOTERMS 2010² as follows:

| Group | Category | Term | Delivery Place |
|-------|-----------|------|---------------------------------------|
| E | departure | EXW | Distribution Operating Unit Specific: |

Note: The Power Quality Monitoring Meters will be delivered to various sites using Rotek logistics at Eskom's account.

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 <i>Supplier's</i> obligations | B | The <i>Purchaser's</i> 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

² International Chamber of Commerce, Incoterms 2010, Paris, January 2011