

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS



NEC3 Supply Contract (SC3)

Between **ESKOM HOLDINGS SOC Ltd**
(Reg No. 2002/015527/30)

and **[Insert at award stage]**
(Reg No. _____)

for **SUPPLY AND DELIVERY OF HERBICIDES AND
WEED KILLER FOR SUBSTATION WEEDING –
GRANULES & LIQUID POISON TO MOU FOR A
PERIOD OF FIVE (5) YEARS**

Contents:	No of pages
Part C1 Agreements & Contract Data	2
Part C2 Pricing Data	35
Part C3 Scope of Work	39

CONTRACT No. [Insert at award stage]

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

PART C1: AGREEMENTS & CONTRACT DATA

Contents:	No of pages
C1.1 Form of Offer and Acceptance	3
[to be inserted from Returnable Documents at award stage]	
C1.2a Contract Data provided by the <i>Purchaser</i>	6
C1.2b Contract Data provided by the <i>Supplier</i>	28
[to be inserted from Returnable Documents at award stage]	
C1.3 Proforma Guarantees	29

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 AND DELIVERY OF HERBICIDES AND WEED KILLER FOR
SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A
PERIOD OF FIVE (5) YEARS**

The tenderer, identified in the Offer signature block, has

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

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

	The offered total of the Prices exclusive of VAT is	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 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

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*.

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) 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.

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

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 _____

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

C1.2a Contract Data provided by the Purchaser

Part one - Data provided by the *Purchaser*

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

Clause	Statement	Data
1	General	
	The <i>conditions of contract</i> are the core clauses and the clauses for Options	
		X1: Price adjustment for inflation X2: Changes in the law X3: Multiple currencies Z: Additional conditions of contract
10.1	The <i>Purchaser</i> is (name):	Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state owned company incorporated in terms of the company laws of the Republic of South Africa
	Address	Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg
	Tel No.	011 800 3000
10.1	The <i>Supply Manager</i> is (name):	
	Address	
	Tel	
	e-mail	
11.2(13)	The <i>goods</i> are	HERBICIDES AND WEED KILLER – GRANULES & LIQUID POISON
11.2(13)	The <i>services</i> are	SUPPLY AND DELIVERY TO MOU
11.2(14)	The following matters will be included in the Risk Register	1. Late deliveries 2. Damages to the product 3. Effectiveness of product
11.2(15)	The Goods Information is in	Part C2: Price list
11.2(15)	The Supply Requirements as part of the Goods Information is in	Part C3: Scope of Work and all documents and drawings to which it refers.
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	1 week

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

2 The Supplier’s main responsibilities

Data required by this section of the core clauses is provided by the *Supplier* in Part 2 and terms in italics used in this section are identified elsewhere in this Contract Data.

3 Time

30.1	The <i>starting date</i> is.	[•]
30.1	The <i>delivery date</i> of the <i>goods and services</i> is:	<i>goods and services</i> <i>delivery date</i> No later then the date specified on the purchase order
30.2	The <i>Supplier</i> does not bring the <i>goods</i> to the Delivery Place more than one week before the Delivery Date.	N/A
31.1	The <i>Supplier</i> is to submit a first programme for acceptance within	1 weeks of the Contract Date.
32.2	The <i>Supplier</i> submits revised programmes at intervals no longer than	N/A

4 Testing and defects

40 Tests and inspections

40.1	This clause only applies to tests and inspections required by the Goods Information or the applicable law.	
40.2	The <i>Supplier</i> and the <i>Purchaser</i> provide records, data sheets, materials, facilities and samples for tests and inspections as stated in the Goods Information.	
40.3	The <i>Supplier</i> and the <i>Supply Manager</i> each notifies the other of each of his tests and inspections before it starts and afterwards notifies the other of its results. The <i>Supplier</i> notifies the <i>Supply Manager</i> in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The <i>Supply Manager</i> may watch any test done by the <i>Supplier</i> .	
40.4	If a test or inspection shows that any work has a Defect, the <i>Supplier</i> corrects the Defect and the test or inspection is repeated.	
40.5	The <i>Supply Manager</i> does his tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful.	
40.6	The <i>Supply Manager</i> assesses the cost incurred by the <i>Purchaser</i> when a test or inspection is repeated after a Defect is found. The <i>Supplier</i> pays the amount assessed.	

41 Testing and inspection before Delivery

41.1	The <i>Supplier</i> does not bring to the Delivery Place those <i>goods</i> which the Goods Information states are to be tested or inspected before being brought to the Delivery Place until <ul style="list-style-type: none"> • the <i>Supply Manager</i> has notified the <i>Supplier</i> that they have passed the test or inspection which the <i>Supply Manager</i> is to do and • the <i>Supplier</i> has notified the <i>Supply Manager</i> that they have passed the test or inspection which the <i>Supplier</i> is to do. 	
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42 Searching for and notifying Defects

42.1	Until the <i>defects date</i> for the <i>goods and services</i> included in Delivery, the <i>Supply Manager</i> may	
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SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

instruct the *Supplier* to search for a Defect in the *goods* and *services* included in the Delivery. He gives his reason for the search with his instruction.

42.2 Until the *defects date* for the *goods* and *services* included in Delivery, the *Supply Manager* notifies the *Supplier* of each Defect as soon as he becomes aware of it and the *Supplier* notifies the *Supply Manager* of each Defect as soon as he becomes aware of it.

43 **Correcting Defects**

43.1 The *Supplier* corrects a Defect whether or not the *Supply Manager* notifies him of it.

43.2 After Delivery, the *Supplier* corrects a notified Defect before the end of the *defect correction period*. The *defect correction period* begins when the *Supply Manager* has arranged the access necessary for the *Supplier* to correct the Defect.

43.3 After Delivery, the *Purchaser* allows access to correct a notified Defect within the *defect access period* following notification. The *Supplier* is not liable for any damage to the *goods* or *services* resulting from a failure by the *Purchaser* to provide access to correct a notified Defect later than the end of the *defect access period* following notification.

44 **Accepting Defects**

44.1 The *Supplier* and the *Supply Manager* may propose to the other that the Goods Information should be changed so that a Defect does not have to be corrected.

44.2 If the *Supplier* and the *Supply Manager* are prepared to consider the change, the *Supplier* submits a quotation for reduced Prices or an earlier Delivery Date or both to the *Supply Manager* for acceptance. If the *Supply Manager* accepts the quotation, he gives an instruction to change the Goods Information, the Prices and the Delivery Date accordingly.

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

45	Uncorrected Defects	
45.1	If the <i>Supplier</i> is given access in order to correct a notified Defect but he has not corrected it within its <i>defect correction period</i> , the <i>Supply Manager</i> assesses the cost to the <i>Purchaser</i> of having the Defect corrected by other people and the <i>Supplier</i> pays this amount. The Goods Information is treated as having been changed to accept the Defect.	
46	If the <i>Supplier</i> is not given access in order to correct a notified Defect before the <i>defects date</i> , the <i>Supply Manager</i> assesses the cost to the <i>Supplier</i> of correcting the Defect at the time it was notified and the <i>Supplier</i> pays this amount. The Goods Information is treated as having been changed to accept the Defect.	N/A
46.1	The <i>defect correction period</i> is	1 week
	except that the <i>defect correction period</i> for	N/A
	and the <i>defect correction period</i> for	N/A
46.2	The <i>defects access period</i> is	N/A
	except that the <i>defect access period</i> for	N/A
	and the <i>defect access period</i> for	N/A
5	Payment	
50.1	The <i>assessment interval</i> is	As and when required
51.1	The <i>currency of this contract</i> is the	South African Rand
51.2	The period within which payments are made is	30 days after all deliveries has been completed along with the required documentation submitted and final correct invoice has been submitted.
51.4	The <i>interest rate</i> is	<p>the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption “Money Rates” in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6</p>

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.

6 Compensation events

- 60.1 The following are compensation events.
- (1) The *Supply Manager* gives an instruction changing the Goods Information except
 - a change made in order to accept a Defect or
 - a change to the Goods Information provided by the *Supplier* for his design which is made either at his request or to comply with other Goods Information provided by the *Purchaser*.
 - (2) The *Purchaser* does not allow access to and use of the parts of the *Purchaser's* premises necessary for the work included in this contract by the later of the date when the access becomes necessary and the date shown on the Accepted Programme.
 - (3) The *Purchaser* does not provide something which he is to provide by the date for providing it shown on the Accepted Programme.
 - (4) The *Supply Manager* gives an instruction to stop or not to start any work.
 - (5) The *Purchaser* or people acting on behalf of the *Purchaser* do not work within the conditions stated in the Goods Information.
 - (6) The *Supply Manager* does not reply to a communication from the *Supplier* within the period required by this contract.
 - (7) The *Supply Manager* changes a decision which he has previously communicated to the *Supplier*.
 - (8) The *Supply Manager* withholds an acceptance (other than acceptance of a quotation for an acceleration or for not correcting a Defect) for a reason not stated in this contract.
 - (9) The *Supply Manager* instructs the *Supplier* to search for a Defect and no Defect is found unless the search is needed only because the *Supplier* gave insufficient notice of doing work obstructing a required test or inspection.
 - (10) A test or inspection done by the *Supply Manager* causes unnecessary delay.
 - (11) The *Purchaser* does not provide records, data sheets, materials, facilities and samples for tests and inspections as stated in the Goods Information.
 - (12) An event which is a *Purchaser's* risk stated in this contract.
 - (13) The *Supply Manager* notifies a correction to an assumption which he has previously stated about a compensation event.
 - (14) A breach of contract by the *Purchaser* which is not one of the other compensation events in this contract.
 - (15) An event occurs during transport of the *goods* to the Delivery Place which
 - stops Delivery or
 - stops Delivery by the Delivery Date,
 and which
 - neither Party could prevent,
 - an experienced supplier would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it and
 is not one of the other compensation events stated in this contract.

61 Notifying compensation events

- 61.1 For compensation events which arise from the *Supply Manager* giving an instruction, changing an earlier decision or correcting an assumption, the *Supply Manager* notifies the *Supplier* of the compensation event at the time of that communication. He also instructs the *Supplier* to submit quotations, unless the event arises from a fault of the *Supplier* or quotations have already been submitted. The *Supplier* puts the instruction or changed decision into effect.
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- 61.2 The *Supply Manager* may instruct the *Supplier* to submit quotations for a proposed instruction or a proposed changed decision. The *Supplier* does not put a proposed instruction or a
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SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

proposed changed decision into effect.

61.3	<p>The <i>Supplier</i> notifies the <i>Supply Manager</i> of an event which has happened or which he expects to happen as a compensation event if</p> <ul style="list-style-type: none"> • the <i>Supplier</i> believes that the event is a compensation event and • the <i>Supply Manager</i> has not notified the event to the <i>Supplier</i>. <p>If the <i>Supplier</i> does not notify a compensation event within eight weeks of becoming aware of the event, he is not entitled to a change in the Prices or the Delivery Date unless the event arises from the <i>Supply Manager</i> giving an instruction, changing an earlier decision or correcting an assumption.</p>
61.4	<p>If the <i>Supply Manager</i> decides that an event notified by the <i>Supplier</i></p> <ul style="list-style-type: none"> • arises from a fault of the <i>Supplier</i>, • has not happened and is not expected to happen, • has no effect upon Defined Cost or Delivery or • is not one of the compensation events stated in this contract <p>he notifies the <i>Supplier</i> of his decision that the Prices and the Delivery Date are not to be changed. If the <i>Supply Manager</i> decides otherwise, he notifies the <i>Supplier</i> accordingly and instructs him to submit quotations.</p> <p>The <i>Supply Manager</i> notifies his decision to the <i>Supplier</i> and, if his decision is that the Prices and the Delivery Date are to be changed, instructs him to submit quotations before the end of either</p> <ul style="list-style-type: none"> • one week after the <i>Supplier's</i> notification or • a longer period to which the <i>Supplier</i> has agreed. <p>If the <i>Supply Manager</i> does not notify his decision, the <i>Supplier</i> may notify the <i>Supply Manager</i> of his failure. A failure by the <i>Supply Manager</i> to reply within two weeks of this notification is treated as acceptance by the <i>Supply Manager</i> that the event is a compensation event and an instruction to submit quotations.</p>
61.5	<p>If the <i>Supply Manager</i> decides that the <i>Supplier</i> did not give an early warning of the event which an experienced supplier could have given, he notifies this decision to the <i>Supplier</i> when he instructs him to submit quotations.</p>
61.6	<p>If the <i>Supply Manager</i> decides that the effects of a compensation event are too uncertain to be forecast reasonably, he states assumptions about the event in his instruction to the <i>Supplier</i> to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the <i>Supply Manager</i> notifies a correction.</p>
61.7	<p>A compensation event is not notified after the last <i>defects date</i>.</p>
62	Quotations for compensation events
62.1	<p>After discussing with the <i>Supplier</i> different ways of dealing with the compensation event which are practicable, the <i>Supply Manager</i> may instruct the <i>Supplier</i> to submit alternative quotations. The <i>Supplier</i> submits the required quotations to the <i>Supply Manager</i> and may submit quotations for other methods of dealing with the compensation event which he considers practicable.</p>
62.2	<p>Quotations for compensation events comprise proposed changes to the Prices and any delay to the Delivery Date assessed by the <i>Supplier</i>. The <i>Supplier</i> submits details of his assessment with each quotation. If the <i>Supplier's</i> programme for remaining work is altered by the compensation event, the <i>Supplier</i> includes the alterations to the Accepted Programme in his quotation.</p>
62.3	<p>The <i>Supplier</i> submits quotations within three weeks of being instructed to do so by the <i>Supply Manager</i>. The <i>Supply Manager</i> replies within two weeks of the submission. His reply is</p> <ul style="list-style-type: none"> • an instruction to submit a revised quotation, • an acceptance of a quotation, • a notification that a proposed instruction will not be given, or a proposed changed decision will

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

not be made or

a notification that he will be making his own assessment.

62.4 The *Supply Manager* instructs the *Supplier* to submit a revised quotation only after explaining his reasons for doing so to the *Supplier*. The *Supplier* submits the revised quotation within three weeks of being instructed to do so.

62.5 The *Supply Manager* extends the time allowed for

- the *Supplier* to submit quotations for a compensation event and
- the *Supply Manager* to reply to a quotation

if the *Supply Manager* and the *Supplier* agree to the extension before the submission or reply is due. The *Supply Manager* notifies the extension that has been agreed to the *Supplier*.

62.6 If the *Supply Manager* does not reply to a quotation within the time allowed, the *Supplier* may notify the *Supply Manager* of his failure. If the *Supplier* submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the *Supply Manager* does not reply to the notification within two weeks, and unless the quotation is for a proposed instruction or a proposed changed decision, the *Supplier's* notification is treated as acceptance of the quotation by the *Supply Manager*.

63 Assessing compensation events

63.1 If the *Supply Manager* and the *Supplier* agree, for a compensation event which only affects the quantities of *goods* and *services* shown in the Price Schedule, the change to the Prices is assessed by multiplying the changed quantities by the appropriate rates in the Price Schedule.

63.2 For other compensation events, the changes to the Prices are assessed as the effect of the compensation event upon

- the actual Defined Cost of the work already done,
- the forecast Defined Cost of the work not yet done and
- the resulting amount calculated by applying the *percentage for overheads and profit* to the Defined Cost of the work.

Effects on Defined Cost are assessed separately for

- people,
- equipment,
- plant and materials included in the *goods*,
- work subcontracted by the *Supplier* and
- transport.

The *Supplier* shows how each of these effects is built up in each quotation for a compensation event.

If the compensation event arose from the *Supply Manager* giving an instruction, changing an earlier decision or correcting an assumption, the date which divides the work already done from the work not yet done is the date of that communication. In all other cases, the date is the date of the notification of the compensation event.

The *percentage for overheads and profit* is applied to the assessed effect of the event on Defined Cost except that it is not applied to any tax charges for

- customs clearance and
- export and import.

The date when the *Supply Manager* instructed or should have instructed the *Supplier* to submit quotations divides the work already done from the work not yet done.

63.3 If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced except as stated in this contract.

63.4 A delay to the Delivery Date is assessed as the length of time that, due to the compensation event, planned Delivery is later than planned Delivery as shown on the Accepted Programme.

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

63.5	The rights of the <i>Purchaser</i> and the <i>Supplier</i> to changes to the Prices and the Delivery Date are their only rights in respect of a compensation event.
63.6	If the <i>Supply Manager</i> has notified the <i>Supplier</i> of his decision that the <i>Supplier</i> did not give an early warning of a compensation event which an experienced supplier could have given, the event is assessed as if the <i>Supplier</i> had given early warning.
63.7	Assessment of the effect of a compensation event includes risk allowances for cost and time for matters which have a significant chance of occurring and are at the <i>Supplier's</i> risk under this contract.
63.8	Assessments are based upon the assumptions that the <i>Supplier</i> reacts competently and promptly to the compensation event, that any Defined Cost and time due to the event are reasonably incurred and that the <i>Supplier's</i> Accepted Programme can be changed.
63.9	A compensation event which is an instruction to change the Goods Information in order to resolve an ambiguity or inconsistency is assessed as if the Prices and the Delivery Date were for the interpretation most favourable to the Party which did not provide the Goods Information.
63.10	If the effect of a compensation event is to reduce the total Defined Cost and the event is <ul style="list-style-type: none"> • a change to the Goods Information or • a correction of an assumption stated by the <i>Supply Manager</i> for assessing an earlier compensation event, the Prices are reduced.
63.11	Assessments for changed Prices for compensation events are in the form of changes to the Price Schedule.
63.12	If the <i>Supply Manager</i> and the <i>Supplier</i> agree, rates and lump sums may be used to assess a compensation event instead of Defined Cost.
64	The Supply Manager's assessments
64.1	The <i>Supply Manager</i> assesses a compensation event <ul style="list-style-type: none"> • if the <i>Supplier</i> has not submitted a quotation and details of his assessment within the time allowed, • if the <i>Supply Manager</i> decides that the <i>Supplier</i> has not assessed the compensation event correctly in a quotation and he does not instruct the <i>Supplier</i> to submit a revised quotation, • if, when the <i>Supplier</i> submits quotations for a compensation event, he has not submitted a programme or alterations to a programme which this contract requires him to submit or if, when the <i>Supplier</i> submits quotations for a compensation event, the <i>Supply Manager</i> has not accepted the <i>Supplier's</i> latest programme for one of the reasons stated in this contract.
64.2	The <i>Supply Manager</i> assesses a compensation event using his own assessment of the programme for the remaining work if <ul style="list-style-type: none"> • there is no Accepted Programme or the <i>Supplier</i> has not submitted a programme or alterations to a programme for acceptance as required by this contract.
64.3	The <i>Supply Manager</i> notifies the <i>Supplier</i> of his assessment of a compensation event and gives him details of it within the period allowed for the <i>Supplier's</i> submission of his quotation for the same event. This period starts when the need for the <i>Supply Manager's</i> assessment becomes apparent.
64.4	If the <i>Supply Manager</i> does not assess a compensation event within the time allowed, the <i>Supplier</i> may notify the <i>Supply Manager</i> of his failure. If the <i>Supplier</i> submitted more than one quotation for the compensation event, he states in his notification which quotation he proposes is to be accepted. If the <i>Supply Manager</i> does not reply within two weeks of this notification the notification is treated as acceptance of the <i>Supplier's</i> quotation by the <i>Supply Manager</i> .

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

65 Implementing compensation events

- 65.1 A compensation event is implemented when
 - the *Supply Manager* notifies his acceptance of the *Supplier's* quotation,
 - the *Supply Manager* notifies the *Supplier* of his own assessment or a *Supplier's* quotation is treated as having been accepted by the *Supply Manager*.

- 65.2 The assessment of a compensation event is not revised if a forecast upon which it is based is shown by later recorded information to have been wrong.

- 65.3 The changes to the Prices and the Delivery Date are included in the notification implementing a compensation event.

7 Title There is no reference to Contract Data in this section of the core clauses and terms in italics used in this section are identified elsewhere in this Contract Data.

8 Risks, liabilities, indemnities and insurance

- | | | |
|------|---|---|
| 80.1 | These are additional <i>Purchaser's</i> risks | <ol style="list-style-type: none"> 1. Late deliveries 2. Damages to the product 3. Effectiveness of product |
| 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 | <p>(1) for the <i>Purchaser's</i> existing and surrounding property in the care, custody and control of the <i>Supplier</i> the amount of the deductible (first amount payable) relevant to the event</p> <p>And</p> <p>(2) for all other existing <i>Purchaser's</i> property the applicable deductible as at contract date</p> |
| 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: | R[•] |
| 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 | R[•] |
| 88.5 | The <i>end of liability date</i> is | [•] years after Delivery of the whole of the goods and services. |

9 Termination and dispute resolution

90 Termination

90.1 If either Party wishes to terminate the *Supplier's* obligation to Provide the Goods and Services he notifies the *Supply Manager* and the other Party giving details of his reason for terminating. The *Supply Manager* issues a termination certificate to both Parties promptly if the reason complies with this contract.

90.2 The *Supplier* may terminate only for a reason identified in the Termination Table. The *Purchaser* may terminate for any reason. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

TERMINATION TABLE

Terminating Party	Reason	Procedure	Amount due
The Purchaser	A reason other than R1-R21	P1 and P2	A1 and A2
	R1-R15 or R18	P1, P2 and P3	A1 and A3
	R17 or R20	P1 and P3	A1 and A2
	R21	P1 and P4	A1 and A2
	R1-R10, R16, R17, R19 or R20	P1 and P4	A1 and A2

90.3 The procedures for termination are implemented immediately after the *Supply Manager* has issued a termination certificate.

90.4 Within thirteen weeks of termination, the *Supply Manager* certifies a final payment to or from the *Supplier* which is the *Supply Manager's* assessment of the amount due on termination less the total of previous payments. Payment is made within three weeks of the *Supply Manager's* certificate.

90.5 After a termination certificate has been issued, the *Supplier* does no further work necessary to Provide the Goods and Services.

91 Reasons for termination

91.1 Either Party may terminate if the other Party has done one of the following or its equivalent.

- If the other Party is an individual and has
 - presented his petition for bankruptcy (R1),
 - had a bankruptcy order made against him (R2),
 - had a receiver appointed over his assets (R3) or
 - made an arrangement with his creditors (R4).
- If the other Party is a company or partnership and has
 - had a winding-up order made against it (R5),
 - had a provisional liquidator appointed to it (R6),
 - passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
 - had an administration order made against it (R8),
 - had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or

made an arrangement with its creditors (R10).

91.2 The *Purchaser* may terminate if the *Supply Manager* has notified that the *Supplier* has defaulted in one of the following ways and not put the default right within four weeks of the notification.

- Substantially failed to comply with his obligations (R11).
- Not provided a bond or guarantee which this contract requires (R12).

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

Appointed a Subcontractor for substantial work before the *Supply Manager* has accepted the Subcontractor (R13).

-
- 91.3 The *Purchaser* may terminate if the *Supply Manager* has notified that the *Supplier* has defaulted in one of the following ways and not stopped defaulting within four weeks of the notification.
- Substantially hindered the *Purchaser* or Others (R14).
- Substantially broken a health or safety regulation (R15).
-
- 91.4 The *Supplier* may terminate if the *Purchaser* has not paid an amount due under the contract within eleven weeks of the date that it should have been paid (R16).
-
- 91.5 Either Party may terminate if the Parties have been released under the law from further performance of the whole of this contract (R17).
-
- 91.6 If the *Supply Manager* has instructed the *Supplier* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start has not been given within thirteen weeks,
- the *Purchaser* may terminate if the instruction was due to a default by the *Supplier* (R18),
 - the *Supplier* may terminate if the instruction was due to a default by the *Purchaser* (R19) and either Party may terminate if the instruction was due to any other reason (R20).
-
- 91.7 The *Purchaser* may terminate if an event occurs which
- stops Delivery or
 - stops Delivery by the Delivery Date and is forecast to delay Delivery by more than 13 weeks, and which
 - neither Party could prevent and
- an experienced supplier would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable for him to have allowed for it (R21).

92 Procedures on termination

-
- 92.1 On termination, the *Purchaser* may obtain the remaining *goods* and *services* from other suppliers (P1).
-
- 92.2 The procedure on termination also includes one or more of the following as set out in the Termination Table.
- P2 The *Purchaser* may instruct the *Supplier* to leave the *Purchaser's* premises, remove any of his equipment, plant and materials and assign the benefit of any subcontract or other contract related to performance of this contract to the *Purchaser*.
- P3 The *Purchaser* may use any equipment to which the *Supplier* has title, except equipment fixed in the *Supplier's* premises, to complete the supply of the *goods* and *services*. The *Supplier* promptly removes the equipment when the *Supply Manager* notifies him that the *Purchaser* no longer requires it to complete the supply of the *goods* and *services*.
- P4 The *Supplier* leaves the Delivery Place and removes any of his equipment which is on the *Purchaser's* premises.

93 Payment on termination

-
- 93.1 The amount due on termination includes (A1)
- an amount due assessed as for normal payments,
 - the Defined Cost of *goods* and *services* not included in normal payments and reasonably incurred in expectation of completing the whole of the *goods* and *services*, less the cost of *goods* and *services* which can be resold or used elsewhere,
 - any amounts retained by the *Purchaser* and
- a deduction of any un-repaid balance of an advanced payment.
-
- 93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table.

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

A2 The forecast Defined Cost of removing the equipment.

A3 A deduction of the forecast of the additional cost to the *Purchaser* of providing the whole of the *goods* and *services*.

94 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 <i>Adjudicator nominating body</i> is:	the Chairman of ICE-SA, a Division of the South African Institution of Civil Engineering, or its successor body (See www.ice-sa.org.za)
94.4(2)	The <i>tribunal</i> is:	arbitration
94.4(5)	The <i>arbitration procedure</i> is	the latest edition of Rules for the Conduct of Arbitrations published by The Association of Arbitrators (Southern Africa) or its successor body.
94.4(5)	The place where arbitration is to be held is	[•] South Africa
	The person or organisation who will choose an arbitrator	
	- if the Parties cannot agree a choice or	the Chairman for the time being or his nominee
	- if the arbitration procedure does not state who selects an arbitrator, is	of the Association of Arbitrators (Southern Africa) or its successor body.

10 Data for Option clauses

X1	Price adjustment for inflation													
X1.1	The <i>base date</i> for indices is	Unregulated rates will be fixed and firm for the first 12 months of the contract. At the anniversary date of the contract the prices will be adjusted in accordance with the published SEIFSA (CPI) INDICES.												
	The proportions used to calculate the Price Adjustment Factor are:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;">proportion</td> <td style="width: 33%; text-align: center;">linked to index for</td> <td style="width: 33%; text-align: center;">Index prepared by</td> </tr> <tr> <td style="text-align: center;">0.</td> <td style="text-align: center;">[•]</td> <td style="text-align: center;">[•]</td> </tr> <tr> <td style="text-align: center;">[•]</td> <td colspan="2" style="text-align: center;">non-adjustable</td> </tr> <tr> <td style="text-align: center;">1.00</td> <td colspan="2"></td> </tr> </table>	proportion	linked to index for	Index prepared by	0.	[•]	[•]	[•]	non-adjustable		1.00		
proportion	linked to index for	Index prepared by												
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[•]	non-adjustable													
1.00														

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

X2	Changes in the law		
X2.1	A change in the law of	[•] is a compensation event if it occurs after the Contract Date	
X3	Multiple currencies		
X3.1	The <i>Purchaser</i> will pay for these items in the currencies stated	Items	Other currency
		[•]	Total maximum payment in the currency
X3.1	The <i>exchange rates</i> are those published in	[•] on [•] (date)	
		<p>The items will be paid in the other currency - to a foreign Bank account nominated by the <i>Supplier</i> - to a valid SARB approved CFC account in South Africa - in accordance with an alternative payment method agreed with the <i>Purchaser</i> before the Contract Date.</p> <p>(select one of the three methods as agreed with the successful tenderer prior to contract award and delete the others and this note)</p>	
X4	Parent company guarantee	There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.	
X7	Delay damages		
X7.1	Delay damages for Delivery are	Delivery of	amount per day
X12	Partnering		
X12.1(1)	The <i>Client</i> is (Name):	[•]	
	Address	[•]	
	Contact details	[•]	
	Telephone:	[•]	
	Fax	[•]	
	e-mail	[•]	
X12.1(4)	The Partnering Information is in	C3 Scope of Work	
X12.2(1)	The <i>Client's objective</i> is:	[•]	
X13	Performance bond		
X13.1	The amount of the performance bond is	N/A	
X14	Advanced payment to the <i>Supplier</i>		
X14.1	The amount of the advanced payment is	N/A	

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

X14.2	An advanced payment bond	Is not required.	
X14.3	The <i>Supplier</i> repays the instalments in assessments starting not less than	N/A	
X14.3	The instalments are	N/A	
X17	Low performance damages		
X17.1	The amounts for low performance damages are:	amount R [●]	performance level for [●]
X20	Key Performance Indicators (not used when Option X12 applies)		
X20.1	The <i>incentive schedule</i> for Key Performance Indicators is in	N/A	
X20.2	A report of performance against each Key Performance Indicator is provided at intervals of	As and when required	
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*

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

obligation to Provide the Goods and Services.

- Z3.4 Failure by the *Supplier* to notify the *Purchaser* of a change in its B-BBEE status may constitute a reason for termination. If the *Purchaser* terminates in terms of this clause, the procedures on termination are P1, P2 and P3 as stated in clause 92, and the amount due is A1 and A3 as stated in clause 93.

Z4 Confidentiality

- Z4.1 The *Supplier* does not disclose or make any information arising from or in connection with this contract available to Others. This undertaking does not, however, apply to information which at the time of disclosure or thereafter, without default on the part of the *Supplier*, enters the public domain or to information which was already in the possession of the *Supplier* at the time of disclosure (evidenced by written records in existence at that time). Should the *Supplier* disclose information to Others in terms of clause 23.1, the *Supplier* ensures that the provisions of this clause are complied with by the recipient.
- Z4.2 If the *Supplier* is uncertain about whether any such information is confidential, it is to be regarded as such until notified otherwise by the *Supply Manager*.
- Z4.3 In the event that the *Supplier* is, at any time, required by law to disclose any such information which is required to be kept confidential, the *Supplier*, to the extent permitted by law prior to disclosure, notifies the *Purchaser* so that an appropriate protection order and/or any other action can be taken if possible, prior to any disclosure. In the event that such protective order is not, or cannot, be obtained, then the *Supplier* may disclose that portion of the information which it is required to be disclosed by law and uses reasonable efforts to obtain assurances that confidential treatment will be afforded to the information so disclosed.
- Z4.4 The taking of images (whether photographs, video footage or otherwise) of the *goods* or any portion thereof, in the course of Providing the Goods and Services and after Delivery, requires the prior written consent of the *Supply Manager*. All rights in and to all such images vests exclusively in the *Purchaser*.
- Z4.5 The *Supplier* ensures that all his subcontractors abide by the undertakings in this clause.

Z5 Waiver and estoppel: Add to core clause 12.3:

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

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

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

Without limitation the *Supplier*:

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

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

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

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

- Z7.1 Within one week of receiving a payment certificate from the *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice in accordance with the *Purchaser's* procedures stated in the Goods Information, showing the amount due for payment equal to that stated in the payment certificate.
- Z7.2 If the *Supplier* does not provide a tax invoice in the form and by the time required by this contract, the time by when the *Purchaser* is to make a payment is extended by a period equal in time to the delayed submission of the correct tax invoice. Interest due by the *Purchaser* in terms of core clause 51.2 is then calculated from the delayed date by when payment is to be made.
- Z7.3 The *Supplier* (if registered in South Africa in terms of the companies Act) is required to comply with the requirements of the Value Added Tax Act, no 89 of 1991 (as amended) and to include the *Purchaser's* VAT number 4740101508 on each invoice he submits for payment.

Z8 Notifying compensation events

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

Z9 Purchaser's limitation of liability

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

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

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

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

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

Z12 Ethics

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

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

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

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.

Z13Insurance

Z 13.1 Replace core clause 84 with the following:

- Insurance cover 84**
- 84.1** When requested by a Party, the other Party provides certificates from his insurer or broker stating that the insurances required by this contract are in force.
 - 84.2** The *Supplier* provides the insurances stated in the Insurance Table A for events which are at the *Supplier's* risk from the *starting date* until the last *defects date* or a termination certificate has been issued.

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

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	<u>Loss of or damage to property</u> <u><i>Purchaser's</i> property</u> 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. <u>Other property</u> The replacement cost <u>Death of or bodily injury</u> The amount required by the applicable law.
Liability for death of or bodily injury to employees of the <i>Supplier</i> arising out of and in the course of their employment in connection with this contract	The amount required by the applicable law

Z 13.2 Replace core clause 87 with the following:

Insurance by the *Purchaser*

87

87.1 The *Purchaser* provides the insurances stated in the Insurance Table B

INSURANCE TABLE B

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

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

Z14 Nuclear Liability

- Z14.1 The *Purchaser* is the operator of the Koeberg Nuclear Power Station (KNPS), a nuclear installation, as designated by the National Nuclear Regulator of the Republic of South Africa, and is the holder of a nuclear licence in respect of the KNPS.
- Z14.2 The *Purchaser* is solely responsible for and indemnifies the *Supplier* or any other person against any and all liabilities which the *Supplier* or any person may incur arising out of or resulting from nuclear damage, as defined in Act 47 of 1999, save to the extent that any liabilities are incurred due to the unlawful intent of the *Supplier* or any other person or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.
- Z14.3 Subject to clause Z14.4 below, the *Purchaser* waives all rights of recourse, arising from the aforesaid, save to the extent that any claims arise or liability is incurred due or attributable to the unlawful intent of the *Supplier* or any other person, or the presence of the *Supplier* or that person or any property of the *Supplier* or such person at or in the KNPS or on the KNPS site, without the permission of the *Purchaser* or of a person acting on behalf of the *Purchaser*.
- Z14.4 The *Purchaser* does not waive its rights provided for in section 30 (7) of Act 47 of 1999, or any replacement section dealing with the same subject matter.
- Z14.5 The protection afforded by the provisions hereof shall be in effect until the KNPS is decommissioned.

Z15 Asbestos

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

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

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

SANAS means the South African National Accreditation System.

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

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

Annexure A: Supply Requirements

[Notes: The example given in the NEC3 Supply Contract Guidance Notes pages 15 to 20 inclusive is based on Incoterms 2000. However users will probably wish to use Incoterms 2010 which the details below are based on. Users may need to adjust the information to comply with actual requirements. First decide whether Incoterms will be used or not, then delete the arrangement below which does not apply and delete these notes]

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

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

[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]

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

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

Group	Category	Term	Delivery Place
E	departure	EXW	
F	main carriage unpaid	FCA, FAS, FOB	
C	main carriage paid	CFR, CIF, CPT, CIP	
D	arrival	DAT, DAP, DDP	

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

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

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

A	The <i>Supplier's</i> obligations	B	The <i>Purchaser's</i> obligations
A1	Provision of goods in conformity with contract	B1	Payment of the price
A2	Licences, authorisations and formalities	B2	Licences, authorisations and formalities
A3	Contracts of carriage and insurance	B3	Contracts of carriage and insurance
A4	Delivery	B4	Taking delivery
A5	Transfer of risks	B5	Transfer of risks
A6	Division of costs	B6	Division of costs
A7	Notice to the buyer	B7	Notice to the seller
A8	Proof of delivery, transport document or equivalent electronic message	B8	Proof of delivery, transport document or equivalent electronic message
A9	Checking - packing - marking	B9	Inspection of goods
A10	Other obligations	B10	Other obligations

[Should there be a need to amplify any of the published obligations listed above for the chosen INCOTERM, add them here.]

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

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

The Supply Requirements for this contract are as follows:

[Use these when INCOTERMS do not apply].

1. The requirements for the supply are	SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS	
2. The requirements for transport are	SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS.	
3. The delivery place is	Various Eskom business units in Mpumalanga and Limpopo Operating Unit	
4. Actions of the Parties during supply	Action	Party which does it
	Giving notice of Delivery	Supplier
	Checking packing and marking before dispatch	Supplier
	Contracting for transport	Supplier
	Pay costs of transport	Supplier
	Arrange access to delivery place	Eskom
	Loading the goods	Supplier
	Unloading the goods	Eskom and Supplier
For international procurement	Undertake export requirements	N/A
	Undertake import requirements	N/A
5. Information to be provided by the Supplier	Title of document	
	Copy of invoice for the goods	
	Delivery Note	
	MSDS	
For international procurement	Licences, authorisations and other formalities associated with export of the goods	
	Air Waybill or Bill of Lading with associated landing, delivery and forwarding order	
	The Bill of Entry endorsed by the importation authority	
	Customs work sheets, showing tax, duties and surcharges which the law of the country into which the goods are being imported requires the importer to pay	
	Invoice from the importation clearing agent showing airline fees, landing charges, wharfage and dock dues as applicable	
	Specify other import documents required by authorised officials.	
1. The requirements for the supply are	SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS	

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

C1.3 Proforma Guarantees

Pro formas for Bonds & Guarantees

For use with the NEC3 Supply Contract (SC3)

[Note to contract compiler:

Once it has been decided which securities are required for this contract delete from this file the ones not required, revise the notes below accordingly and delete this note.]

The conditions of contract stated in the Contract Data Part 1 may include the following Options:

- Option X4: Parent company guarantee
- Option X13: Performance bond
- Option X14 Advanced payment to the *Supplier*

These Options require a bond or guarantee “in the form set out in the Goods Information”.

Pro forma documents for these bonds and guarantees are provided here for convenience but are to be treated as part of the Goods Information.

The organisation providing the bond / guarantee does so by copying the pro forma document onto it’s letterhead without any change to the text or format and completing the required details. The completed document is then given to the *Purchaser* within the time stated in the contract.

Pro forma Parent Company Guarantee (for use with Option X4)

(to be reproduced exactly as shown below on the letterhead of the Supplier’s Parent Company)

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

Date:

Dear Sirs,

Parent Company Guarantee for Contract No

With reference to the above numbered contract made or to be made between

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

(the Purchaser) and

[Insert registered name and address of the *Supplier*]

(the Supplier), for

[Insert details of the goods and services from the Contract Data]

(the goods and services).

I/We the undersigned

on behalf of the *Supplier’s*
parent company (name)

.....
.....

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

of physical address _____

and duly authorised thereto do hereby unconditionally guarantee to the *Purchaser* that the *Supplier* shall Provide the Goods and Services in accordance with the above numbered Contract.

1. If for any reason the *Supplier* fails to Provide the Goods and Services, we hereby agree to cause to Provide the Goods and Services at no additional cost to the *Purchaser*.
2. If we fail to comply with the terms of this Deed of Guarantee, the *Purchaser* may itself procure such performance (whether or not the Agreement be formally determined). The *Purchaser* is to notify us and we shall indemnify the *Purchaser* for any additional cost or expense it incurs.
3. Our liability shall be as primary obligor and not merely as surety and shall not be impaired or discharged by reason of any arrangement or change in relationship made between the *Supplier* and the *Purchaser* and/or between us and *Supplier*; nor any alteration in the obligations undertaken by the *Supplier* or in the terms of the Agreement; nor any indulgence, failure, delay by you as to any matter; nor any dissolution or liquidation or such other analogous event of the *Supplier*.
4. The *Purchaser* shall not be obliged before taking steps to enforce the terms of this Deed of Guarantee to obtain judgement against the *Supplier* in any court or other tribunal, to make or file any claim in liquidation (or analogous proceedings) or to seek any remedy or proceed first against the *Supplier*.
5. This Deed of Guarantee shall be governed by and construed in accordance with the laws of the Republic of South Africa and we hereby submit to the non-exclusive jurisdiction of the High Court of South Africa.

Signed at _____ on this _____ day of _____ 20__

Signature(s)	_____
Name(s) (printed)	_____
Position in parent company	_____
Signature of Witness(s)	_____
Name(s) (printed)	_____

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

Pro forma Performance Bond – Demand Guarantee (for use with Option X13)

(to be reproduced exactly as shown below on the letterhead of the Bank providing the Bond / Guarantee)

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

Bank reference No.

Date:

Dear Sirs,

Performance Bond – Demand Guarantee for [insert name of *Supplier*] required in terms of contract [insert *Supplier's* contract reference number or title]

1. In this Guarantee the following words and expressions shall have the following meanings:-

1.1	“Bank” means	[Insert name of Bank], [●] Branch, Registration No. [●]
1.2	“Bank’s Address” means	[Insert physical address of Bank]
1.3	“Contract” means	the written agreement relating to providing the <i>goods</i> and <i>services</i> , entered into between the <i>Purchaser</i> and the <i>Supplier</i> , on or about the [●] day of [●] 200[●] (Contract Reference No. [●]) as amended, varied, restated, novated or substituted from time to time;
1.4	“ <i>Supplier</i> ” means	[●] a company registered in accordance with the laws of [●] under Registration No [●].
1.5	“ <i>Purchaser</i> ” means	Eskom Holdings SOC Ltd a company registered in accordance with the laws of the Republic of South Africa under Registration Number [●]
1.6	“Expiry Date” means	the earlier of <ul style="list-style-type: none"> • the date that the Bank receives a notice from the <i>Purchaser</i> stating that all amounts due from the <i>Supplier</i> as certified in terms of the contract have been received by the <i>Purchaser</i> and that the <i>Supplier</i> has fulfilled all his obligations under the Contract, or • the date that the Bank issues a replacement Bond for such lesser or higher amount as may be required by the <i>Purchaser</i>.
1.7	“Guaranteed Sum” means	the sum of R[●], ([●] Rand)
1.8	“ <i>goods</i> and <i>services</i> ” means	[insert details from Contract Data part 1]

2. At the instance of the *Supplier*, we the undersigned _____ and _____, in our respective capacities as _____ and _____ of the Bank, and duly authorized thereto, confirm that we hold the Guaranteed Sum at the disposal of the *Purchaser* as security for the proper performance by the *Supplier* of all of its obligations in terms of and arising from the Contract and hereby undertake to pay to the *Purchaser*, on written demand from the *Purchaser* received prior to the Expiry Date, any sum or sums not exceeding in total the Guaranteed Sum.

3. A demand for payment under this guarantee shall be made in writing at the Bank’s address and shall:
- be signed on behalf of the *Purchaser* by a Group Executive, Divisional Executive, Senior General Manager, General Manager or its delegate;
 - state the amount claimed (“the Demand Amount”);

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

- state that the Demand Amount is payable to the *Purchaser* in the circumstances contemplated in the Contract.
4. Notwithstanding the reference herein to the Contract the liability of the Bank in terms hereof is as principal and not as surety and the Bank’s obligation/s to make payment:
- is and shall be absolute provided demand is made in terms of this bond in all circumstances; and
 - is not, and shall not be construed to be, accessory or collateral on any basis whatsoever.
5. The Bank’s obligations in terms of this Guarantee:
- shall be restricted to the payment of money only and shall be limited to the maximum of the Guaranteed Sum; and
 - shall not be discharged and compliance with any demand for payment received by the Bank in terms hereof shall not be delayed, by the fact that a dispute may exist between the *Purchaser* and the *Supplier*.
6. The *Purchaser* shall be entitled to arrange its affairs with the *Supplier* in any manner which it sees fit, without advising us and without affecting our liability under this Guarantee. This includes, without limitation, any extensions, indulgences, release or compromise granted to the *Supplier* or any variation under or to the Contract.
7. Should the *Purchaser* cede its rights against the *Supplier* to a third party where such cession is permitted under the Contract, then the *Purchaser* shall be entitled to cede to such third party the rights of the *Purchaser* under this Guarantee on written notification to the Bank of such cession.
8. This Guarantee:
- shall expire on the Expiry Date until which time it is irrevocable;
 - is, save as provided for in 7 above, personal to the *Purchaser* and is neither negotiable nor transferable;
 - shall be returned to the Bank upon the earlier of payment of the full Guaranteed Sum or expiry hereof;
 - shall be regarded as a liquid document for the purpose of obtaining a court order; and
 - shall be governed by and construed in accordance with the law of the Republic of South Africa and shall be subject to the jurisdiction of the Courts of the Republic of South Africa.
 - will be invalid and unenforceable if any claim which arises or demand for payment is received after the Expiry Date.
9. The Bank chooses domicilium citandi et executandi for all purposes in connection with this Guarantee at the Bank’s Address.

Signed at _____ on this _____ day of _____ 20__

For and on behalf of the Bank

Bank Signatories(s)

Name(s) (printed)

Witness(s)

Bank’s seal or stamp

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

Pro forma Advanced Payment Bond (for use with Option X14)

(to be reproduced exactly as shown below on the letterhead of the Bank providing the Bond)

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

Bank ref no. [●]

Date: [●]

Dear Sirs,

Advanced Payment Bond for Contract No. [●]

With reference to the above numbered contract made or to be made between

Eskom Holdings SOC Ltd (the *Purchaser*) and

{Insert registered name and address of the *Supplier*} (the *Supplier*), for

{Insert details of the *goods and services* from the Contract Data} (the *goods and services*).

I/We the undersigned [●]
on behalf of the Surety [●]
of physical address [●]

and duly authorised thereto do hereby bind ourselves as Surety and co-principal debtors in solidum for the due and proper repayment by the *Supplier* to the *Purchaser* of the advanced payment made by the *Purchaser* to the *Supplier* under the Contract, and for all losses and expenses that may be suffered or incurred by the *Purchaser* as a result of non-payment by the *Supplier*, subject to the following conditions

1. The terms *Purchaser*, *Supplier*, and the *goods and services* have the meaning as assigned to them by the *conditions of contract* listed in the Contract Data for the aforesaid Contract.
2. We renounce all benefits from the legal exceptions "Benefit of Excussion and Division", "No value received" "Revision of Accounts", "Cession of Action" and any other exceptions which might or could be pleaded against the validity of this bond, with the meaning and effect of which exceptions we declare ourselves to be fully acquainted.
3. The *Purchaser* has the absolute right to arrange his affairs with the *Supplier* in any manner which the *Purchaser* deems fit and without being advised thereof the Surety shall not have the right to claim his release on account of any conduct alleged to be prejudicial to the Surety. Without derogating from the foregoing compromise, extension of the supply period, indulgence, release or variation of the *Supplier's* obligation shall not affect the validity of this Advance Payment bond.
4. This bond expires on the date when the Surety receives a notice from the *Supply Manager* stating that the advanced payment has been repaid to the *Purchaser* in terms of the Contract, or liquidated by deductions from other payments due to the *Supplier*.
5. The amount of the bond shall be payable to the *Purchaser* upon the *Purchaser's* demand and no later than 7 days following the submission to the Surety of a certificate signed by the *Supply Manager* stating the amount of the *Purchaser's* losses, damages and expenses incurred as a result of the non-performance aforesaid. The signed certificate shall be deemed to be conclusive proof of the extent of the *Purchaser's* loss, damage and expense.

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

- 6. Our total liability hereunder shall not exceed the sum of (R) which is equal to the advance payment.
- 7. This Advanced Payment Bond is neither negotiable nor transferable and is governed by the laws of the Republic of South Africa.

Signed at _____ on this _____ day of _____ 200_

Signature(s)

Name(s) (printed)

Position in Surety company

Signature of Witness(s)

Name(s) (printed)

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

PART C2: PRICING DATA

NEC3 Supply Contract

Document reference	Title	No of pages
C2.1	Pricing assumptions	36
C2.2	The <i>price schedule</i>	38

C2.1 Pricing assumptions

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	<p>(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.</p> <p>(12) The Price Schedule is the <i>price schedule</i> unless later changed in accordance with this contract.</p>
Assessing the amount due	50.2	<p>The amount due is</p> <ul style="list-style-type: none"> • the Price for each lump sum item in the Price Schedule which the <i>Supplier</i> has completed, • where a quantity is stated for an item in the Price Schedule, an amount calculated by multiplying the quantity which the <i>Supplier</i> has completed by the rate, • plus other amounts to be paid to the <i>Supplier</i>, • less amounts to be paid by or retained from the <i>Supplier</i>. <p>Any tax which the law requires the <i>Purchaser</i> to pay to the <i>Supplier</i> is included in the amount due.</p>

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.

Function of the Price Schedule

Clause 53.1 states: "Information in the Price Schedule is not Goods Information". This confirms that instructions to do work or how it is to be done are not included in the Price Schedule but in the Goods Information. This is further confirmed by Clause 20.1 which states, "The *Supplier* Provides the Goods and Services in accordance with the Goods Information". Hence the *Supplier* does **not** Provide the Goods and Services in accordance with the Price Schedule. The Price Schedule is only a pricing document.

Preparing the *price schedule*

Items in the *price schedule* may have been inserted by the *Purchaser* and the tendering supplier should insert any additional items which he considers necessary. Whichever party provides the items in the *price schedule* the total of the Prices is assumed to be fully inclusive of everything necessary to Provide the Goods and Services as described at the time of entering into this contract.

It will be assumed that the tendering supplier has

- Read Pages 8, 11, 12 and Appendix 5 of the SC3 Guidance Notes before preparing the *price schedule*;
- Included in his Prices and rates for correction of Defects (core clause 43.1) as there is no compensation event for this unless the Defect is due to a *Supplier's* risk;
- Spread the cost of doing work he chooses not to list as separate items in the *price schedule* across other Prices and rates in order to fulfil the obligation to Provide the Goods and Services for the tendered total of the Prices;
- Understood that there is no adjustment to lump sum prices in the *price schedule* if the amount, or quantity, of work within that lump sum item later turns out to be different to that which the *Supplier* estimated at time of tender. The only basis for a change to the Prices is as a result of a compensation event per clause 60.1;

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

- Understood that the *Supplier* does not have to allow in his Prices and rates for matters that may arise as a result of a compensation event.

Format of the *price schedule*

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

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

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

If the *Supplier* is to be paid an amount for an item proportional to the length of time for which the *goods* and *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.

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

C2.2 the *price schedule*

Items description	Price per item
Granule poison - 50 kg bag	To be provided on reverse e-auction stage
Liquid poison – 25L	To be provided on reverse e-auction stage
Transport LDV	To be provided on reverse e-auction stage
Transport Truck	To be provided on reverse e-auction stage

The supplier that met functionality requirements would go through reverse e-Auction.

Please note:-

Reverse e-auction is an electronic price and preference point system (aligned to PPPFA) that aims to achieve the most competitive prices. Eskom reserves the right to utilize reverse e-auction in certain enquiries. Where reverse e-auction is utilized in a specific enquiry this will be indicated in the respective enquiry and the relevant reverse e-auction supporting documents will form part of the enquiry. The Tenderers will be required to submit a complete tender but without prices. Where a supplier includes prices in their tender; these prices will not be considered and will be disregarded.

The total of the Prices

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

PART C3: SCOPE OF WORK

Document reference	Title	No of pages
C3.1	<i>Purchaser's</i> Goods Information	40
C3.2	<i>Supplier's</i> Goods Information	45

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

C3.1: *PURCHASER'S* GOODS INFORMATION

1 **Overview and purpose of the goods and services**

This enquiry calls for the supply and delivery of Herbicides and Weedkiller for substation weeding on an "as" and when required basis to various Eskom Mpumalanga sites. Order requests will be done on as and when required basis by various Eskom sites.

2 **Specification and description of the goods**

The standard document for Herbicide's usage in Eskom is titled 240-125477962 for Herbicides usage in Eskom and restricted areas, live chambers, telecommunication infrastructures and security fences

3 **Purchaser's design**

Clause 21.1 requires that the *Purchaser* states which parts of the *goods* he is to design. Complete as required or delete. Be careful not to duplicate what may already be covered in the *Purchaser's* operating philosophy / user requirement specification (URS) / performance specification described elsewhere in this Goods Information.

4 **Procedure for submission and acceptance of Supplier's design**

This is a mandatory requirement of core clause 21.2 and must be addressed. Identify the extent of detail (the particulars) of the *Supplier's* design which is to be submitted to the *Supply Manager* for his acceptance. . State requirements for drawings to be prepared by the *Supplier*.

5 **Other requirements of the Supplier's design**

Use this section to describe any particulars which must be taken into account by the *Supplier* in his design; for example codification of the *goods*.

6 **Use of Supplier's design**

First read core clause 22.1 and then include here the exceptions and other purposes if applicable. If there are none this section could be deleted leaving the core clause to stand.

7 **Manufacture & fabrication**

Although the *Purchaser* does not usually prescribe how the *goods* are to be manufactured and fabricated, if there are any specific requirements they could be stated here.

8 **Factory acceptance testing (FAT)**

Core Clauses 40 and 41 both make reference to the Goods Information regarding tests and inspections. There are often comprehensive requirements for testing at place of manufacture and before delivery. State whether the tests are to be witnessed by the *Supply Manager* or by a testing agency of the *Purchaser's* nomination. Note, *Supplier* may not restrict *Supply Manager's* right to witness tests per clause 25.2

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

9 Other tests and inspections and commissioning in place of use

Describe any other tests and inspections that may be required, specifically in the place of use. If the *Supplier* is to commission the *goods* in the place of use after Delivery, describe the process here. If he is only required to witness and report on the commissioning done by others, this would be included as a service in section 4 below.

10 Operating manuals and maintenance schedules

Use this section to describe these requirements. Pay particular attention to when and in what form they are required. Consideration should be given to obtaining operating manuals and maintenance schedules before Delivery of the whole of the *goods* when there is still financial incentive for the *Supplier* to do so.

11 Supply Requirements

Supply and delivery of Herbicides and Weedkiller
MSDS Data sheet need to accompany the product on delivery where applicable.

The Supply Requirements for this contract are in an Annexure to the Contract Data provided by the *Purchaser*.

12 Specification of the services to be provided.

Supply and delivery of Herbicides and Weedkiller
Provide training to the end-users on the correct application of the different types of poison supplied

13 Constraints on how the *Supplier* Provides the Goods

14 Programming constraints

Read clause 31.2 first then state what additional information (if any) is to go in the programme per the last bullet of clause 31.2. Describe any particular constraints on the order and timing of the work which the *Supplier* must take into account in his programme.

15 Work to be done by the Delivery Date

Clause 11.2(5) defines Delivery as when the *Supplier* has done all the work which the Goods Information states he is to do by the Delivery Date. The defined term "Delivery" is used in this contract to identify when a stage, or amount of work has been achieved. This may be more than the common meaning of "delivery" and could include the passing of specified tests, provision of documentation and packing and preparation for air freight or shipping to the *Purchaser's* nominated Delivery Place specified in the Supply Requirements.

Either list here what has to be done in order to constitute "Delivery", or list what may remain undone and be completed after the Delivery Date by stating that everything else must be done before Delivery.

The supplier will deliver the poison at the *Purchaser's* premises. The material must have a Delivery note and invoice of all the items collected, signed by both *Supplier* and *Purchaser*.

Delivery to be verified physically by the *Purchaser* representative and Delivery note must have been accepted by the *Purchaser*.

16 Marking the goods

If this contract requires the *goods* be paid for before they are brought within the Delivery Place, core clause 71.1 requires that the Goods Information state how the *Supplier* is to "mark" the *goods*

17 Constraints at the delivery place and place of use

State any constraints on how the *Supplier* is to provide the *goods* and *services* both at the delivery place and where the *goods* and *services* are to be put into use, e. g. restriction on access, hours of working and sequence of work. Sites such as Sasol Secunda and Koeberg Nuclear Power Station have very strict entrance requirements which tenderers need to allow for in their prices, and the *Supplier* has to comply with. State these or similar requirements here.

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

18 Cooperating with Others

Although not a direct requirement of the *conditions of contract* if the *Purchaser* is aware of the *Supplier's* need to co-operate with Others (for example where the supply is to one of the *Purchaser's* contractor's on a project or design of the *goods* needs to be discussed with Others) details could be given here.

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

Clause 23.2 requires that the Goods Information state what services and other things are to be provided by the Parties, each to the other as part of the supply process. This has nothing to do with the *services* identified in the Contract Data. It would include temporary services and things needed to facilitate the supply, such as cranes provided by the *Purchaser* for offloading of the *goods*.

20 Management meetings

The *conditions of contract* (e.g. Clause 16.2) require and other sections of the Goods Information (e.g. safety risk management) may require (mandate) that a meeting shall be held. However the intention of all NEC contracts is that the Parties and their agents use the techniques of partnering to manage the contract by holding meetings designed to pro actively and jointly manage the administration of the contract with the objective of minimising the adverse effects of risks and surprises for both Parties. Depending on the complexity of the *goods*, it is probably beneficial for the *Supply Manager* to hold a regular risk register meeting (Clause 16.2). This could be used to discuss safety, compensation events, subcontracting, overall co-ordination and other matters of a general nature. Separate meetings for specialist activities such as programming, engineering and design management, may also be warranted. Describe here the general meetings and their purpose. Provide particulars of approximate times, days, location, and attendance requirements, stipulating that attendees shall have the necessary delegated authority to make decisions in respect of matters raised at such meetings. The right to hold specialist meetings should be stated generically and in such a way that ambiguity with other parts of the Goods Information is avoided. The following text could be used as a model for this section:

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

Title and purpose	Approximate time & interval	Location	Attendance by:
Risk register and compensation events	Weekly on _____ at _____		
Overall contract progress and feedback	Monthly on _____ at _____		<i>Purchaser, Supplier, and _____</i>

Meetings of a specialist nature may be convened as specified elsewhere in this Goods Information or if not so specified by persons and at times and locations to suit the Parties, the nature and the progress of the manufacture of the *goods*. Records of these meetings shall be submitted to the *Supply Manager* by the person convening the meeting within five days of the meeting.

All meetings shall be recorded using minutes or a register prepared and circulated by the person who convened the meeting. Such minutes or register shall not be used for the purpose of confirming actions or instructions under the contract as these shall be done separately by the person identified in the *conditions of contract* to carry out such actions or instructions.

21 Documentation control

Specify how documentation will be identified with an alpha numeric which indicates source, recipient, communication number etc. Provide details of any particular format or other constraints; for example that all contractual communications will be in the form of properly compiled letters or forms attached to e mails and not as a message in the e mail itself. State any particular routing requirements but note from SC who issues what to whom.

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

22 Health and safety risk management

In addition to the requirements of the laws governing health and safety, the *Purchaser* may have some additional requirements particular to the *goods* and the location where they are to be delivered for this contract. This is a requirement of clause 25.4.

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

23 Environmental constraints and management

Describe or cross refer to environmental constraints applicable to the *Supplier's* design of the *goods* if not already included in the *Purchaser's* URS.

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

24 Quality

Specify minimum requirements for the *Supplier's* Quality Plan and Work Procedures if required and not already covered in the specifications for the *goods*. State whether ISO compliance is a condition and if so which ISO standard shall apply.

25 Invoicing and payment

List the information that is to be shown by the *Supplier* on his invoices. State any other requirements relating to payment. For example:

Within one week of receiving a payment certificate from the *Supply Manager* in terms of core clause 51.1, the *Supplier* provides the *Purchaser* with a tax invoice showing the amount due for payment equal to that stated in the *Supply Manager's* certificate.

The *Supplier* shall address the tax invoice to *Purchaser* and include on each invoice the following information:

- Name and address of the *Supplier* and the *Supply Manager*;
- The contract number and title;
- *Supplier's* VAT registration number;
- The *Purchaser's* VAT registration number.
- Description of *goods* and *services* provided for each item invoiced based on the Price Schedule;
- Total amount invoiced excluding VAT, the VAT and the invoiced amount including VAT;
- (add other as required)

Add procedures for invoice submission and payment (e. g. electronic payment instructions)

26 Insurance provided by the *Purchaser*

First read SC3 Core Clause 84.1 and then add anything necessary for the management of insurance related issues such as a cross reference to where procedures for making claims can be found. Also provide contact details for persons capable of being able to answer any insurance related queries the *Supplier* may have, as well as to whom the information required by any Marine Insurance may be addressed.

27 Contract change management

This section is intended to deal with any additional requirements to the compensation event clauses in section 6 of the core clauses; such as the use of standard forms. Not the same thing as documentation control.

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

28 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.

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

Read clause 63.2 and 11.2(4) and then state whether the *Supplier* is required to keep any records of Defined Cost. Include any other constraint which may be required in regard to format and filing of the records, and whether access for the *Supply Manager* shall be provided in hard copy or electronically.

30 Procurement

31 Subcontracting

Subcontracting opportunities have been identified and proposed at a target of 7%

32 Preferred subcontractors

Subcontractors need to fall into the category of designated groups.

33 Limitations on subcontracting

A target of minimum 7% has been set for subcontracting.

34 Spares and consumables

Some contracts may need to include provision for the supply of a minimum category of spares, fuel, oil or other consumables which the *Purchaser* may need at or just after delivery or commissioning of the *goods* and that it is best the *Supplier* provide these initially as part of his Providing the Goods and Services

35 Other requirements related to procurement

35.1 BBBEE

Eskom hierarchy of procurement that supports BBBEE initiative will be adhered to at all times when purchased orders are issued.

The *Contractor* is expected to maintain or improve its' B-BBEE rating for the duration of the contract. Should the rating be change negatively, the *Contractor* would be expected to rectify that within 6-months of being made aware of negative change.

The *Contractor* is expected to submit a valid B-BBEE Verification Certificate from a SANAS accredited Verification Agency each year. Failure to submit such a Certificate may be regarded as the breach of the Contract by the *Employer*.

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

35.2 Supplier Development and localisation

35.2.1 SDL&I Objectives in line with Reconstruction and Development Programme (RDP) Goals

Tenderers who complete and submit the objectives as required, but who do not meet Eskom’s targets, will not be disqualified. SDL&I objectives do not form part of scoring but commitments will form part of contractual obligations

1. **BBBEE requirements: All tenderers are required at a minimum to maintain their BBBEE status throughout the contract period.**

2. **Local Procurement Content**

“Local Procurement Content” refers to value added in South Africa by South African resources. Where a single contract involves a combination of local and imported goods and/or services, the tender response must be separated into its components as per the Price Schedule included with the tender documents. Local procurement content is total spending minus the imported component.

Tenderers are required to submit their proposals in the table below.

Local Procurement Content	Eskom target	Tenderer Proposal
	100%	

3. **Procurement spend on entities with a minimum 51% black ownership at a set target of 7.0% - designated groups**

The winning tenderer is encouraged to procure/spend on designated groups on the following paid invoices for both:

- the indirect expenses (**transport to Eskom sites – with an approved vehicle; PPE procurement; petrol/diesel purchases; and other overheads**) on goods and services supplied to the contractor by designated groups; and
- direct spend on goods and services supplied by the subcontractors for the execution of the scope of work.

Activities, as a proportion of the local procurement content, which may be subcontracted to designated black owned enterprises must be submitted in a table below:

Procurement from Designated Group	Eskom Target	Tenderer Proposal
Black Women Owned	2.5%	
Black Youth Owned	2.5%	
Black Persons with Disability	2.0%	

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

4. Jobs. Tenderers are required to submit proposals for the type and number of jobs that will be created and retained in South Africa as a direct result of being awarded a contract.

Type of Jobs to be created	Number of Jobs to be created
Semi-skilled and general labour	Tenderer’s proposal

Type of Jobs to be retained	Number of Jobs to be retained
Tenderer to propose	Tenderers proposal

5. Skills development

Tenderers are required to submit proposals in a table below for developing the skills of unemployed candidates within Mpumalanga. Skills development is intended to address Eskom’s core, scarce and critical skills and the scarce and critical skills. These skills are also included in a 2020 list of occupations in high demand as stipulated in the Government Gazette 43937. Candidates shall be from Mpumalanga province in the country, and their composition shall be representative of the population demographics of South Africa.

Skill type / Occupation	Eskom target	Proposed Number of Candidates
Competent and compliant driver	1	
Safety officer	1	

The process of developing these skills shall involve the participation by tenderers directly and through their supply network. In certain cases, the SETA’s accredited training providers can be approached to participate in developing critical and scarce skills.

Note: That these targets for skills development candidates categorically exclude Eskom employees and registered learners. The tenderers are required to take full responsibility for the total cost of developing the requisite skills, and Eskom shall not make any financial contribution towards the fulfilment of this obligation. Tenderers also are advised to approach their relevant SETAs to access grants, subsidies, and incentives as well as South African Revenue Services for tax rebates that are earmarked for skills development initiatives.

35.2.2 SDL&I Penalty and Performance Security

Eskom will apply a penalty of 2.5% of the invoice amount for failure to meet SDL&I obligations.

Eskom will apply a penalty of 2.5% of the Accumulated Task Order Values for failure to meet SDL&I obligations.

For the duration of the contract, Eskom will retain 2.5% of every invoice (excluding VAT) as security for the fulfilment of all SDL&I Obligations. The retained amounts shall only be released to the Contractor upon:

- Eskom receives the SDL&I progress report/s from the contractor.
- Fulfilment of all SDL&I obligations by the contractor.

Submission of an approved compliance report by SDL&I Department.

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

35.2.3 Reporting and Monitoring - Contractor Performance template attached for this purpose.

- The suppliers shall on a quarterly basis submit a report to Eskom in accordance with Data Collection Template on their compliance with the SDL&I obligations described above.
- Eskom shall review the SDL&I reports submitted by the suppliers within 30 (thirty) days of receipt of the reports and notify the suppliers in writing if their SDL&I obligations have not been met.
- Upon notification by Eskom that the suppliers have not met their SDL&I obligations, the suppliers shall be required to implement corrective measures to meet those SDL&I obligations before the commencement of the following report, failing which Retention clauses shall be invoked.

Every contract shall be accompanied by the SDL&I Implementation Schedule, which must be completed by the suppliers and returned to SDL&I representative for acceptance 28 days after contract award. This will be used as a reference document for monitoring, measuring and reporting on the supplier's progress in delivering on their stated SDL&I commitments.

Other requirements such as ASGISA or socio political enhancements the <i>Supplier</i> is to provide as part of Providing the Goods and Services (if any) could be included here.
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36 Cataloguing requirements by the *Supplier*

State whether cataloguing is applicable, if it is, reference the requirements for cataloguing that need to be satisfied by the <i>Supplier</i> (consult Procurement Instruction Number 1 of 2018 – Incorporating Cataloguing into the Procurement Environment, Unique Identifier 240-1289988974).

SUPPLY AND DELIVERY OF HERBICIDES AND WEED KILLER FOR SUBSTATION WEEDING – GRANULES & LIQUID POISON TO MOU FOR A PERIOD OF FIVE (5) YEARS

37 List of drawings

38 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

C3.2 SUPPLIER’S GOODS INFORMATION

This section of the Goods Information will always be contract specific depending on the nature of the *goods* and *services*.
 It is most likely to be required for supply contracts where the tendering supplier will have proposed specifications and schedules for the *goods* and *services*, which once accepted by the *Purchaser* prior to award of contract now become obligations of the *Supplier* per core clause 20.1.

This section could also be compiled as a separate file.
