

C1.2 SC3 Contract Data

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 |
| | | X7: Delay damages |
| | | X17: Low performance damages |
| | | Z: <i>Additional conditions of contract</i> |
| | of the NEC3 Supply Contract (April 2013) ¹ | (If the December 2009 edition is to be used delete April 2013 and replace by December 2013) |
| 10.1 | The <i>Purchaser</i> is (name): | Eskom Holdings SOC Ltd (reg no: 2002/015527/30), a state-owned company incorporated in terms of the company laws of the Republic of South Africa |
| | Address | Registered office at Megawatt Park, Maxwell Drive, Sandton, Johannesburg |
| | Tel No. | |
| | Fax No. | |
| 10.1 | The <i>Supply Manager</i> is (name): | |
| | Address | Eskom Holding SOC Ltd Kusile Power Station R545 Kendal/Balmoral Haartebeesfontein Farm Witbank |
| | Tel | |
| | Fax | |
| | e-mail | |
| 11.2(13) | The <i>goods</i> are | Gearboxes for a five-year period as stated on C3.1 "Purchaser's Goods" |
| 11.2(13) | The <i>services</i> are | Supply and delivery of Gearboxes for a five- |

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

| | | year period on "as and when required" basis | |
|----------|---|---|-----------------------|
| 11.2(14) | The following matters will be included in the Risk Register | 1. Late deliveries 2. Inability to hold stock. 3. Components becoming obsolete due to rapid change in technology | |
| 11.2(15) | The Goods Information is in | Part 3: Scope of Work and all documents and drawings to which it makes reference. | |
| 11.2(15) | The Supply Requirements as part of the Goods Information is in | Annexure A to this Contract Data | |
| 12.2 | The <i>law of the contract</i> is the law of | the Republic of South Africa | |
| 13.1 | The <i>language of this contract</i> is | English | |
| 13.3 | The <i>period for reply</i> is | Three (3) working days | |
| 2 | The Supplier's main responsibilities | | |
| 3 | Time | | |
| 30.1 | The <i>starting date</i> is. | TBC | |
| 30.1 | The <i>delivery date</i> of the goods and services is: | goods and services | delivery date |
| | | 1 Gearboxes (on as and when required basis) | As per Purchase Order |
| 30.2 | The <i>Supplier</i> does not bring the goods to the Delivery Place more than one week before the Delivery Date. | All deliveries to be communicated and agreed upon prior delivery. | |
| 31.1 | The <i>Supplier</i> is to submit a first programme for acceptance within | Three (3) working days after receipt of an official Purchase Order. | |
| 32.2 | The <i>Supplier</i> submits revised programmes at intervals no longer than | Two (2) weeks. | |
| 4 | Testing and defects | | |
| 42 | The <i>defects date</i> is | Warranty liability of six (6) months after first service, within the first year otherwise warranty is void. | |
| 43.2 | The <i>defect correction period</i> is | Two (2) weeks after notification of the defect | |
| | except that the <i>defect correction period</i> for | N/A | |
| | and the <i>defect correction period</i> for | N/A | |
| 42.2 | The <i>defects access period</i> is | One (1) day after notification | |
| | 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 | Assessment will be done on the 25th of every successive month |
| 51.1 | The <i>currency of this contract</i> is the | South African Rand |
| 51.2 | The period within which payments are made is | 60 days after receiving the correct invoice. |
| 51.4 | The <i>interest rate</i> is | <p>the publicly quoted prime rate of interest (calculated on a 365 day year) charged from time to time by the Standard Bank of South Africa Limited (as certified, in the event of any dispute, by any manager of such bank, whose appointment it shall not be necessary to prove) for amounts due in Rands and</p> <p>(ii) the LIBOR rate applicable at the time for amounts due in other currencies. LIBOR is the 6 month London Interbank Offered Rate quoted under the caption "Money Rates" in The Wall Street Journal for the applicable currency or if no rate is quoted for the currency in question then the rate for United States Dollars, and if no such rate appears in The Wall Street Journal then the rate as quoted by the Reuters Monitor Money Rates Service (or such service as may replace the Reuters Monitor Money Rates Service) on the due date for the payment in question, adjusted <i>mutatis mutandis</i> every 6 months thereafter and as certified, in the event of any dispute, by any manager employed in the foreign exchange department of The Standard Bank of South Africa Limited, whose appointment it shall not be necessary to prove.</p> |
| 6 | Compensation events | |
| 7 | Title | |
| 8 | Risks, liabilities, indemnities and insurance | |
| 80.1 | These are additional <i>Purchaser's</i> risks | <ol style="list-style-type: none"> 1. Offloading of goods on site 2. Industrial Actions 3. Community Strikes 4. Goods Quality Problems |
| 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 | (1) for the <i>Purchaser's</i> existing and surrounding property in the care, custody and |

the *Purchaser's* property is limited to

control of the *Supplier* the amount of the deductible (first amount payable) relevant to the event and

(2) for all other existing *Purchaser's* property the applicable deductible as at contract date

88.3 The *Supplier's* liability for Defects due to his design which are not notified before the last *defects date* is limited to: **N/A**

88.4 The *Supplier's* total liability to the *Purchaser*, for all matters arising under or in connection with this contract, other than the excluded matters, is limited to **N/A**

88.5 The *end of liability date* is **Two (2) years after Delivery of the goods, in addition to applicable warranties.**

9 Termination and dispute resolution

94.1 The *Adjudicator* is **the person selected from the ICE-SA Division (or its successor body) of the South African Institution of Civil Engineering Panel of Adjudicators by the Party intending to refer a dispute to him. (see www.ice-sa.org.za). If the Parties do not agree on an Adjudicator the Adjudicator will be appointed by the Arbitration Foundation of Southern Africa (AFSA).**

Address

Tel No.

Fax No.

e-mail

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

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

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

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

The person or organisation who will choose an arbitrator

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

the Chairman for the time being or his nominee of the Association of Arbitrators (Southern Africa) or its successor body.

| 10 Data for Option clauses | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------------------------------|---|---------------------------------------|---------------------|---------------------------------------|-----|--|--|-----|--|--|-----|--|--|----|--|--|----|--|--|-----|----------------|--|------|--|--|
| X1 | Price adjustment for inflation | | | | | | | | | | | | | | | | | | | | | | | | |
| X1.1 | <p>The <i>base date</i> for indices is</p> <p>The proportions used to calculate the Price Adjustment Factor are:</p> <table border="1"> <thead> <tr> <th>proportion</th> <th>linked to index for</th> <th>Index prepared by</th> </tr> </thead> <tbody> <tr> <td>0.</td> <td></td> <td></td> </tr> <tr> <td>0.</td> <td></td> <td></td> </tr> <tr> <td>0.</td> <td></td> <td></td> </tr> <tr> <td>0.</td> <td></td> <td></td> </tr> <tr> <td>0.</td> <td></td> <td></td> </tr> <tr> <td>[•]</td> <td>non-adjustable</td> <td></td> </tr> <tr> <td>1.00</td> <td></td> <td></td> </tr> </tbody> </table> | proportion | linked to index for | Index prepared by | 0. | | | 0. | | | 0. | | | 0. | | | 0. | | | [•] | non-adjustable | | 1.00 | | |
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| 0. | | | | | | | | | | | | | | | | | | | | | | | | | |
| [•] | non-adjustable | | | | | | | | | | | | | | | | | | | | | | | | |
| 1.00 | | | | | | | | | | | | | | | | | | | | | | | | | |
| X2 | Changes in the law | | | | | | | | | | | | | | | | | | | | | | | | |
| X2.1 | <p>A change in the law of</p> <p>5% is a compensation event if it occurs after the Contract Date</p> | | | | | | | | | | | | | | | | | | | | | | | | |
| X3 | Multiple currencies | | | | | | | | | | | | | | | | | | | | | | | | |
| X3.1 | <p>The <i>Purchaser</i> will pay for these items in the currencies stated</p> <table border="1"> <thead> <tr> <th>Items</th> <th>Other currency</th> <th>Total maximum payment in the currency</th> </tr> </thead> <tbody> <tr> <td>[•]</td> <td></td> <td></td> </tr> <tr> <td>[•]</td> <td></td> <td></td> </tr> <tr> <td>[•]</td> <td></td> <td></td> </tr> </tbody> </table> | Items | Other currency | Total maximum payment in the currency | [•] | | | [•] | | | [•] | | | | | | | | | | | | | | |
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| [•] | | | | | | | | | | | | | | | | | | | | | | | | | |
| [•] | | | | | | | | | | | | | | | | | | | | | | | | | |
| [•] | | | | | | | | | | | | | | | | | | | | | | | | | |
| X3.1 | <p>The <i>exchange rates</i> are those published in [•] on [•] (date)</p> <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 | | | | | | | | | | | | | | | | | | | | | | | | |
| | <p>There is no reference to Contract Data in this Option and terms in italics are identified elsewhere in this Contract Data.</p> | | | | | | | | | | | | | | | | | | | | | | | | |
| X7 | Delay damages | | | | | | | | | | | | | | | | | | | | | | | | |
| X7.1 | <table border="1"> <thead> <tr> <th>Delivery of</th> <th>amount per day</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> </tr> </tbody> </table> | Delivery of | amount per day | | | | | | | | | | | | | | | | | | | | | | |
| Delivery of | amount per day | | | | | | | | | | | | | | | | | | | | | | | | |
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| | | 1% (one) per day up to a maximum of 10 % of the purchase order value. | |
| 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 | Part 3 Scope of Work, section C3.[•] | |
| X12.2(1) | The <i>Client's objective</i> is: | [•] | |
| X13 | Performance bond | | |
| X13.1 | The amount of the performance bond is | R [•] | |
| X14 | Advanced payment to the <i>Supplier</i> | | |
| X14.1 | The amount of the advanced payment is | R[•]. | |
| X14.2 | An advanced payment bond | is /is not required. | |
| X14.3 | The <i>Supplier</i> repays the instalments in assessments starting not less than | [•] weeks after the Contract Date. | |
| X14.3 | The instalments are | R[•] (either an amount or a percentage of the payment otherwise due) | |
| X17 | Low performance damages | | |
| X17.1 | The amounts for low performance damages are: | <p>amount</p> <p>1 % per total value of the Purchase order(s). Limited to 5% of the total value of the Purchase Order(s) of the spares</p> | <p>performance level</p> <p>for 1. For <i>Goods</i> delivered without signed Data pack</p> <p>2. For delivery of goods that does not meet the quality requirements</p> <p>3. For delayed good deliveries</p> |

| | |
|------------|--|
| X20 | Key Performance Indicators (not used when Option X12 applies) |
| X20.1 | The <i>incentive schedule</i> for Key Performance Indicators is in Annexure [●] to this Contract Data |
| X20.2 | A report of performance against each Key Performance Indicator is provided at intervals of [●] months |
| Z | The <i>additional conditions of contract</i> are Z1 to Z15 always apply for Eskom |

Z1 Cession delegation and assignment

- Z1.1 The *Supplier* does not cede, delegate or assign any of its rights or obligations to any person without the written consent of the *Purchaser*.
- Z1.2 Notwithstanding the above, the *Purchaser* may on written notice to the *Supplier* cede and delegate its rights and obligations under this contract to any of its subsidiaries or any of its present divisions or operations which may be converted into separate legal entities as a result of the restructuring of the Electricity Supply Industry.

Z2 Joint ventures

- Z2.1 If the *Supplier* constitutes a joint venture, consortium or other unincorporated grouping of two or more persons or organisations then these persons or organisations are deemed to be jointly and severally liable to the *Purchaser* for the performance of this contract.
- Z2.2 Unless already notified to the *Purchaser*, the persons or organisations notify the *Supply Manager* within two weeks of the Contract Date of the key person who has the authority to bind the *Supplier* on their behalf.
- Z2.3 The *Supplier* does not alter the composition of the joint venture, consortium or other unincorporated grouping of two or more persons without the consent of the *Purchaser* having been given to the *Supplier* in writing.

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

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

Z4 Confidentiality

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

Z5 Waiver and estoppel: Add to core clause 12.3:

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

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

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

Without limitation the *Supplier*:

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

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

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

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

Z8 Notifying compensation events

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

Z9 Purchaser's limitation of liability

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

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

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

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

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

Z12 Ethics

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

- Affected Party** means, as the context requires, any party, irrespective of whether it is the *Supplier* or a third party, such party's employees, agents, or Subcontractors or Subcontractor's employees, or any one or more of all of these parties' relatives or friends,
- Coercive Action** means to harm or threaten to harm, directly or indirectly, an Affected Party or the property of an Affected Party, or to otherwise influence or attempt to influence an Affected Party to act unlawfully or illegally,
- Collusive Action** means where two or more parties co-operate to achieve an unlawful or illegal purpose, including to influence an Affected Party to act unlawfully or illegally,

- Committing Party** means, as the context requires, the *Supplier*, or any member thereof in the case of a joint venture, or its employees, agents, or Subcontractors or the Subcontractor's employees,
- Corrupt Action** means the offering, giving, taking, or soliciting, directly or indirectly, of a good or service to unlawfully or illegally influence the actions of an Affected Party,
- Fraudulent Action** means any unlawfully or illegally intentional act or omission that misleads, or attempts to mislead, an Affected Party, in order to obtain a financial or other benefit or to avoid an obligation or incurring an obligation,
- Obstructive Action** means a Committing Party unlawfully or illegally destroying, falsifying, altering or concealing information or making false statements to materially impede an investigation into allegations of Prohibited Action, and
- Prohibited Action** means any one or more of a Coercive Action, Collusive Action Corrupt Action, Fraudulent Action or Obstructive Action.

- Z12.1 A Committing Party may not take any Prohibited Action during the course of the procurement of this contract or in execution thereof.
- Z12.2 The *Purchaser* may terminate the *Supplier's* obligation to Provide the Services if a Committing Party has taken such Prohibited Action and the *Supplier* did not take timely and appropriate action to prevent or remedy the situation, without limiting any other rights or remedies the *Purchaser* has. It is not required that the Committing Party had to have been found guilty, in court or in any other similar process, of such Prohibited Action before the *Purchaser* can terminate the *Supplier's* obligation to Provide the Services for this reason.
- Z12.3 If the *Purchaser* terminates the *Supplier's* obligation to Provide the Services for this reason, the amounts due on termination are those intended in core clauses 92.1 and 92.2.
- Z12.4 A Committing Party co-operates fully with any investigation pursuant to alleged Prohibited Action. Where the *Purchaser* does not have a contractual bond with the Committing Party, the *Supplier* ensures that the Committing Party co-operates fully with an investigation.

Z13 Insurance

Z 13.1 Replace core clause 84 with the following:

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

INSURANCE TABLE A

| Insurance against | Minimum amount of cover or minimum limit of indemnity |
|---|---|
| Loss of or damage to the <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>Purchaser's 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 |
|--------------------------------------|-----------------------------------|

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

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

Annexure A: Supply Requirements

[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]

| 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

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

The Supply Requirements for this contract are as follows:

[Use these when INCOTERMS do not apply].

| | | |
|--|--|----------------------------|
| 1. The requirements for the supply are | [State the constraints on how the <i>Supplier</i> manufactures, prototypes, tests and stores the <i>goods</i> including order and timing] | |
| 2. The requirements for transport are | [State the extent to which the <i>Supplier</i> transports the <i>goods</i> and the mode of transport] | |
| 3. The delivery place is | [State the location where the <i>goods</i> are to be placed by the <i>Supplier</i> , such as whether it is a dispatch department at the <i>Supplier's</i> premises, the <i>Purchaser</i> is to collect or other location the <i>Purchaser</i> may require. If the delivery place for the <i>services</i> is different to the <i>goods</i> state it here] | |
| 4. Actions of the Parties during supply | Action | Party which does it |
| | Giving notice of Delivery | |
| | Checking packing and marking before dispatch | |
| | Contracting for transport | |
| | Pay costs of transport | |
| | Arrange access to delivery place | |
| | Loading the <i>goods</i> | |
| | Unloading the <i>goods</i> | |
| For international procurement | Undertake export requirements | |
| | Undertake import requirements | |
| 5. Information to be provided by the Supplier | Title of document | |
| | Packing lists for cases and their contents | |
| | Copy of invoice for the <i>goods</i> | |
| | Delivery Note | |
| | Test results and maintenance manuals | |
| For international procurement | Licences, authorisations and other formalities associated with export of the <i>goods</i> | |
| | Air Waybill or Bill of Lading with associated landing, delivery and forwarding order | |
| | The Bill of Entry endorsed by the importation authority | |
| | Customs work sheets, showing tax, duties and surcharges which the law of the country into which the <i>goods</i> are being imported requires the importer to pay | |
| | Invoice from the importation clearing agent showing airline fees, landing charges, wharfage and dock dues as applicable | |
| | Specify other import documents required by authorised officials. | |

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

