

Supply, delivery, and off-loading Ammonia NH3 Liquid to Matimba Power Station on an as when required bases for a period of Five years.



NEC3 Supply Contract (SC3)

Between ESKOM HOLDINGS SOC Ltd

(Reg No. 2002/015527/30)

and [Insert at award stage]

(Reg No. _____)

**for : Supply, delivery, and off-loading Ammonia NH3
Liquid to Matimba Power Station on an as when
required bases for a period of Five years**

| Contents: | No of pages |
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| Part C1 Agreements & Contract Data | [•] |
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CONTRACT No. [Insert at award stage]

PART C1: AGREEMENTS & CONTRACT DATA

| Contents: | No of pages |
|---|--------------------|
| C1.1 Form of Offer and Acceptance | [•] |
| [to be inserted from Returnable Documents at award stage] | |
| C1.2a Contract Data provided by the <i>Purchaser</i> | [•] |
| C1.2b Contract Data provided by the <i>Supplier</i> | [•] |
| [to be inserted from Returnable Documents at award stage] | |
| C1.3 Proforma Guarantees | [•] |

Supply, delivery, and off-loading Ammonia NH3 Liquid to Matimba Power Station on an as when required bases for a period of Five years.

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:

Supply, delivery, and off-loading Ammonia NH3 Liquid to Matimba Power Station on an as when required bases for a period of Five years

The tenderer, identified in the Offer signature block, has

| | |
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| <i>either</i> | examined the documents listed in the Tender Data and addenda thereto as listed in the Returnable Schedules, and by submitting this Offer has accepted the Conditions of Tender. |
| <i>or</i> | examined the draft contract as listed in the Acceptance section and agreed to provide this Offer. |

By the representative of the tenderer, deemed to be duly authorised, signing this part of this Form of Offer and Acceptance the tenderer offers to perform all of the obligations and liabilities of the *Supplier* under the contract including compliance with all its terms and conditions according to their true intent and meaning for an amount to be determined in accordance with the *conditions of contract* identified in the Contract Data.

| | | |
|--|--|----------|
| | The offered total of the Prices exclusive of VAT is | R |
| | Value Added Tax @ 15% is | R |
| | The offered total of the amount due inclusive of VAT is 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

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*.

Data, or other period as agreed, whereupon the tenderer becomes the party named as the *Supplier* in the *conditions of contract* identified in the Contract Data.

Signature(s)

Name(s)

Capacity

**For the
tenderer:**

(Insert name and address of organisation)

Name &
signature of
witness

Date

| |
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Supply, delivery, and off-loading Ammonia NH3 Liquid to Matimba Power Station on an as when required bases for a period of Five years.**Acceptance**

By signing this part of this Form of Offer and Acceptance, the Purchaser identified below accepts the tenderer's Offer. In consideration thereof, the Purchaser shall pay the Supplier the amount due in accordance with the *conditions of contract* identified in the Contract Data. Acceptance of the tenderer's Offer shall form an agreement between the Purchaser and the tenderer upon the terms and conditions contained in this agreement and in the contract that is the subject of this agreement.

The terms of the contract, are contained in:

Part C1 Agreements and Contract Data, (which includes this Form of Offer and Acceptance)

Part C2 Pricing Data

Part C3 Scope of Work: Goods Information including Supply Requirements

and drawings and documents (or parts thereof), which may be incorporated by reference into the above listed Parts.

Deviations from and amendments to the documents listed in the Tender Data and any addenda thereto listed in the Returnable Schedules as well as any changes to the terms of the Offer agreed by the tenderer and the Purchaser during this process of offer and acceptance, are contained in the Schedule of Deviations attached to and forming part of this Form of Offer and Acceptance. No amendments to or deviations from said documents are valid unless contained in this Schedule.

The tenderer shall within two weeks of receiving a completed copy of this agreement, including the Schedule of Deviations (if any), contact the Purchaser's agent (whose details are given in the Contract Data) to arrange the delivery of any securities, bonds, guarantees, proof of insurance and any other documentation to be provided in terms of the *conditions of contract* identified in the Contract Data at, or just after, the date this agreement comes into effect. Failure to fulfil any of these obligations in accordance with those terms shall constitute a repudiation of this agreement.

Notwithstanding anything contained herein, this agreement comes into effect on the date when the tenderer receives one fully completed and signed original copy of this document, including the Schedule of Deviations (if any).

Signature(s)

Name(s)

Capacity

for the
Purchaser

**Eskom Holdings SOC Ltd, Megawatt Park, Maxwell Drive, Sandton,
Johannesburg, 2199**

(Insert name and address of organisation)

Name &
signature of
witness

Date

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

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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

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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 Options | <p>W1: Dispute resolution procedure</p> <p>X1: Price adjustment for inflation</p> <p>X2: Changes in the law</p> <p>X7: Delay damages</p> <p>Z: Additional conditions of contract</p> <p>All Z clause are all applicable</p> |
| | of the NEC3 Supply Contract (April 2013) ² | (If the December 2009 edition is to be used delete April 2013 and replace by December 2013) |
| 10.1 | The <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. | |
| | Fax No. | |

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

| | | |
|----------|--|---|
| 10.1 | The <i>Supply Manager</i> is (name): | M Seshoka |
| | Address | Eskom Holdings SOC Limited (Reg No: 2002/015527/06) Matimba Power Station Private Bag x215, Lephalale 0555 |
| | Tel | 014 763 8574 |
| | Fax | N/A |
| | e-mail | sesokmm@eskom.co.za |
| 11.2(13) | The <i>goods</i> are | Supply, delivery, and off-loading Ammonia NH3 Liquid to Matimba Power Station on an as when required bases for a period of Five years |
| 11.2(14) | The following matters will be included in the Risk Register | None |
| 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 <i>Supplier's</i> 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. | 2024.07.01 |

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| | | |
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| 30.1 | The <i>delivery date</i> of the <i>goods</i> and <i>services</i> is: | Will be stated in every purchase order |
| 31.1 | The <i>Supplier</i> is to submit a first programme for acceptance within | 04 weeks of the Contract Date. |
| 32.2 | The <i>Supplier</i> submits revised programmes at intervals no longer than | 08 weeks. |
| 4 | Testing and defects | |
| 42 | The <i>defects date</i> is | 2 weeks after delivery |
| 43.2 | The <i>defect correction period</i> is | 4 weeks |
| 42.2 | The <i>defects access period</i> is | 5 Days or as agreed by the parties |
| 5 | Payment | |
| 50.1 | The <i>assessment interval</i> is | between the 25th 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 | As per Eskom payment terms applicable to vendor registration |

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 and

(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 *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 | 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 | |

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| | | |
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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 |
| 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 of the Prices |
| 88.5 | The <i>end of liability date</i> is | N/A |
| 9 | Termination and dispute resolution | |
| 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). |

Address

Tel No.

Fax No.

e-mail

94.2(3) The *Adjudicator nominating body* is: **the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za)**

94.4(2) The *tribunal* is: **arbitration**

94.4(5) The *arbitration procedure* is **the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.**

94.4(5) The place where arbitration is to be held is **Gauteng, South Africa**

The person or organisation who will choose an arbitrator **the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.**

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

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| | | | |
|-----------|--|--|---|
| 10 | Data for Option clauses | | |
| X1 | Price adjustment for inflation | | |
| X1.1 | The <i>base date</i> for indices is | | |
| | The proportions used to calculate the Price Adjustment Factor are: | | |
| | | 85% | Wage and report StatSA PPI Table 4 Coal & Gas |
| | | 15% | Non-adjustable |
| 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 | | | |
| X3.1 | The <i>Purchaser</i> will pay for these items in the currencies stated | N/A | |
| X3.1 | The <i>exchange rates</i> 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.

(select one of the three methods as agreed with the successful tenderer prior to contract award and delete the others and this note)

X4

Supply, delivery, and off-loading Ammonia NH3 Liquid to Matimba Power Station on an as when required bases for a period of Five years.

| | | | |
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| X7 | Delay damages | Will be determined as per NCR raised | |
| X7.1 | Delay damages for Delivery are | Delivery of | amount per day |
| | | Incorrect item or late delivery | 1 Day- 1% of the PO 2 Days- 2% of the PO 3 Days- 3% of the PO 4 Days- 4% of the PO 5 Days- 5% of the PO 6 Days- 6% of the PO 7 Days- 7% of the PO 8 Days- 8% of the PO 9 Days- 9% of the PO 10 Days- 10% of the PO |
| Z | The <i>additional conditions of contract</i> are | Z1 to Z15 always apply for Eskom | |

Z1 Cession delegation and assignment

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

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

Z2 Joint ventures

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

- Z2.2 Unless already notified to the *Purchaser*, the persons or organisations notify the *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Supplier* on their behalf.
- Z2.3 The *Supplier* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Purchaser* having been given to the *Supplier* in writing.

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

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

Z4 Confidentiality

- Z4.1 The *Supplier* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Supplier*, enters the public domain or to information which was already in the possession of the *Supplier* at the time of disclosure (evidenced by written records in existence at that time). Should the *Supplier* disclose information to Others in terms of clause 23.1, the *Supplier* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Supplier* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*.

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- 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.

Supply, delivery, and off-loading Ammonia NH3 Liquid to Matimba Power Station on an as when required bases for a period of Five years.

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.

Supply, delivery, and off-loading Ammonia NH3 Liquid to Matimba Power Station on an as when required bases for a period of Five years.

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 <i>Supplier</i> provides the insurances stated in the Insurance Table A for events which are at the <i>Supplier's</i> risk from the <i>starting date</i> until the last <i>defects date</i> or a termination certificate has been issued. |

INSURANCE TABLE A

| Insurance against | Minimum amount of cover or minimum limit of indemnity |
|---|---|
| Loss of or damage to the <i>goods</i> , plant and materials | The replacement cost where not covered by the <i>Purchaser's</i> insurance. The <i>Purchaser's</i> policy deductible as at Contract Date, where covered by the <i>Purchaser's</i> insurance. |
| Liability for loss of or damage to property (except the <i>goods</i> , plant and materials and equipment) and liability for bodily injury to or death of a person (not an employee of the <i>Supplier</i>) caused by activity in connection with this contract | <p><u>Loss of or damage to property</u></p> <p><u><i>Purchaser's</i> property</u></p> <p>The replacement cost where not covered by the <i>Purchaser's</i> insurance.</p> <p>The <i>Purchaser's</i> policy deductible as at Contract Date, where covered by the <i>Purchaser's</i> insurance.</p> <p><u>Other property</u></p> <p>The replacement cost</p> <p><u>Death of or bodily injury</u></p> <p>The amount required by the applicable law.</p> |
| Liability for death of or bodily injury to employees of the <i>Supplier</i> arising out of and in the course of | The amount required by the applicable law |

| | |
|---|--|
| their employment in connection with this contract | |
|---|--|

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 Nuclear Liability

- Z14.1 The *Purchaser* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z14.2 The *Purchaser* is solely responsible for and indemnifies the *Supplier* or any other person against any and all liabilities which the *Supplier* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Supplier* or any other person or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at

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

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

Z15 Asbestos

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

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

SANAS means the South African National Accreditation System.

TWA means the average exposure, within a given workplace, to airborne asbestos fibres, normalised to the baseline of a 4 hour continuous period, also applicable to short term exposures, i.e. 10-minute TWA.

- Z15.1 The *Purchaser* ensures that the Ambient Air in the area where the *Supplier* will Provide the Services conforms to the acceptable prescribed South African standard for asbestos, as per the regulations published in GNR 155 of 10 February 2002, under the Occupational Health and Safety Act, 1993 (Act 85 of 1993) (“Asbestos Regulations”). The OEL for asbestos is 0.2 regulated asbestos fibres per millilitre of air as a 4-hour TWA, averaged over any continuous period of four hours, and the short term exposure limit of 0.6 regulated asbestos fibres per millilitre of air as a 10-minute TWA, averaged over any 10 minutes, measured in accordance with HSG248 and monitored according to HSG173 and OESSM.
- Z15.2 Upon written request by the *Supplier*, the *Purchaser* certifies that these conditions prevail. All measurements and reporting are effected by an independent, competent, and certified occupational hygiene inspection body, i.e. a SANAS accredited and Department of Employment and Labour approved AAIA. The *Supplier* may perform Parallel Measurements and related control measures at the *Supplier's* expense. For the purposes of compliance the results generated from Parallel Measurements are evaluated only against South African statutory limits as detailed in clause Z15.1. Control measures conform to the requirements stipulated in the AAIA-approved asbestos work plan.
- Z15.3 The *Purchaser* manages asbestos and ACM according to the Standard.
- Z15.4 In the event that any asbestos is identified while Providing the Services, a risk assessment is conducted and if so required, with reference to possible exposure to an airborne concentration of above the AL for asbestos, immediate control measures are implemented and relevant air monitoring conducted in order to declare the area safe.
- Z15.5 The *Supplier's* personnel are entitled to stop working and leave the contaminated area forthwith until such time that the area of concern is declared safe by either Compliance Monitoring or an AAIA approved control measure intervention, for example, per the emergency asbestos work plan, if applicable.
- Z15.6 The *Supplier* continues to Provide the Services, without additional control measures presented, on presentation of Safe Levels. The contractually agreed dates to Provide the Services, including the Completion Date, are adjusted accordingly. The contractually agreed dates are extended by the notification periods required by regulations 3 and 21 of the Asbestos Regulations.
- Z15.7 Any removal and disposal of asbestos, asbestos containing materials and waste, is done by a registered asbestos contractor, instructed by the *Purchaser* at the *Purchaser's* expense, and conducted in line with South African legislation.

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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 2010³ as follows:

[Select the group and then term within the group which applies and state the applicable delivery place. Delete all the other groups and this note]

| Group | Category | Term | Delivery Place |
|-------|----------|------|-------------------------------------|
| D | arrival | DDP | Matimba Power Station, Lephalale |

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 |

³ International Chamber of Commerce, Incoterms 2010, Paris, January 2011

| | | | |
|------------|--|------------|--|
| 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 |

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

Supply, delivery, and off-loading Ammonia NH3 Liquid to Matimba Power Station on an as when required bases for a period of Five years.

The Supply Requirements for this contract are as follows:

| | | |
|---|--|----------------------------|
| 1. The requirements for the supply are | [State the constraints on how the <i>Supplier</i> manufactures, prototypes, tests and stores the <i>goods</i> including order and timing] | |
| 2. The requirements for transport are | [State the extent to which the <i>Supplier</i> transports the <i>goods</i> and the mode of transport] | |
| 3. The delivery place is | [State the location where the <i>goods</i> are to be placed by the <i>Supplier</i> , such as whether it is a dispatch department at the <i>Supplier's</i> premises, the <i>Purchaser</i> is to collect or other location the <i>Purchaser</i> may require. If the delivery place for the <i>services</i> is different to the <i>goods</i> state it here] | |
| 4. Actions of the Parties during supply | Action | Party which does it |
| | Giving notice of Delivery | |
| | Checking packing and marking before dispatch | |
| | Contracting for transport | |
| | Pay costs of transport | |
| | Arrange access to delivery place | |
| | Loading the <i>goods</i> | |
| | Unloading the <i>goods</i> | |
| For international procurement | Undertake export requirements | |
| | Undertake import requirements | |
| 5. Information to be provided by the <i>Supplier</i> | Title of document | |
| | Packing lists for cases and their contents | |
| | Copy of invoice for the <i>goods</i> | |
| | Delivery Note | |
| | Test results and maintenance manuals | |
| For international procurement | Licences, authorisations and other formalities associated with export of the <i>goods</i> | |
| | 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 <i>goods</i> 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*

Whenever a cell is shaded in the left hand column it denotes this data is optional and would be required in relation to the option selected. In the event that the option is not required select and delete the whole row.]

Notes to a tendering supplier:

1. Please read both the NEC3 Supply Contract (SC3)⁴ and the relevant parts of its Guidance Notes (SC3-GN)⁵ 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 <i>Supplier</i> is (Name): Address Tel No. Fax No. | |
| 11.2(8) | The Goods Information for the <i>Supplier's</i> design is in: | |
| 11.2(11) | The tendered total of the Prices is | R , (in words) |

⁴ Either April 2013 or December 2009 Edition as stated by *Purchaser* in Contract Data part 1.

⁵ Available from Engineering Contract Strategies Tel 011 803 3008, Fax 086 539 1902, or www.ecs.co.za

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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 <i>Supply Manager</i> and Others to work being done for this contract are | | |
| 30.1 | The <i>delivery date</i> of the <i>goods and services</i> is: | | |
| | <i>goods and services</i> | | <i>delivery date</i> |
| | 1 | [•] | [•] |
| | 2 | [•] | [•] |
| | 3 | [•] | [•] |
| 31.1 | The programme identified in the Contract Data is contained in: | | |
| 63.2 | The <i>percentage for overheads and profit</i> added to the Defined Cost is | | % |

PART 2: PRICING DATA

NEC3 Supply Contract

| Document reference | Title | No of pages |
|--------------------|---------------------------|-------------|
| C2.1 | Pricing assumptions | 2 |
| C2.2 | The <i>price schedule</i> | [•] |

Supply, delivery, and off-loading Ammonia NH3 Liquid to Matimba Power Station on an as when required bases for a period of Five years.

C2.1 Pricing assumptions

1. How goods and services 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 *services* which can be priced as lump sums or as expected quantities of *goods* and *services* multiplied by a rate, or a mix of both.

2. 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.

3. 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.

3.1. Format of the *price schedule*

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

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

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

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

C2.2 the *price schedule*

| Item No | Material Number | Material Descriptions and Texts | UMC | QTY | Price |
|---------|-----------------|--|-----|-----|-------|
| 00010 | 0157471 | CHEMICAL:AMMONIA NH3;LIQUID;VARIABLE L | L | | |

PART 3: SCOPE OF WORK

| Document reference | Title | No of pages |
|--------------------|--------------------------------------|-------------|
| | This cover page | 1 |
| C3.1 | <i>Purchaser's</i> Goods Information | |
| C3.2 | <i>Supplier's</i> Goods Information | |
| | Total number of pages | |

C3.1: PURCHASER'S GOODS INFORMATION

Contents

Contents

| Item No | Material Number | Material Descriptions and Texts | UMC |
|---------|-----------------|---|-----|
| 00010 | 0157471 | CHEMICAL: TYPE: AMMONIA NH3; FORM: LIQUID; CONTAINER CAPACITY: VARIABLE L; CONTAINER: BULK TANKER; COLOR: WHITE CLEAR; SUPPL P/N: NH3; 99.9PCT MIN PURITY; DENSITY 0.603G/CM3 AT 25C; WATER: 0.05PCT MM MAX; OIL: 0.002PCT MAX; BULK UNDER PRESSURE; MATERIAL SAFETY DATA SHEETS WITH ENVIRONMENTAL INFORMATION IN THE 16 POINT FORMAT TO BE PROVIDED WITH EVERY DELIVERY AS REQUIRED BY THE OCCUPATIONAL HEALTH AND SAFETY ACT | L |

1 Constraints on how the *Supplier Provides the Goods*

1.1 Management meetings

Meetings are held monthly between the Project Manager and the Contractor (and any other co-opted members). The Contractor is represented, at each meeting, by the appropriate members of the staff.

The venue for these meetings is as determined by the Project Manager. The Project Manager writes the minutes of meetings.

Any action of the Project Manager or Contractor implied in the minutes of meetings with contractual implications is confirmed by means of a separate communication given in accordance with this Works Information and NEC.

The Contractor reports the overall progress and as a minimum requirement, the following is

addressed:

- Contractor’s current activity progress and planned finish dates;
- Contractor’s programme agenda compared for delays and milestone targets
- Health, safety and quality Management;
- The progress of any other relevant activities;
- To discuss any technical or commercial issues;
- Problem areas or concerns.

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

| Title and purpose | Approximate time & interval | Location | Attendance by: |
|--|--|-----------------------|---|
| Project Kick-Off Meeting | Once, before contract start | Matimba Power Station | <p>Contractor’s Project Manager, Project Supervisor and other attendees at the discretion of the contractor.</p> <p>Employer’s Project Team</p> |
| Progress Report and Assessment Meeting | Monthly | Matimba Power Station | <p>Contractor’s Project Manager, Project Supervisor and other attendees at the discretion of the contractor.</p> <p>Employer’s Project Team</p> |
| Risk Management Review | Monthly | Matimba Power Station | <p>Contractor’s Project Manager, Project Supervisor and other attendees at the discretion of the contractor.</p> <p>Employer’s Project Team</p> |

Meetings of a specialist nature may be convened as specified elsewhere in this Works Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the *works*. Such meetings should not prejudice the Employer in terms of cost, quality and schedule. Records of these meetings shall be submitted to the *Project 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.

1.2 Document Management

1.2.1 Document identification

The documentation requirements cover the various engineering stages, from the design stage through fabrication, installation, testing and commissioning and most importantly for the operating, maintenance and training stage of the project.

The Contractor is responsible for the compilation and the supply of the documentation during the various project stages and to provide the documentation programme to link with the milestone dates. Documentation and drawings are programmed for delivery to meet the milestone dates and in accordance with the agreed VDSS supplied Employer.

1.2.2 Documents Submission

In order to portray a consistent image it is important that all documents used within the project follow the same standards of layout, style and formatting as described in the documents above. The Contractor is required to submit documents as electronic in .pdf format in a CD and hard copies and are delivered to the Project Manager with a transmittal note.

The Contractor submits the Master Document List to the Employer on a monthly basis for tracking purposes irrespective of whether there are updates or not. The MDL includes list of drawings and documents and contains the following minimum information for each document:

- Date of submission
- Transmittal number
- Transmittal title
- Document description
- Document number
- Document Type

- Revision number
- Document Approval Status
- Document Authorisation Status (i.e. Accepted With Comments, Not Accepted with Comments, Accepted)

1.2.3 Documentation Review and Turn-around

The Employer has a minimum four working days to review and consolidate review comments for documentation submitted by the Contractor. The Contractor also has a minimum four working days to respond and / rectify as per the comments by the Employer. This excludes *Contractor's* design documentation.

1.2.4 Drawings Format and Layout

The creation, issuing and control of all Engineering Drawings are in accordance to the latest revision of 240-86973501 (Engineering Drawing Office and Engineering Documentation Standard). Drawings issued to the Employer are a minimum of one hardcopy and an electronic copy. All Contractors are required to submit electronic drawings in Micro Station (DGN) format, and scanned drawings in pdf format. No drawings in TIFF, AUTOCAD or any other electronic format are accepted. Drawings issued to the Employer may not be "Right Protected" or encrypted. The Employer reserves the right to use these drawings to meets it other contractual obligations.

1.3 Health and safety risk management

1.3.1 General

In carrying out its obligations to the Employer in terms of this contract, which obligations include, amongst others, to Provide the Works; using Plant, Materials and Equipment; and whilst at the site for any reason, the Contractor is the "Employer" in terms of the Occupational Health and Safety Act, No. 85 of 1993, in respect of its activities and in relation to its employees, agents, Subcontractor/s and mandatories.

The Contractor does not consider itself under the supervision or management of the Employer with regard to compliance with the Safety Health and Environmental requirements.

Furthermore, the Contractor does not consider himself to be a subordinate or under the supervision of the Project Manager in respect of these matters. The Contractor is responsible for the supervision of its employees, agents, Subcontractors and mandatories and takes full responsibility and accountability for ensuring that they are competent, aware of the Safety Health and Environmental requirements, whilst executing the works in accordance with the Safety Health and Environmental requirements.

The Contractor ensures compliance with, amongst others:

- The provisions of the Occupational Health and Safety Act, No. 85 of 1993 and all applicable regulations (as amended), binding in terms thereof;
- The latest versions of standards, procedures, specifications, rules, systems of work and requirements of the Employer, copies of which are provided to the Contractor on request.
- The Health and Safety Plan prepared by the Contractor in accordance with the Employer's Safety Health and Environmental Specification – 240-149136837 and requirements.
- The provisions of the National Environmental Management Act (as amended) and all regulations in force from time to time in terms of that Act,

The Contractor ensures that its employees, agents, Subcontractors and mandatories comply with the provisions of the Occupational Health and Safety Act, No. 85 of 1993, and all applicable regulations binding in terms thereof as well as the Employer's Safety Health and Environmental Specification - 240-149136837 whilst making use of plant, materials and equipment and whilst at the Site for any reason whatsoever.

The Contractor implements a comprehensive health and safety management system, based on

the OHSAS 18001 requirements for utilisation at the project.

The Contractor appoints a person, qualified and competent in accordance with the safety health and environmental requirements, as the liaison with the Employer's Project Safety, Health and Environment Manager/Officer or delegated person for all such matters as pertaining related to safety, health and the environment. The Contractor ensures that such a person is contactable 24 hours a day, and is registered with a registered professional council approved by the Principal Director of the Department of Labour, as per the requirements of the latest Construction Regulations, inclusive of all exemptions and amendments pertaining thereto.

The Contractor hereby indemnifies the Employer and holds the Employer harmless in respect of any and all loss, costs, claims, demands, liabilities, damage, penalties or expenses that may be made against the Employer and/or suffered or incurred by the Employer (as the case may be) as a result of, any failure of the Contractor, its employees, agents, Subcontractors and mandatories to comply with their obligations, and/or the failure of the Employer to procure the compliance by the Contractor, its employees, agents, Subcontractors and/or mandatories with their responsibilities and/or obligations in terms of or arising from the Occupational Health and Safety Act, No. 85 of 1993.

The *Contractor* acknowledges that he is fully aware of the requirements of all requirements and undertakes to employ only people who have been duly authorised in terms thereof and who have received sufficient safety training to ensure that they can comply therewith.

The *Contractor* undertakes not to do, or not to allow anything to be done which will contravene any of the provisions of the Act, Regulations or Safety and Operating Procedures.

The *Contractor* shall appoint a person who will liaise with the *Employer* Safety Officer responsible for the premises relevant to this contract. The person so appointed shall on request:

- Supply the Employer Safety Officer with copies of minutes of all Health and Safety Committee meetings, whenever he is required to do so.
- Supply the Employer Safety Officer with copies of all appointments in respect of Employees employed on this contract, in terms of the Act and Regulations and shall advise the Employer Safety Officer of any changes thereto.

***Employer* may, at any stage during the currency of this agreement be entitled to:**

- Do safety audits at the Contractor's premises, its work places and on its Employees.
- Refuse any Employees, sub-Contractor or agent of the Contractor access to its premises if such person are found to commit any unlawful act or any unsafe working practice or is found to be not authorised or qualified in terms of the Act.
- Issue the Contractor with a work stop order or a compliance order should Employer become aware of any unsafe working procedures or conditions or any non-compliance with the Act, Regulations and Procedures by the Contractor or any of its Employees, sub-Contractors or agents. Stoppages of this nature will not constitute a compensation event.

1.3.2 Mandatory Agreements

The Contractor confirms that:

- In terms of sections 37(1) and 37(2) of the OHSA, the Employer is relieved of any and all of its responsibilities and liabilities pertaining to the activities performed by the Contractor (and its employees, agents, Subcontractors and mandatories) relating to the works; the use of plant, materials and equipment; and whilst at the Site for whatsoever reason.
- b) The Contractor confirms that, in terms of the Construction Regulations, Regulation 6, it is hereby mandated as the designer and must perform all duties required of a designer. (This will be applicable only where the Contractor is required to do design work as part of their Scope).

The Contractor confirms that he has been provided with sufficient information regarding the health and safety arrangements applicable to the works; the use of Plant, Materials and Equipment, as well as at the Site.

In addition, the Contractor ensures that:

- Prior to the Contractor commencing with any operations/ activities relating to the works and/or prior to gaining access to the Site, the Contractor concludes a written mandatory agreement with the Employer in terms of Section 37(2) of the OHSA and 5(1)(k) under the construction regulations. The aforementioned agreement constitutes a record of the written arrangements and procedures between the Contractor and Employer regarding health and safety.
- As far as is reasonably practicable, the safety and absence of risks to health in connection with the production, processing, use, handling, storage or transport of articles or substances is maintained;
- As far as is reasonably practicable, all hazards pertaining to the health and safety of persons and harm to the environment that are attached to any work which is performed, any article or substance which is produced, processed, used, handled, stored or transported and any plant or machinery which is used in its business, is clearly identified and, as far as is reasonably practicable, further establishes what precautionary measures should be taken with respect to such work, article, substance, plant or machinery in order to protect the health and safety of persons and or harm to the environment, and provides the necessary means to apply such precautionary measures;
- Such information, instructions, training and supervision as may be necessary to ensure, as far as is reasonably practicable, the health and safety at work of its employees, agents, Subcontractors and mandatories is provided;
- As far as is reasonably practicable, no employee, agent, Subcontractor and transports any article or substance or operates any plant or machinery, unless the precautionary measures contemplated in paragraph 2.3.3, or any other precautionary measures which may be prescribed have been taken;
- Such measures as may be necessary in the interest of health and safety and the environment are enforced;
- Work is performed and that plant, materials or equipment is used under the direct supervision of a person trained to understand the hazards associated with it and who has the authority to ensure that precautionary measures required by the Employer are implemented; and
- All employees are informed of the scope of their authority as contemplated in OHSA.

1.3.3 Health and Safety Obligations

In addition to the mandatory agreements, the Contractor:

- Ensures that all statutory appointments (as required in terms of the Occupational Health and Safety Act, No. 85 of 1993 and all applicable regulations binding in terms thereof, as amended) and other appointments required in terms of the Employer's Safety Health and Environmental Specification – 240-149136837 and SHE Requirements Procedure (32-726) are in place and that all appointees are cognisant of their duties and responsibilities in terms of such appointments;
- Ensures that such appointees execute their duties and responsibilities as required by such an appointment.
- Ensures that all personnel brought by itself onto site (including employees of Contractors and Subcontractors) are suitably qualified and trained for the performance of the task, duties and functions, which are allocated to them;
- Immediately reports any occupational or other injuries, near miss events, property damage, environmental related incidents as well as any potential threat to the health and safety of individuals at the works or on the site, as soon as he becomes aware thereof, to the Project Manager; Complies with the Employer's Occupational Health and Safety

Incident Management Procedure – 32-95 and Environmental Incident Management Procedure – 240-133087117 relating to the reporting and investigation of incidents. The classification of incidents contained in such document are considered final and are applied by the Contractor relating to any incidents/ injuries relating to its employees, agents, Contractors, Subcontractors and mandatories whilst on Site;

- Conducts a risk assessment regarding the utilisation of PPE and thereafter ensure that PPE of good quality is issued (at its own cost) to its employees, agents, Contractors, Subcontractors and mandatories prior to such individuals accessing the site, alternatively performing activities related to the works at the site, as specified in the Eskom PPE Specification - 240-44175132.

1.3.4 Eskom Life Saving Rules (240-62196227)

RULE 1: OPEN, ISOLATE, TEST, EARTH, BOND, AND/OR INSULATE BEFORE TOUCH

With the aim to ensure a safe electrical work environment, no person may work/operate on, around or near any electrical network, line or apparatus, electrically connected to the power system and/or electrically charged and/or not electrically charged unless:

- a) He/she is trained and authorised as competent for the task to be done;
- b) There is a valid permit to work, where required;
- c) A pre-task risk assessment to identify all risks and hazards has been conducted prior to any work commencing;
- d) He/she follows the requirements on OPEN, ISOLATE, TEST, EARTH, BOND and/or INSULATE BEFORE TOUCH, correctly based on applicable/related standards, procedures and outcome of risk assessment fit for the type of work or task to be performed;
- e) The authorised person (team leader) has certified and physically shown all team members that the apparatus is safe to work on;
- f) He/she makes the specific electrical environment safe prior to performing the work; and
- g) All the appropriate PPE (including face shield and insulated gloves for low voltage work) are worn.

RULE 2: HOOK UP AT HEIGHTS

Working at height is a significant part of work in Eskom Holdings and is regarded as a high-risk activity, and as a result all precautions must be taken to prevent incidents while working at height. Wherever reasonably practicable, preference must be given to the performance of work at ground level as opposed to work in an elevated position. Where work in an elevated position is necessary, the requirements in this document shall apply.

No person may work at height where there is a risk of falling unless:

- a) He/she is medically fit to work at height;
- b) A pre-task risk assessment to identify all risks and hazards has been conducted prior to commencing any work of this nature;
- c) He/she is appropriately trained as determined by the risk assessment;
- d) He/she is appropriately secured during ascending and descending; and
- e) He/she is using an Eskom approved fall arrest system where applicable.

RULE 3: BUCKLE UP

Where required, the proper wearing of seat belts for any driver, operator and passenger is mandatory in all vehicles/equipment when driving and/or travelling for Eskom business purposes. The driver is obligated to ensure that he/she as well as all passengers are properly seated and wearing their seatbelts at all times while being transported in the vehicle, as per Eskom specifications.

Note: This rule is applicable on any road or parking lot, irrespective of the speed, and when the vehicle moves in a forward or backward direction.

RULE 4: BE SOBER

No person who is under the influence or who appears to be under the influence of intoxicating liquor or drugs will be permitted to enter, or remain on an Eskom site or conduct Eskom business or drive/operate a vehicle/equipment for Eskom business purposes.

This includes any level of alcohol or the presence of any drugs, controlled substances, and/or illegal substances in the body that impairs or could impair mental and physical functioning, irrespective of when the substance was used.

RULE 5: ENSURE THAT YOU HAVE A PERMIT TO WORK

Where an authorisation limitation exists, no person shall work without the required Permit to Work (PTW), which is governed by for example the:

- a) Plant Safety Regulations; or
- b) Operating Regulations for High Voltage Systems (ORHVS); or
- c) Any other activity where a permit is required.

No plant is to be returned to service without the cancellation of all permits on that plant in accordance with procedure, unless permission is granted for a particular plant to be returned to service with permits still open, like in the case of redundant systems.

NOTE: In the case of live work, a “live work declaration form” is to be completed by the authorised person, who is the person responsible for the safe execution of work according to relevant standards and procedures. Outline the key principles or rules to support the implementation of the standard statement.

1.3.5 Matimba Permit to Work System

The *Contractor* will ensure that he/she is informed of all the requirements of Eskom’s Plant Safety Regulations and ORHVS and that he/she at all times comply to the requirements of these Regulations.

The *Contractor* will ensure that all his supervisors who are directly involved with Eskom’s Permit to Work System, are trained and on successful completion of Matimba’s authorization / evaluation process will be authorized as “Responsible Persons”.

The Responsible Person shall ensure that:

- The conditions of permits and cautionary notices are strictly adhered to
- The lockout procedures, mechanical as well as electrical, are strictly adhered to and any deviations shall be corrected immediately
- The safe work procedures as laid down by Matimba Power Station and as determined by the Risk Assessment, shall be followed
- The workers register and cautionary notices are discussed daily with workers

1.3.6 Health and Safety Plan (Construction Regulations)

The following will be required after contract award:

The Contractor shall compile a Health and Safety Plan, filed in a Health and Safety File, comprising of the following:

- Proof of the contracting company’s own Health and Safety Policy
- Proof of appointments, assignments and designations as required in terms of the Occupational Health and Safety Act, No 85 of 1993
- Proof of Risk Assessments regarding Hazards identified and proof of training of own employees regarding controls derived from the risk assessment
- Proof of Safe Work Procedures that derived out of the Risk Assessments
- Proof of the contracting company’s own Emergency Plan that will deal with their own emergencies on site
- Proof of a Fall Protection Plan, if required to perform work at elevated levels developed by a competent person appointed by the contracting company
- Proof of “Notification to perform Construction Work” – a copy of the notification addressed to the Department of Labour as required Regulation 3 of the Construction Regulations
- Proof of an Induction Program (it is advised that the Matimba SHE Rules as a Guide) and an attendance register signed by its employees prior the commencement of any construction work on site

- Proof of the contracting company's employees Medical Fitness Certificate. (Must still be valid – one year. May only have been issued by an occupational health practitioner)
- Proof of contractors weekly Health and Safety Rep Inspections regarding its own site and where detached work is performed
- Proof of Personal Protective Equipment (PPE) issued to Contractor's employees
- Proof of contracting company's Accident/Incident Reporting and Investigation System
- Proof of checklists and where applicable test certificates, regarding contractor's tools, equipment, machinery, mobile equipment, vessels under pressure and any other applicable checks required by the Act
- A "Section 37(2) Agreement with Mandatory" needs to be drawn up by the Employer and co-signed by the Contractor before work can commence
- The Contractor shall ensure that his Subcontractors do also have a Health and Safety File and that it must be accepted by the Contractor.
- The Safety Officer employed by Matimba Power Station will audit these Health and Safety Plans to ensure compliance with the provisions of the Act.
- In terms of Clause 4 (b) of the Construction Regulations, the Employer points out the hazards or risks that is associated with the works, as indicated in Appendix B, to the Contractor. The hazards or risks it are however not limited to this list.

1.4 Environmental constraints and management

The Contractor shall adhere to all requirements as set out in 240-146112716: Environmental management

requirements for contractors.

The Contractor provides an Environmental Management Plan applicable during the execution of the Works. The plan provides a guideline on the environmental management of the handling of the works. All waste is handled in an environmentally friendly manner. The Contractor conforms to the "polluter pays principle", duty of care and other NEMA principles.

The Contractor conforms to all requirements dictated in the document as well as the National Environmental Management Act (NEMA, Act No. 107 of 1998) and the National Environmental Management Waste Act (NEMWA, Act No. 59 of 2008). This is achieved by undertaking inspections, audits, monitoring and reviews, conducted internally by the Contractor and externally by the Project Manager.

The Contractor ensures that all environmental authorization obligations, applicable legislative requirements and Employer's specific requirements are fulfilled. This includes all national, provincial and local environmental legislation and requirements.

The Contractor issues on a monthly basis, Environmental Management Performance and Expenditure Reports to the Project Manager.

The Contractor conducts their environmental management based on the ISO 14001 requirements and implement their environmental management practices accordingly.

The Contractor develops and implements as a minimum the following procedures:

- Environmental Management Plan,
- Waste Management Work Instruction,
- Spill Management Procedure,
- Hazardous Chemical Substances Management and Storage Procedure,
- Stockpile and Erosion Management Procedure,
- Clear-and-Grub Procedure,
- Environmental Rehabilitation Procedure.

All environmental procedures, as listed above, are site-specific and submitted to the Employer for acceptance by the Project Manager before the commencement of construction activities. The Employer provides a copy of the environmental authorisation and Environmental Management Plan to the contractor for the drafting of the above procedures.

1.4.1 Waste Management

All waste management activities, which includes procurement of control measures, handling and disposal or processing of all waste forms generated on the Contractor's site, are conducted according to Matimba Power Station Waste Management Procedure – PS/244/001, and all requirements of the Employer as per the Environmental Management Programme. All costs associated with waste management are the responsibility of the Contractor.

Provide sufficient storage containers, labelled depicting general or hazardous waste and store in a designated storage area

1.4.2 Rehabilitation

The Contractor rehabilitates both its lay-down and construction site including all disturbed areas under their jurisdiction and or as directed by Supervisor at the end of the project. The Contractor submits to the Project Manager a rehabilitation plan and schedule at least 2 weeks before finalisation of the works for acceptance by the Project Manager. All rehabilitation costs are the responsibility of the Contractor.

1.4.3 Hazardous Waste

All waste introduced to and/or produced on *Employer's Premises* by the *Contractor* for this order, must be handled in accordance with the minimum requirements for the Handling and Disposal of hazardous waste in terms of Government Legislation as proclaimed by the Department of Water Affairs and Forestry 1994 Ref.: BN0621-16296-5. (A copy of this document is available at the Power Station for reference purposes).

No hazardous waste may be stored for a period of more than 90 days on the Matimba premises.

Ensure that all hazardous waste is disposed of at a licensed Class H disposal site. A copy of the hazardous waste disposal certificate is submitted to the Project Manager.

1.4.4 Environmental Management

Matimba has an Environmental Policy, PP/240/001, to which the *Contractor* and his employees must adhere. It is the responsibility of the *Contractor* to ensure that he obtains copies of the Matimba Environmental Policy, the legal register applicable to his area of responsibility, the aspect register and the Matimba procedures (applicable to the *Contractor's* area of responsibility) and to familiarize themselves on such procedures, within 30 days from the date of commencement of work at Matimba, to assist the *Contractor* and his/her employees to prevent pollution and to comply with legislative requirements. Copies of the above-mentioned documents shall be obtained from the *Project Manager* or Environmental Officer on the first day prior to commencement of work at Matimba. The *Contractor* shall submit proof to the Environmental Officer of Matimba that he and his employees has done all the necessary training on procedures and Policies supplied to them and that they do understand the contents of the procedures, registers and policies and will adhere to them at all times.

The non-adherence to the Matimba Environmental policy and rules could result in the termination of this contract.

1.5 Quality assurance requirements

1.5.1 Quality Management System

The *Contractor* shall implement and maintain a quality management system that as a minimum meets the requirements of 240-105658000 - Supplier Quality Management: Specification. If the *Contractor* is registered, the appropriate ISO 9001:2000 Registration certificate of compliance must be supplied with the tender.

The *Contractor* further ensures that the subcontractor's programmes comply with the requirements of the Works Information.

The *Contractor* notifies the *Project Manager* of any changes to the Quality System and obtains agreement prior to implementation on existing orders and contracts, or sub orders and sub contracts.

1.5.2 Quality Documents Submitted with the Tender

The Contractor submits a copy of his quality policy and quality system procedures relevant to the Works.

The Contractor also submits a typical quality control plan.

The Project Manager evaluates the Contractor's capabilities with regards to quality assurance and quality control based on these submissions and the performance history of the Contractor. The Project Manager performs pre-award assessments where necessary, giving further information to aid the selection process.

1.5.3 Quality Documents Submitted after the Contract Date

Contractor submits a fully detailed Quality Assurance Programme (QAP) for acceptance by the Project Manager within four weeks of the Contract Date.

The documents submitted by the Contractor shall include the following:

- Copy of the Quality Manual
- Copy of the Quality System Procedure
- Copy of the Contract Quality Management Plan
- Copy of Quality Control Plans
- Copy of the proposed index of the QA/QC, inspection and test records

The Contractor will further submit the following documents during the course of the contract:

- Non-conformance reports (NCR's) raised by the Contractor
- Notification of any planned changes to the Contractor's quality manual, quality system procedures, contract quality management plan or quality plan for acceptance by the Project Manager prior to implementation
- Concession/production permit applications and supporting documentation
- Data books and/or data packages

1.5.4 Contract Quality Management Plan Requirement

The Contractor prepares a contract quality management plan that, where appropriate, indicates the following:

- Indicates the interface with the Contractors quality system and applicable documents such as procedures and work instructions
- Establishes communication channels between the Contractor and the Project Manager in respect of quality and the integration of such with prescribed contract communication channels
- Indicates how specific subcontractors will be monitored
- Identifies items or activities for which quality control plans will be prepared
- Identifies the specifications, drawings and acceptance criteria for material for which quality control plans are not required
- Identifies the areas or processes requiring special controls
- Identifies the Contractor's Management Representative and personnel responsible for the control of quality activities and their relationship to the Contractor's management structure
- Identifies the documents which are to be submitted to the Project Manager
- Identifies the Contractor's quality monitoring programme

The Contractor periodically updates the contract quality management plan to reflect changes in any of the above details. The frequency of such updates is determined by the Project Manager but will not be greater than one year.

1.5.5 Quality Control Plan

The Contractor quality control plans cover inspection and test proposals for items or activities to be supplied as part of the works.

The quality control plan indicates the following as appropriate:

- The identification of the item
- The material
- A list of the sequence of operations including inspections and tests
- The identification of the specification, drawings or procedures for each operation
- The acceptance criteria with reference to the appropriate technical specification, in-house, national or international standard and relevant clause number
- The inspections and tests the Contractor has nominated for hold and witness points
- Provision for inspections and tests nominated by the Project Manager
- Provision for inspection status indication
- Inspection and test records that are generated by the Contractor

The quality control plans are reviewed by the Project Manager to allow for insertion of his specific requirements, including hold and witness points, prior to commencement of work. The Contractor does not commence work until the Project Manager accepts.

1.5.6 Inspection and Testing

All Plant and Materials are comprehensively tested in accordance with the agreed QCPs prior to commencement of work. The Employer reserves the right to appoint others to inspect all parts during manufacturing, erection and commissioning to be present at any of the tests specified. The witnessing of tests by the Supervisor or Others, and if the Supervisor chooses to waive the witnessing of any tests, it does not relieve the Contractor of his responsibilities to Provide the Works.

All tests which the Employer requires are carried out by the Contractor during manufacturing, erection and commissioning to prove compliance with the specification independently of any tests which may have been carried out at the Contractor's premises.

The Supervisor inspects parts of the Plant at his discretion during manufacturing stages and before shipment as per the agreed QCP;

- The Contractor is responsible for the inspection of all the works performed and the Supervisor only verifies that such work is conducted as per the Works Information.
- The Contractor conducts all inspections in accordance with the accepted QCP.
- The Contractor provides suitably qualified personnel to conduct on-and-off site inspections.
- The Contractor ensures that all parts of the works are inspected and accepted before the Supervisor is invited for verification.
- The Contractor allows for a minimum of five (5) working days' notice for local off-site inspections, 24 hours for local on-site inspection, and 21 working days' notice for foreign inspections. The notice strictly contains copies of the Contractor's inspection reports and particulars of work which the inspection notice/request entail.

1.5.7 Quality Records

The Contractor prepares and submits to the Project Manager an Index of QA/QC and inspection and test records prior to the commencement of work.

The Project Manager determines which documents are to be submitted during the performance of work and reviews the index and request changes if required. The Contractor conforms to the Index approved by the Project Manager

The Contractor ensures all records identify the items, equipment and/or activities to which they pertain and collates indexes and securely stores the records in such a manner that they are readily retrievable.

The Contractor implements appropriate administrative controls to limit access to prevent inadvertent loss of or damage to records.

The Contractor stores all quality records. The Contractor only destroys or discards quality records with the approval of the Project Manager.

The Contractor presents on completion of the works all quality records in the form of a data package. The package is indexed and shows the entire contents.

1.5.8 Quality Reporting

The Contractor submits monthly quality reports, on the last working day of the month. The report

includes, but is not limited to the following:

- A register of NCRs and defects
- Updated QCP / ITP register
- QA monthly report summary
- Planned and completed local and foreign inspection dates
- Completed and outstanding Inspections
- Audit findings report
- Risks with Mitigation plan

1.5.9 Preservation, shipping and transportation

The Contractor develops and implements a comprehensive preservation, shipping and transportation programme consisting of plans, processes, procedures, and actions undertaken for the purpose of planning for, and maintenance of, material deliverables quality. The Contractor and Subcontractor complies with the Employer's Quality Requirements: Specifications 240-105658000.

1.6 Programming constraints

1.6.1 General

The Contractor submits a single integrated Level 3 programme that incorporates all the work to be performed including that of his Subcontractors. The interfaces between Subcontractors as well as the interfaces between Subcontractors and the Contractor are clearly identified. Project key dates are incorporated into the programme.

1.6.2 Computerised Planning

MSPProjects is the only planning tool which the Employer accepts for this project; therefore the plan submitted to the Employer must be converted or submitted in this format. The Project Manager does not intend duplicating the Contractor's planning and scheduling, however, the Accepted Programme is used in the Employer's internal integrated and Master project programmes for project control purposes, updating and monitoring. The Project Manager requires one project programme to be used and updated during the execution of the Works This insures that any changes, deviations to the Programme can be carried out on the agreed programme and monitored. The initial programme supplied to the Employer after Contract award is fully resource loaded.

Any changes that are required to be made to the Project/Programme i.e. scope changes, delays and the like, are recorded through the Employer's change process and documentation, where all parties agree to the changes and sign.

The Contractor and Project Manager agree on the format of how the updates are done, and the frequency of the updates i.e. such as on a weekly basis, or at any other time as required by the Contractor, or as instructed by the Project Manager.

1.6.3 Planning and Scheduling Levels

All planning and scheduling is done based on the Critical Path Method (CPM). The Contractor uses activity codes to define interfaces to be agreed upon between Project Manager and Contractor. The Contractor's programme shows the actual critical path clearly.

The schedule layout takes into account the accepted WBS, reflecting the manner the works are to be performed as per the Contractor's Method Statement and how activities are to be summarised, reported and monitored.

The programme includes:

- a) Major milestones, interface dates, access dates and key dates (for the new plant, existing plant and between Subcontractors)
- b) The duration of major activities and their relationship to one another.
- c) Identified long-lead material items.
- d) Responsibility assignments for accomplishing project objectives end product is a time scaled bar-chart programme developed using logic network.

This programme is separated by unit, by plant area, by phase, by WBS. The work within each plant area is broken down by engineering discipline, procurement, delivery, construction by the Contractor, start-up and commissioning. The programme is resource-loaded and it forms the basis for progress measurement, progress curves and histograms for each discipline within a plant area. This is used for Evaluations and for the accepted programme after contract award. This is saved and used as the original.

The Contractor's Forecasted Rate of Invoicing (FRI) also aligns with the resource loading on the programme.

1.6.4 Planning Programmes

The Contractor develops a contract programme which includes a bar chart conforming to the project master programme dates included and sufficient detail to indicate the Contractor's intention for executing the works. This programme covers major items relating to design, procurement, manufacture, delivery, erection, start-up and commissioning. The critical path is clearly shown.

Key milestones, access dates, interface dates and commissioning key dates are clearly identified in the contract programme, including access dates and release of terminal points that involve the Employer or Others.

The programme makes provision for site related preparation such as site establishment, safety induction and medical clearance of the entire Contractor's staff that will be working on site.

1.7 Invoicing and payment

There are no additional requirements to the invoicing and payment clauses in Section 5 of the core clauses.

At each assessment interval, the Contractor submits to the Project Manager a forecast rate of invoicing that includes all the expected payments by the Employer to the Contractor on a month-by-month basis.

The Contractor addresses the tax invoice to Eskom Holdings SOC Ltd and include on each invoice the following information:

- The registered name of the Contractor
- The VAT registration number of the Contractor
- The address of the Contractor
- The Employer's contract number
- The VAT registration number of the Employer
- The value of the invoice split into payments as per the activity schedule as indicated in the Price Lists.
- Any retention monies to be deducted from the invoice
- Any interest payable
- Escalation formula used where applicable

All invoices in PDF format are emailed straight from your system to an Eskom email address.

- Email addresses for invoice submission: Invoiceseskomlocal@eskom.co.za. The Project Manager is copied when submitting invoices.
- All queries and follow up on invoice payments are made by contacting the FSS Contact Centre:
Tel: 011 800 5060 or e-mail: fss@eskom.co.za
- For Foreign invoices, the Contractor is required to physically deliver hard copies of original documents to the Project Manager even though the Contractor has e-mailed those invoices.
- The Contractor ensures compliance with the tax Requirement for submitting invoices electronically.
- If there is Cost Price Adjustment (CPA) on your invoice, the Employer recommends that the Contractor issue a separate invoice for CPA so that if there are any issues on the CPA the rest of the invoice can be paid while resolving CPA issues.
- The base invoice number needs to be mentioned on the CPA invoice.
- Electronic invoicing does not guarantee payment but ensures visibility of all invoices and ensures that no invoices get lost. If the Goods Receipt (GR) is not done the invoice is parked and the system automatically sends an e-mail to the Project Manager to do the goods receipt. This is also tracked by the Employer through the parked invoice report.
- The Contractor can request a parked invoice report from the Finance Shared Services (FSS) Contact Centre which can then be followed up and corrected. The Contractor is allowed to forward the details of invoices corrected to the FSS Contact Centre.

1.8 Insurance provided by the *Purchaser*

There are no additional requirements to the risk and insurance clause in Section 8 of the core clauses and Z13 of the *Additional conditions of contract*.

1.9 Contract change management

There are no additional requirements to the compensation event clauses in Section 6 of the core clauses.

1.10 Provision of bonds and guarantees

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

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

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

There are no additional requirements to the compensation event clauses in Section **Error! Reference source not found.** of the core clauses.

2 Procurement

BBBEE and preferencing scheme

The company shall maintain or improve upon their current B-BBEE Contribution level for the duration of the contract. The supplier will be required to submit a new B-BBEE certificate within 3 months, should ownership of the company change during the life of the contract.

Local Content and Production

This tender concerns a service that has material and commodities that are part of the designated sector as per regulation 13 of the Preferential Procurement Regulations, 2017 and Local Production and Content applicable as pre-qualification criteria. Therefore, only locally produced goods or services with a stipulated minimum threshold for Local Production and Content will be considered. Therefore, SBD 6.2 and supporting annexures WILL form part of tender returnable.

- Bolt and Nuts -100%
- Pump and Motors -70%
- Valve and Actuators -70%

Skills Development (not weighted criteria)

Eskom intends to improve Skills Development by ensuring that technical support is directed towards enhancing supply capacity and capability within the industry or sector of operation. By doing this the capacity and competitiveness of the local supply base will be increased and the goals of shared growth, employment creation, poverty reduction and skills development will be achieved.

The gearbox manufacturer shall train at least 10 people (supplied by the purchaser) how to effectively refurbish the supplied gearboxes to ensure the highest quality is achieved. The training shall include classroom training that shall focus on the basic design of the gearbox, the importance of adequate lubrication and maintaining good oil cleanliness and what methods can be applied during gearbox repairs to ensure good oil cleanliness is achieved. It is also required that attention be given to the importance of ensuring gear misalignment is prevented and what actions could result in gear misalignment. Practical training shall also be given to demonstrate how these gearboxes are refurbished and shall include a step-by-step work instruction with photos.

National Industrialisation Participation Programme

NIPP is a programme that seeks to leverage economic benefits and support the development of South African industry by effectively utilizing the instrument of government procurement. The NIPP programme is mandatory on all government and parastatal purchases or lease contracts (goods and services) with an imported content equal to or exceeding US\$5 million.

The programme is targeted at the South African and foreign industries, enterprises, and suppliers of goods and services to government / parastatals, where the imported content of such goods and services equals to or exceeds US\$5 million. The first customer of NIPP is the South African industry that benefits through the NIPP business plans which, when implemented generate new or additional business activities through one or more of the following: investment, export opportunities, job creation, increased local sales, SMME and BEE promotion, R & D and technology transfer.

Companies with a NIPP obligation are required to sign this obligation agreement with The Department of Trade, Industry and Competition (the dtic) before the contract with Eskom Holdings SOC Ltd, as a purchasing entity, is signed. The obligation agreement governs the relationship between the dtic and supplier. It defines the NIPP obligation value/s, requirements to fulfil the NIPP obligation, performance milestones, performance monitoring processes and the NIPP credit allocation criteria

All tenders with an import content that is equal to or exceeds the threshold of US\$5 million, compels the winning bidder to negotiate and enter into a NIPP obligation agreement with the dtic before signing the contract with Eskom.”

Retention

- a. Eskom shall be permitted to retain 2.5% (two and half percent) of the invoices (excluding VAT) as security for the fulfilment by the tenderers of their SD&L obligations.

- b. Once Eskom has verified that tenderers have fulfilled their SD & L obligations, the 2.5% retained shall be approved for reimbursement by Eskom to suppliers within 90 (ninety) days of verification by Eskom.

Reporting

- a. The tenderers shall on a monthly /quarterly basis submit a report to Eskom in accordance with Data Collection Template on their compliance with the SD& L obligations described above.
- b. Eskom shall review the quarterly reports submitted by the tenderers within 60 (sixty) days of receipt of the reports and notify the tenderers in writing if their SD&L obligations have not been met.
- c. Upon notification by Eskom that the tenderers have not met their SD&L obligations, the tenderers shall be required to implement corrective measures to meet those SD&L obligations before the commencement of the following quarter, failing which retention clauses shall be invoked.
- d. Every contract shall be accompanied by the SD&L implementation schedule which must be completed by the tenderers and returned to SD&L representative for acceptance **before** contract award. This will be used as a reference document for monitoring, measuring, and reporting on the tenderer’s progress in delivering on their stated SD&L commitments.

2.1 Subcontracting

2.1.1 Limitations on subcontracting

No more than 15% of the contract may be subcontracted.

3 List of drawings

3.1 Drawings issued by the *Purchaser*

This is the list of drawings issued by the *Purchaser* at or before the Contract Date and which apply to this contract.

| Drawing number | Revision | Title |
|----------------|----------|-------|
| | | |
| | | |
| | | |
| | | |

4 Engineering and the Contractor's design

4.1 Employer's design

The water treatment plant produces demineralized water through ion exchange using resins. The demin water produced is used to produce electricity by converting water to steam in the boiler. To reduce boiler failure related to steam/water such as corrosion caused by low boiler water pH, Gaseous ammonia is diluted and dosed at the boiler feed system to create a base media inside the boiler tubes, turbine, and air-cooled condensers.

| | |
|-------|---------------------------|
| Plant | Resin Technical spec name |
| Demin | Anhydrous Ammonia |

4.1.1 Supply deliver and offloading of ammonia to Matimba power station.

1. The contractor shall ensure that the required ammonia must be within technical specifications as required.

| parameter | Anhydrous Ammonia (NH ₃) Technical specifications |
|------------------|---|
| Form | Liquefied Gas |
| Container | Bulk tanker |
| Colour | Clear/transparent |
| Purity(minimum) | 99.9% |
| matrix | >0.002% chloride, sulphate, and sodium |
| Density at 25 °C | 0.603 g/cm ³ |
| Water (maximum) | 0.05% |
| Oil (maximum) | 0.002% |

2. The contractor shall ensure that all deliveries made are accompanied by (COA) certificate of analysis of the chemical to be supplied.
3. The contractor shall ensure that all deliveries made are accompanied by recent or latest (SDS) safety data sheets with environmental information in a 16-point format required by the occupational health and safety act.
4. The contractor shall ensure that all deliveries made are provided with an offloading system with these technical parameters:

compressor: type: ammonia offloading; size: 333 l/min; pressure rating: 1.04-19.7 bar; power: 11.2 kw; model no: 291; inlet pressure:1.04bar; outlet pressure: 19.7bar; maximum outlet temp: 177^oc ; compression ratio: 7; bore cylinder: 7.62cm; stroke: 6.35cm; piston displacement (min): 170(l/min) @ 300rpm; 2 cylinders; piston displacement (max): 453(l/min) @ 825rpm; maximum liquid transfer: 333(l/min) bore of cylinder: 7.62cm.

5. The contractor shall provide batch numbers for all ammonia delivered to Eskom, for traceability during troubleshooting.
6. The contractor shall ensure that all bulk ammonia must be supplied in bulk tankers that meet hazardous bulk transportation regulation standards.
7. The contractor shall ensure that all deliveries made requires the driver/ off loader to wear prescribed PPE for offloading bulk ammonia.