

C1.2 ECC3 Contract Data

Part one - Data provided by the *Employer*

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for main Option	
	dispute resolution Option and secondary Options	B: Priced contract with bill of quantities W1: Dispute resolution procedure X2 Changes in the law X4: Parent company guarantee (if applicable) X5: Sectional Completion X7: Delay damages X13: Performance Bond X16: Retention X18: Limitation of liability
	of the NEC3 Engineering and Construction Contract, April 2013 (ECC3)	Z: Additional conditions of contract
10.1	The <i>Employer</i> is (Name): Address	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 Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
10.1	The <i>Project Manager</i> is: (Name) Address Tel Fax e-mail	TBA
10.1	The <i>Supervisor</i> is: (Name) Address	TBA.

Tel No.

Fax No.

e-mail

11.2(13)	The <i>works</i> are	Line construction and associated works for a 2 km, 400kV line from Oranjemond to a tower across the Orange river a portion of the Oranjemond Obib 95 km 400kV Line and deviations at Gromis and Oranjemond substations
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11.2(14)	The following matters will be included in the Risk Register	<ol style="list-style-type: none"> 1. Achieving milestone dates. 2. Constructability of designs. 3. Unavailability of specified equipment and material. 4. All crossings (lines, services, rivers, roads, etc) 5. Landowner access issues. 6. limited access to tower positions 7. Outage constraints. 8. Abnormal weather conditions 9. COVID 19 restrictions
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11.2(15)	The <i>boundaries of the site</i> are	The boundaries of the Eskom servitude specified for the line route from Oranjemond substation to the Namibian and South African border and the deviations at Gromis and Oranjemond substations as shown on the relevant profiles and diagrams.
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11.2(16)	The Site Information is in	Part 4: Site Information
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11.2(19)	The Works Information is in	Part 3: Scope of Work and all documents and drawings to which it refers.
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12.2	The <i>law of the contract</i> is the law of	the Republic of South Africa
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13.1	The <i>language of this contract</i> is	English
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13.3	The <i>period for reply</i> is	2 (two) weeks (14 calendar days)
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2	The Contractor's main responsibilities	Notwithstanding any standard conditions required by Eskom including any legal requirements for works undertaken. The <i>Contractor's</i> main responsibility shall be as per the Scope of Works.
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3	Time	
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11.2(3)	The <i>completion date</i> for the whole of the <i>works</i> is	30 March 2025
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11.2(9)	The <i>key dates</i> and the <i>conditions</i> to be met are:	Condition to be met	key date	
		1	Site establishment	15 September 2024
		2	Bush clearing	30 October 2024
		3	Excavations	15 December 2024
		4	Foundations (Concrete)	30 January 2025

		5	Tower erection	27 February 2025
		7	Stringing and regulating	15 March 2025
		6	Final inspection	30 March 2025
		7	Commissioning	30 March 2025
30.1	The <i>access dates</i> are:	Part of the Site		Date
		1	NamPower 2 nd Interconnector 400kV Line	01 August 2024
31.1	The <i>Contractor</i> is to submit a first programme for acceptance within	2 (two) weeks of the Contract Date.		
31.2	The <i>starting date</i> is	01 August 2024		
32.2	The <i>Contractor</i> submits revised programmes at intervals no longer than	4 (four) weeks.		
4	Testing and Defects			
42.2	The <i>defects date</i> is	52 (Fifty-two) weeks after Completion of the whole of the works.		
43.2	The <i>defect correction period</i> is	2 (Two) weeks		
	except that the <i>defect correction period</i> for	Supervisor notifies may jeopardise performance of the works is 96 (Ninety-six) hours as agreed upon with the Project Manager (PM) and works must start immediately.		
5	Payment			
50.1	The <i>assessment interval</i> is	Between the 20th and 25th day of each successive month		
		To facilitate payment for work done, the Contractor is to submit his Schedule of completed activities (verified by the Supervisor) for payment to the Project Manager by the 20th day of each month, in a similar format to the bill of quantities. The Project Manager will determine the value of the work done in accordance with Core clause 5 and changes to Core clause Z (A) sub-clause 50.2		
51.1	The <i>currency of this contract</i> is the	South African Rand.		
51.2	The period within which payments are made is	60 (Sixty) days.		
51.4	The <i>interest rate</i> is	<p>the publicly quoted prime rate of interest (calculated on a 365day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the</p>		

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 *mutatis mutandis* 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.

6 Compensation events

60.1(13) The place where weather is to be recorded is:

1. Port Nolloth town
2. Oranjemond Substation
3. Gromis Substation
4. Kleinsee town

The rainfall measurement will be measured at the *Contractor* construction site camp and where construction is taking place.

The *weather measurements* to be recorded for each calendar month are,

the cumulative rainfall per day in (mm)
 Excessive win is wind in excess of 10m/a or 36km/hr

the number of days with rainfall more than 10 mm

the number of days with minimum air temperature less than 0 degrees Celsius

the number of days with snow lying at 09:00 hours South African Time

and these measurements:

The *weather measurements* are supplied by

South African Weather Services

The *weather data* are the records of past *weather measurements* for each calendar month which were recorded at:

Kleinsee and Alexandre Bay

and which are available from:

the South African Weather Bureau and included in Annexure A to this Contract Data provided by the Employer

60.1(13) Assumed values for the ten-year return *weather data* for each *weather measurement* for each calendar month are:

As stated in Annexure A to this Contract Data provided by the Employer.

Note: If this arrangement is used, delete the rows above for 60.1(13) and delete this note.

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 and insurance

80.1 These are additional *Employer's* risks

1. None

9 Termination

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.

10 Data for main Option clause

B Priced contract with bill of quantities

60.6 The *method of measurement* is **Option B published by NEC3, Engineering and Construction Contract of 2005 and amended as stated in Part C2.1, Pricing Assumptions.**

11 Data for Option W1

W1.1 The *Adjudicator* is **the person selected by agreement of the parties 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 as contemplated in clause W1.2(3) below. The failure to identify or appoint a specific person to act as an Adjudicator in terms of this clause shall not operate as preventing a time bar defence**

Address **[•]**

Tel No. **[•]**

Fax No. **[•]**

e-mail **[•]**

W1.2(3) The *Adjudicator nominating body* is: **Subject to the provisions of clause W1.1, the Chairman of ICE-SA a joint Division of the South African Institution of Civil Engineering and the London Institution of Civil Engineers. (See www.ice-sa.org.za) or its successor body**

W1.4(2) The *tribunal* is: **Arbitration.**

W1.4(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.**

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.**

12 Data for secondary Option clauses

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.**

X3	Multiple currencies		
X3.1	The <i>Employer</i> will pay for these items or activities in the currencies stated	Items & activities	Other currency
		[•]	[•]
		[•]	[•]
		[•]	[•]
		[•]	[•]
X3.1	The <i>exchange rates</i> are those published in	[•] on [•] (date)	
		<p>The items & activities will be paid in the other currency - to a foreign Bank account nominated by the <i>Contractor</i> - to a valid SARB approved CFC account in South Africa - in accordance with an alternative payment method agreed with the <i>Employer</i> before the Contract Date. (select one of the three methods as agreed with successful tenderer and delete the others and this note)</p>	
X4	Parent company guarantee		
	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.		
X5	Sectional Completion		
X5.1	The <i>completion date</i> for each <i>section</i> of the <i>works</i> is:	Section	Description
		1	Site establishment
		2	Bush clearing
		3	Excavations
		4	Foundations (Concrete)
		5	Tower erection
		7	Stringing and regulating
		6	Final inspection
		7	Commissioning
		Completion date	
			15 September 2024
			30 October 2024
			15 December 2024
			30 January 2025
			27 February 2025
			15 March 2025
			30 March 2025
			30 March 2025
X5 & X7	Sectional Completion and delay damages used together		
X7.1 X5.1	Delay damages for late Completion of the <i>sections</i> of the <i>works</i> are:	section	Description
		1	Site establishment
		2	Bush clearing
		3	Excavations
		4	Foundations (Concrete)
		5	Tower erection
			Amount per day
			R 100 000.00
			R 90 000.00
			R 130 000.00
			R 250 000.00
			R 180 000.00

		7	Stringing and regulating	R 280 000.00
		6	Final inspection	R 80 000.00
		7	Commissioning	R 50 000.00
	Remainder of the <i>works</i>			R 5 000 000.00
	The total delay damages payable by the <i>Contractor</i> does not exceed:		10% of contract value	
X13	Performance bond			
X13.1	The amount of the performance bond is		5% of contract value	
X15	Limitation of the <i>Contractor's</i> liability for his design to reasonable skill & care		There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.	
X16	Retention (not used with Option F)			
X16.1	The <i>retention free amount</i> is		0%	
	The <i>retention percentage</i> is		5% of contract value	
	The SDL&I and Stability and CSI retention percentage is		2,5% for SDL&I 1% CSI	
X18	Limitation of liability			
X18.1	The <i>Contractor's</i> liability to the <i>Employer</i> for indirect or consequential loss is limited to:		R0.0 (zero Rand)	
X18.2	For any one event, the <i>Contractor's</i> liability to the <i>Employer</i> for loss of or damage to the <i>Employer's</i> property is limited to:		the amount of the deductibles relevant to the event	
X18.3	The <i>Contractor's</i> liability for Defects due to his design which are not listed on the Defects Certificate is limited to		The greater of <ul style="list-style-type: none"> the total of the Prices at the Contract Date and the amounts excluded and unrecoverable from the <i>Employer's</i> assets policy for correcting the Defect (other than the resulting physical damage which is not excluded) plus the applicable deductible as at contract date. 	
X18.4	The <i>Contractor's</i> total liability to the <i>Employer</i> for all matters arising under or in connection with this contract, other than excluded matters, is limited to:		the total of the Prices other than for the additional excluded matters. The <i>Contractor's</i> total liability for the additional excluded matters is not limited. The additional excluded matters are amounts for which the <i>Contractor</i> is liable under this contract for <ul style="list-style-type: none"> Defects due to his design which arise before the Defects Certificate is issued, Defects due to manufacture and fabrication outside the Site, loss of or damage to property (other than the <i>works</i>, Plant and Materials), 	

		<ul style="list-style-type: none">• death of or injury to a person and• infringement of an intellectual property right.
X18.5	The <i>end of liability date</i> is	<p>(i) seven (7) years after the <i>defects date</i> for latent Defects and</p> <p>(ii) the date on which the liability in question prescribes in accordance with the Prescription Act No. 68 of 1969 (as amended or in terms of any replacement legislation) for any other matter.</p> <p>A latent Defect is a Defect which would not have been discovered on reasonable inspection by the <i>Employer</i> or the <i>Supervisor</i> before the <i>defects date</i>, without requiring any inspection not ordinarily carried out by the <i>Employer</i> or the <i>Supervisor</i> during that period. If the <i>Employer</i> or the <i>Supervisor</i> do undertake any inspection over and above the reasonable inspection, this does not place a greater responsibility on the <i>Employer</i> or the <i>Supervisor</i> to have discovered the Defect.</p>
Z	The Additional conditions of contract are	Z1 to Z15 always apply.
Z1	Cession delegation and assignment	
Z1.1	The <i>Contractor</i> does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the <i>Employer</i> .	
Z1.2	Notwithstanding the above, the <i>Employer</i> may on written notice to the <i>Contractor</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>Contractor</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>Employer</i> for the performance of this contract.	
Z2.2	Unless already notified to the <i>Employer</i> , the persons or organisations notify the <i>Project Manager</i> within two weeks of the Contract Date of the key person who has the authority to bind the <i>Contractor</i> on their behalf.	
Z2.3	The <i>Contractor</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>Employer</i> having been given to the <i>Contractor</i> in writing.	
Z3	Change of Broad Based Black Economic Empowerment (B-BBEE) status	
Z3.1	Where a change in the <i>Contractor's</i> legal status, ownership or any other change to his business composition or business dealings results in a change to the <i>Contractor's</i> B-BBEE status, the <i>Contractor</i> notifies the <i>Employer</i> within seven days of the change.	
Z3.2	The <i>Contractor</i> is required to submit an updated verification certificate and necessary supporting documentation confirming the change in his B-BBEE status to the <i>Project Manager</i> within thirty days of	

the notification or as otherwise instructed by the *Project Manager*.

- Z3.3 Where, as a result, the *Contractor's* B-BBEE status has decreased since the Contract Date the *Employer* may either re-negotiate this contract or alternatively, terminate the *Contractor's* obligation to Provide the Works.
- Z3.4 Failure by the *Contractor* to notify the *Employer* of a change in its B-BBEE status may constitute a reason for termination. If the *Employer* 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 *Contractor* 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 *Contractor*, enters the public domain or to information which was already in the possession of the *Contractor* at the time of disclosure (evidenced by written records in existence at that time). Should the *Contractor* disclose information to Others in terms of clause 25.1, the *Contractor* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Contractor* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Project Manager*.
- Z4.3 In the event that the *Contractor* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Contractor*, to the extent permitted by law prior to disclosure, notifies the *Employer* 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 *Contractor* 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 *works* or any portion thereof, in the course of Providing the Works and after Completion, requires the prior written consent of the *Project Manager*. All rights in and to all such images vests exclusively in the *Employer*.
- Z4.5 The *Contractor* 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 *Project Manager*, the *Supervisor*, 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 27.4

- Z6.1 The *Contractor* undertakes to take all reasonable precautions to maintain the health and safety of persons in and about the execution of the *works*. Without limitation the *Contractor*:
- accepts that the *Employer* may appoint him as the "Principal Contractor" (as defined and provided for under the Construction Regulations 2014 (promulgated under the Occupational Health & Safety Act 85 of 1993) ("the Construction Regulations") for the Site;
 - warrants that the total of the Prices as at the Contract Date includes a sufficient amount for proper compliance with the Construction Regulations, 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 *works*; and
 - undertakes, in and about the execution of the *works*, to comply with the Construction Regulations and with all applicable health & safety laws and regulations and rules, guidelines and procedures otherwise provided for under this contract and ensures that his Subcontractors, employees and

others under the *Contractor's* direction and control, likewise observe and comply with the foregoing.

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

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 *Project Manager* in terms of core clause 51.1, the *Contractor* provides the *Employer* with a tax invoice in accordance with the *Employer's* procedures stated in the Works Information, showing the amount due for payment equal to that stated in the payment certificate.

Z7.2 If the *Contractor* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Employer* 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 *Employer* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.

Z7.3 The *Contractor* (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 *Employer'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, "unless the *Project Manager* should have notified the event to the *Contractor* but did not".

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 *Contractor* 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 *Contractor*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractor 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 *Employer* may terminate the *Contractor's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Contractor* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Employer* 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 *Employer* can terminate the *Contractor's* obligation to Provide the Services for this reason.
- Z12.3 If the *Employer* terminates the *Contractor'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 *Employer* does not have a contractual bond with the Committing Party, the *Contractor* 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 *Contractor* provides the insurances stated in the Insurance Table A.
- 84.3** The insurances provide cover for events which are at the *Contractor's* risk from the *starting date* until the earlier of Completion and the date of the termination certificate.

INSURANCE TABLE A

Insurance against	Minimum amount of cover or minimum limit of indemnity
Loss of or damage to the <i>works</i> , Plant and Materials	The replacement cost where not covered by the <i>Employer's</i> insurance The <i>Employer's</i> policy deductible, as Contract Date, where covered by the <i>Employer's</i> insurance
Loss of or damage to Equipment	The replacement cost
Liability for loss of or damage to property (except the <i>works</i> , Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Contractor</i>) caused by activity in connection with this contract	<u>Loss of or damage to property</u> <u>Employer's property</u> The replacement cost where not covered by the <i>Employer's</i> insurance The <i>Employer's</i> policy deductible, as Contract Date, where covered by the

	<p><i>Employer's insurance</i></p> <p><u>Other property</u> The replacement cost</p> <p><u>Bodily injury to or death of a person</u> The amount required by applicable law</p>
Liability for death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law

Z 13.2

Replace core clause 87 with the following:

The *Employer* provides the insurances stated in the Insurance Table B.

INSURANCE TABLE B

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

Z14 Nuclear Liability

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

Z14.2 The *Employer* is solely responsible for and indemnifies the *Contractor* or any other person against any and all liabilities which the *Contractor* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Contractor* or any other person or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at

or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.

- Z14.3 Subject to clause Z14.4 below, the *Employer* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Contractor* or any other person, or the presence of the *Contractor* or that person or any property of the *Contractor* or such person at or in the KNPS or on the KNPS site, without the permission of the *Employer* or of a person acting on behalf of the *Employer*.
- Z14.4 The *Employer* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z14.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z15 Asbestos

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

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

- Z15.1 The *Employer* ensures that the Ambient Air in the area where the *Contractor* 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 *Contractor*, the *Employer* 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 *Contractor* may perform Parallel Measurements and related control measures at the *Contractor'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 *Employer* 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 *Contractor'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 *Contractor* 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, 2001.
- Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Employer* at the *Employer's* expense, and conducted in line with South African legislation.

Annexure A: One-in-ten-year-return weather data obtained from SA Weather Bureau for [weather station]

If any one of these *weather measurements* recorded within a calendar month, before the Completion Date for the whole of the *works* and at the place stated in this Contract Data is shown to be more adverse than the amount stated below then the *Contractor* may notify a compensation event.

Month	Weather measurement				
	Cumulative rainfall (mm)	Number of days with rain more than 10mm	Number of days with min air temp < 0 deg.C	Number of days with snow lying at 08:00 CAT	[Other measurements if applicable]
January	[•]	[•]	[•]	[•]	
February	[•]	[•]	[•]	[•]	
March	[•]	[•]	[•]	[•]	
April	[•]	[•]	[•]	[•]	
May	[•]	[•]	[•]	[•]	
June	[•]	[•]	[•]	[•]	
July	[•]	[•]	[•]	[•]	
August	[•]	[•]	[•]	[•]	
September	[•]	[•]	[•]	[•]	
October	[•]	[•]	[•]	[•]	
November	[•]	[•]	[•]	[•]	
December	[•]	[•]	[•]	[•]	

Only the difference between the more adverse recorded weather and the equivalent measurement given above is taken into account in assessing a compensation event.

