



Powering Business Worldwide

Eaton  
Electrical Sector  
Eaton Electric S.I.A (Estonia Branch)

## Selling Country – Estonia Terms & Conditions – sale of goods and services

Publication no. SP090236EN

Date: March 2019

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- 1. Scope**
  - 1.1. These general terms and conditions for the sale of goods (the “**Terms**”) shall apply to any sale by Eaton (together with any of its affiliated entities, subsidiaries or holding companies referred to as “**Eaton**”) of any Eaton products or work performed by Eaton (the “**Supplies**”) to the person or entity placing an order with Eaton which is accepted by Eaton under these Terms (the “**Buyer**”). The Buyer and Eaton are collectively referred to as the “**Parties**” and each individually as a “**Party**”.
  - 1.2. Eaton shall only be bound and an agreement for the sale of Supplies between Eaton and the Buyer on these Terms shall only be concluded once Eaton accepts, in writing, any purchase order(s) placed by the Buyer for any Supplies (the “**Acceptance**”).
  - 1.3. Notwithstanding any language to the contrary in the Buyer’s standard terms and conditions of purchase, in any purchase order, any correspondence or any other form of acknowledgment, the Buyer shall be bound by these Terms and any other terms and conditions are hereby expressly rejected and excluded.
  - 1.4. No variation to these Terms shall be binding unless agreed in writing by an authorised representative of Eaton. Prior dealings, usage of the trade or a course of performance shall not be relevant to determine the meaning of these Terms even though the accepting or acquiescing party had knowledge of the nature of the performance and opportunity for objection.
  - 1.5. The scope of the sale (the quantity, part number(s), price(s) and description of the Supplies) shall be as set out or as referred to in the Acceptance.
- 2. Price, Terms of Payment and Set –Off**
  - 2.1. The price of the Supplies shall be the price set out in the Acceptance or, where no price has been set out, the price listed in Eaton’s published price list current at the date of the Acceptance.
  - 2.2. Unless otherwise agreed by Eaton in writing, all prices shall include the costs of delivery in accordance with the provisions of clause 4.1.
  - 2.3. The price is exclusive of Value Added Tax or any other applicable tax which the Buyer shall pay in addition when it is due to pay for the Supplies.
  - 2.4. Eaton shall issue an invoice for the Supplies upon shipment. The price shall be paid free from any deductions or set-off to Eaton’s bank account within thirty (30) days of the date of invoice unless otherwise specified or referred to in an Acceptance. Time for payment shall be of the essence. If the due date for payment calculated in terms of this clause 2.4 falls on a Saturday, Sunday or public holiday, payment shall be due on the last business day immediately preceding the relevant Saturday, Sunday or public holiday. Payment shall not be deemed to have been made until Eaton has received sums due to it in full in cleared funds.
  - 2.5. If the Buyer fails to make any payments as and when they fall due under these Terms, Eaton may, without prejudice to its other rights (i) suspend performance of its obligations under these Terms until such payments have been made; and (ii) charge interest on such overdue amounts at a rate of 8% above the European Central Bank’s reference rate per annum from the due date to the date of payment in full.
  - 2.6. Eaton shall be entitled in its sole discretion to set off any payments due from Eaton to the Buyer from time to time from any receivables due from the Buyer to Eaton. The Buyer shall not be entitled to set off any payments due to Eaton from the Buyer without the prior written agreement of Eaton.
  - 2.7. Acceptance of all orders is subject to the Buyer meeting Eaton’s credit requirements. Terms of payment (as specified above) are subject to change for failure to meet such requirements. Eaton reserves the right at any time to demand full or partial payment before proceeding with a sale if in the judgment of Eaton, the financial condition of the Buyer does not justify the terms of payment specified.
- 3. Minimum Billing**

Orders less than five hundred (500) Euro or local currency equivalent will be assessed a shipping and handling charge of five (5) % of the price of the order, with a minimum charge of twenty five (25) Euro or local currency equivalent unless noted differently by Eaton on Acceptance.
- 4. Delivery**
  - 4.1. Unless otherwise agreed in writing by Eaton, delivery shall be made:
    - 4.1.1. for road freight and parcel deliveries, CPT (Incoterms 2010) at the Buyer’s warehouse; or
    - 4.1.2. for ocean and air freight deliveries, FCA (Incoterms 2010) at the origin loading port or warehouse as agreed between the Parties in writing.
  - 4.2. As notified to the Buyer any dates quoted for delivery of the Supplies are approximate only and may not be made of the essence by notice. Eaton shall not be liable for any delay in delivery of the Supplies howsoever caused. If no delivery dates are specified, delivery will be within a reasonable time.
  - 4.3. If Eaton is satisfied that the Supplies have been short delivered, Eaton shall at its option:-
    - 4.3.1. make up any short delivery by dispatching to the Buyer such Supplies as Eaton is satisfied were not delivered; or
    - 4.3.2. allow the Buyer credit in respect thereof.
  - 4.4. Eaton’s liability shall be limited to making up the delivery or allowing credit as above.
  - 4.5. Where the Supplies are to be delivered in instalments, each delivery shall constitute a separate contract and defective delivery by Eaton of any one or more of the instalments in accordance with these Terms shall not entitle the Buyer to treat these Terms as a whole as repudiated.
  - 4.6. If Eaton fails to deliver the Supplies for any reason (other than the Buyer’s fault) and Eaton is accordingly liable to the Buyer, Eaton’s liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Supplies.
- 4.7. If the Buyer fails to take delivery of the Supplies or fails to give Eaton adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer’s reasonable control or by reason of Eaton’s fault) then, without prejudice to any other right or remedy available to Eaton, Eaton may:-
  - 4.7.1. require payment on any reasonable basis, including but not limited to the selling price, and any additional expenses, or costs resulting from such a delay;
  - 4.7.2. store the Supplies until actual delivery at the sole cost and risk of the Buyer and charge the Buyer for the reasonable costs (including handling and insurance) of storage; or
  - 4.7.3. sell the Supplies at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under these Terms or charge the Buyer for any shortfall below the price under these Terms; and
  - 4.7.4. payment of any amounts contemplated in clauses 4.7.1, 4.7.2 or 4.7.3 shall be due by the Buyer within 30 (thirty) days from the date of Eaton’s invoice.
- 4.8. If Eaton holds any of the Supplies contemplated in clause 4.7 on the Buyer’s behalf in excess of three (3) months from the the time stated for delivery, Eaton shall be entitled to terminate the agreement in respect of such Supplies. In the event that any part of the price for such Supplies was paid by the Buyer prior to such termination, Eaton shall repay such amounts after deducting all costs incurred by Eaton in respect of such Supplies prior to termination.
- 4.9. The Buyer shall not refuse to receive Supplies due to minor defects.
- 4.10. Buyer shall provide any information and documents required for export, transport and import purposes.



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### 5. Title and Risk

- 5.1. Title to all Supplies shall be retained by Eaton until all amounts due to Eaton in respect of such Supplies, including any charges or interest, are paid in full.
- 5.2. Until ownership of the Supplies has passed to the Buyer, the Buyer must take all reasonable measures to keep the Supplies in a satisfactory condition to the reasonable satisfaction of Eaton.
- 5.3. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Supplies which remain Eaton's property, but if the Buyer does so all monies owing by the Buyer to Eaton shall, without prejudice to any of Eaton's other rights or remedies, become due and payable immediately.
- 5.4. To the extent that any provision of furnishing security to Eaton is invalid according to the laws where the Supplies that are retained by Eaton are located, any other security which is recognised by the local law and which gives Eaton an equivalent safeguard, shall be deemed to have been agreed upon between the Buyer and Eaton. The Buyer shall be bound to perform all acts and take all steps necessary for the creation and upholding of security rights for the benefit of Eaton.
- 5.5. Risk of any loss or damage to the Supplies shall pass from Eaton to the Buyer upon the delivery of the Supplies in accordance with the applicable Incoterm (Incoterms 2010) set out or referred to in the Acceptance.

### 6. Returning Products

Authorisation and shipping instructions for the return of any Supplies must be obtained from Eaton in writing before any Supplies may be returned to Eaton by the Buyer.

### 7. Intellectual Property Rights

- 7.1. Each Party shall remain the owner of its Background IP and nothing contained in these Terms shall imply any transfer of title of Background IP. Eaton shall be the sole owner

of all Foreground IP and shall have full title to such rights.

- 7.2. The Buyer shall not do or authorise any third person to do any act which would or might damage or be inconsistent with the trademarks (which term for purposes of these Terms shall include but not be limited to trademarks, trade names, service marks, logo marks, trade dress other trade names, whether registered or unregistered) used by Eaton in relation to the Supplies or to the goodwill associated therewith and, in particular, will not do or authorise the alteration, obliteration, covering up or incorporation of other marks (in whole or in part) on to the Supplies. The Buyer shall not use or authorise any third person to use the trademarks used by Eaton in relation to the Supplies on any stationery, advertising, promotion or selling material other than the Supplies or other such materials supplied by Eaton to the Buyer. All advertising, promotion and selling materials supplied by Eaton to the Buyer shall remain the property of Eaton and the Buyer shall not permit any other person to make use thereof. The use in any form of the name "EATON" or Eaton's logo in the official name, company name, trading or business name, domain name or other similar name of the Buyer requires the prior written approval of Eaton.
- 7.3. The Buyer agrees to inform Eaton promptly about any infringement of any of Eaton's trademarks or other Intellectual Property Rights or of any act of unfair competition of which the Buyer has knowledge. Eaton and the Buyer shall then jointly decide on appropriate action. The Buyer agrees to assist in every way possible in legal actions taken by Eaton or its affiliated entities in this regard.
- 7.4. If any claim is made against the Buyer that the Supplies infringe or that their use or resale infringes the rights of any third party, Eaton may (at its option) either secure the Buyer's right to continue to use the Supplies or replace or modify the Supplies to make them non-infringing, or if neither of these alternatives is reasonably available to Eaton, refund the purchase price.

7.5. In these Terms:

- 7.5.1. "**Background IP**" means any intellectual property and Intellectual Property Rights existing before the date of the Acceptance, and any Intellectual Property Rights generated after the date of Acceptance but outside the scope of these Terms;
- 7.5.2. "**Foreground IP**" means all intellectual property and Intellectual Property Rights generated under these Terms; and
- 7.5.3. "**Intellectual Property Rights**" means any intellectual and industrial property rights including, but not limited to, copyright, moral rights and neighbouring rights, all rights in relation to: inventions (including patent rights and utility models), trademarks, confidential information (including trade secrets and know how), drawings, prototypes, algorithms, software, mask works and semiconductor topographies and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic field, afforded by law anywhere in the world whether registered or unregistered or capable of registration and all applications therefore.

### 8. Termination, Cancellation and Changes

- 8.1. Without prejudice to any other rights of termination provided herein, the agreement between the Parties under these Terms may be terminated immediately at any time effective upon written notice by either Party if the other Party commits a material breach of these Terms, and such breach is not cured within thirty (30) business days of written notice of such breach, if such breach is not reasonably subject to cure within thirty (30) business days, the Party in breach has not commenced a continuous good faith effort to cure the default.
- 8.2. The Parties may agree to make changes to an order after Acceptance in writing from time to time.
- 8.3. Parties agree that the termination rights specified in this clause 8 are meant to be exhaustive and as such agree to waive any other

termination rights they may have under any applicable law to the extent such waiver of termination rights is permitted under such applicable law.

### 9. Warranty

- 9.1. Unless otherwise agreed in writing by the Parties, Eaton warrants to the Buyer that the Supplies shall be free from defects in design, material, and workmanship ("**Defects**"), under normal use, for a maximum period of twelve (12) months ("**Warranty**") from the date of invoice for such Supplies. Eaton shall, subject to the provisions of these Terms and for the duration of the Warranty, remedy any material Defect in the Supplies resulting from faulty design, material or workmanship which impairs the functioning of the relevant Supplies. There shall be no claims based on Defects in cases of insignificant deviations, of only minor impairment of usability or from non-reproducible software errors.
- 9.2. This limited Warranty shall not apply to any Supplies or component thereof which:
  - 9.2.1. has been repaired or altered outside of Eaton's factory in any manner so as, in Eaton's sole judgment, to affect its serviceability;
  - 9.2.2. has been subject to alteration, accident, misuse, abuse, neglect or abnormal wear;
  - 9.2.3. has been installed, operated or used in a manner contrary to Eaton's instructions, or due to failure to follow Eaton's instructions for operation and maintenance; or
  - 9.2.4. has been subjected to abnormal or unusual physical or electrical stress or environmental conditions misused or negligently handled or operated.
- 9.3. Eaton shall not be liable for damage due to third party acts, atmospheric discharges, excess voltage, chemical influences and for loss and damage in transit. The Warranty does not cover the replacement of parts subject to normal wear and tear. Eaton gives no warranty for the sale of used Supplies. If the Supplies are manufactured by Eaton on the basis of design



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- data, design drawings, models or other specifications supplied by the Buyer, Eaton's Warranty shall be restricted to non-compliance with the Buyer's specifications as approved by Eaton under these Terms.
- 9.4. Eaton's sole obligation and Buyer's sole remedy under the Warranty shall be, at Eaton's option and discretion, to either repair or replace at no additional charge, the defective Supplies (or the defective part of the Supplies) thereof, which is proved to breach such Warranty.
- 9.5. Except for the express Warranty set forth above, Eaton makes no other representations or warranties, express or implied, statutory or otherwise, regarding the supplies, their fitness for any particular purpose, their merchantability, their quality, their non-infringement, or otherwise.
- 9.6. The Buyer shall expressly not have any claim with regard to expenses incurred in the course of supplementary performance, including costs for travel, transport, labour, and material, to the extent that expenses are increased because the subject-matter of the Supplies has subsequently been brought to another location than the place of delivery.
- 9.7. All drawings, descriptive matter, specifications and advertising issued by Eaton and any descriptions or illustrations contained in Eaton's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Supplies described in them. They will not form part under these Terms in general or this Warranty specifically. Eaton may make any changes in the specifications, design or materials of the Supplies which are required to conform with any applicable safety or other statutory requirements, or where the Supplies are to be supplied to Eaton's specifications, which do not in Eaton's reasonable opinion materially affect the quality or performance of the Supplies.
- 9.8. The Buyer shall only have a claim for damage based on Defects within the limits set forth in these Terms.
- 10. Liability**
- 10.1. The remedies of the Buyer under these Terms are exclusive and are its sole remedies for any failure of Eaton to comply with its obligation hereunder.
- 10.2. In no event, whether under contract, statutory law or tort, shall the aggregate liability of Eaton under these Terms exceed the price paid in respect to the Supplies to which such liability relates. This limit of liability is cumulative and not per-incident (i.e. the existence of two or more claims will not enlarge this limit). Furthermore, it applies cumulatively to all of Eaton's affiliated entities.
- 10.3. In no event, whether under contract, statutory law or tort, shall Eaton or its affiliated entities, officers, directors, employees, agents, be liable for indirect, incidental or consequential damages, including but not limited to loss of profit, loss of use, loss of production or penalty payments.
- 10.4. The limitations of liability contemplated in this clause 10 shall not apply in the following cases:
- 10.4.1. liability in accordance with §§ 1061 1067 of the Estonian Law of Obligations Act or any other applicable product liability laws which cannot be excluded by law;
- 10.4.2. intent;
- 10.4.3. gross negligence on the part of the owners, legal representatives or executives of Eaton arising from or relating to Eaton's performance under these Terms;
- 10.4.4. fraud; or
- 10.4.5. injury to life, limb or health.
- 11. Transfer of Rights and Obligations; Indemnification**
- 11.1. The Buyer is only entitled to transfer any rights to its customers resulting out of these Terms within the limits set forth herein. Any obligations exceeding these Terms remain at the sole responsibility of the Buyer. The Buyer shall provide the user (including its employees) of the Supplies with all Eaton supplied product notices, warnings, instructions, recommendations and similar materials.
- 11.2. The Buyer shall indemnify and hold Eaton harmless from and against all losses, claim damages or other costs of any nature or kind whatsoever (including attorneys' fees) arising from a breach of any provision of these Terms by the Buyer or the negligence, misconduct or actions of the Buyer, its officers, employees, agents of contractors. The same applies to any loss, cost or expenses incurred by Eaton for claims made by any customer of the Buyer to the extent that such loss, cost or expense is in excess of the liability limits set forth in these Terms including, without limitation, the provisions of the Warranty.
- 12. Export Regulations and Anti-Corruption**
- 12.1. The performance of any obligations under these Terms is conditional upon that no hindrances attributable to applicable local, United Nations (UN) or United States of America (US) or otherwise applicable national, European Union or international rules of foreign trade law or any sanctions or any embargoes exist.
- 12.2. The Buyer shall comply with all laws as set forth in clause 12.1. The Buyer shall not take any action which could place Eaton or any other associated company in jeopardy of breaching or violating any such laws, regulations, provisions and/or acts or any interpretations thereof.
- 12.3. The Buyer agrees to comply fully with all applicable anti-corruption laws and regulations, including (but not limited to) those in the jurisdiction in which the Buyer is registered, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act. The Buyer agrees to comply with Eaton's Worldwide Anti-Corruption Policy and Worldwide Gift & Entertainment Policy, copies of which are available on request.
- 12.4. The Buyer shall observe at all times Eaton's Code of Ethics and related policies, copies of which are available upon request.
- 12.5. The Buyer agrees to indemnify, defend and hold Eaton harmless from any breach of the Buyer's obligations under this clause 12.
- 13. Force Majeure**
- 13.1. If Eaton is prevented, hindered or delayed from or in performing any of its obligations under these Terms (other than a payment obligation) by a Force Majeure Event, Eaton's obligations under these Terms are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed.
- "Force Majeure Event" means an event beyond the reasonable control of Eaton including, without limitation, strike, lock out, labour dispute, (but excluding strikes, lockouts and labour disputes involving employees of Eaton, supply difficulties and delays, any delays at borders and/or customs, breach of contract or disputes with the sub-contractors of Eaton, act of God, war, riot, civil commotion, malicious damage (but excluding malicious damage involving the employees of Eaton) compliance with a law or governmental order, rule, regulation or direction, embargoes and trade limitations, accident, breakdown of plant or machinery fire, flood, storm and difficulty or increased cost in obtaining workers, goods or transport.
- 13.2. Where a Force Majeure Event in the meaning of clause 0 substantially changes the economic importance of the contents of the Supplies or considerably affect the Buyer's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. To the extent this is not justifiable for economic reasons; Eaton shall have the right to rescind the contract. If Eaton intends to exercise its right to rescind the contract, it shall notify the Buyer thereof without undue delay after having realized the repercussions of the event; this shall also apply even were an extension of the delivery period has been agreed with the Buyer.
- 14. Confidentiality and Announcements**
- 14.1. "Confidential Information" means all information (whether communicated in writing, verbally, electronically or by any other means



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and whether communicated directly or indirectly), including information in connection with these Terms and the transactions contemplated therein, or any related agreement, which by its nature is intended to be for the knowledge of the receiving Party alone, which is marked as "confidential" or "proprietary" or which is otherwise confidential, and all information concerning the business transactions and the financial arrangements of any Party with any person with whom that Party is in a confidential relationship with regard to the matter in question.

- 14.2. Neither Party, including but not limited to its affiliated entities, owners, managers and employees shall, without the prior written consent of the disclosing Party, for any purpose other than the proper performance of its obligations under these Terms make use of or disclose or permit the use or disclosure to any third party of any trade secrets or other Confidential Information, whether relating to the method of operation or business of the other Party or the Supplies which it may receive or obtain either directly or indirectly, or make any public announcement, communication or circular concerning the transactions to which these Terms shall apply. This obligation shall remain in force after fulfillment of the Supplies with no limitation on time, but shall not apply to any information which (i) was publicly known at the time of disclosure to the receiving Party or becomes publicly known through no fault of the receiving Party subsequent to the time of communication thereof to the receiving Party; (ii) was in the receiving Party's possession free from any obligation of confidence at the time of communication thereof to the receiving Party; (iii) is developed independently by the receiving Party or its affiliates, and without reference to any of the disclosing Party's Confidential Information or other information that was disclosed in confidence to any third party, as evidenced by contemporaneous written records; (iv) required by law, by a rule of a listing authority or stock exchange to which either Party is subject or submits provided that only such

Confidential Information as is strictly required is disclosed; or (v) is rightfully obtained by the receiving Party from third party authorised to make disclosure thereof without restrictions.

- 14.3. A disclosing Party has no liability or responsibility for errors or omissions in, or any decisions made by the receiving Party in reliance on any Confidential Information disclosed under these Terms. No warranties of any kind (whether express, implied or statutory) are made in connection with the Supplies as to the accuracy or completeness of the Confidential Information disclosed.

#### **15. Governing Law and Jurisdiction**

- 15.1. These Terms, their interpretation and any contractual or non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with the laws of country where Eaton (i.e. the affiliated entity, subsidiary or holding company that enters into the sale agreement) has its registered office without regard to any conflict of law rules.
- 15.2. Any dispute arising directly or indirectly out of these Terms shall be resolved exclusively by the competent courts in having jurisdiction over the area where Eaton (i.e. the affiliated entity, subsidiary or holding company that enters into the sale agreement) has its registered office.

#### **16. General**

- 16.1. If any provision of these Terms is held to be invalid or unenforceable, then such provision shall (so far as it is invalid or unenforceable) be given no effect and shall be deemed not to be included in these Terms but without invalidating any of the remaining provisions of these Terms. The Parties shall then use all reasonable endeavours to replace the invalid or unenforceable provisions by a valid and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.
- 16.2. The Buyer may not assign, licence or sub-contract all or any of its rights or obligations

under these Terms without Eaton's prior written consent. Eaton may assign, license or sub-contract all or any part of its rights or obligations under these Terms without the Buyer's consent.

- 16.3. The failure to exercise or delay in exercising a right or remedy provided by these Terms or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by these Terms or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.
- 16.4. Any notice hereunder shall be deemed to have been duly given if sent by registered post or fax to the Party concerned at its registered office or principal place of business. Notices sent by registered post shall be deemed to have been given seven (7) days after despatch and notices sent by fax shall be deemed to have been given twenty-four (24) hours from the date of despatch.
- 16.5. If there is any conflict between the English version of these Terms and any translation thereof into any other language, the English language version shall prevail.