



Powering Business Worldwide

Eaton
Electrical Sector
Eaton Electric (South Africa) (Pty) Ltd

Selling Country – South Africa Terms & Conditions – sale of goods

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1. **Validity**
 - 1.1. The tender is open for acceptance for 30 (thirty) days after receipt of the Tender by the Purchaser provided that no acceptance shall be binding on Eaton unless issued in writing by the Purchaser and received by Eaton within the aforementioned periods, whichever is applicable.
 - 1.2. In the event of a contradiction between the conditions of tender and these conditions, the conditions of tender shall prevail. In the event that the conditions of tender are silent on any aspect, these conditions shall prevail.
 2. **Acceptance**
 - 2.1. A binding contract will come into effect when both parties to the contract have signed the contract/order and the contract/order shall include the terms and conditions/ qualifications set out in this document.
 3. **Delivery**
 - 3.1. Delivery shall be made FCA (Incoterms 2010) at the origin loading port or warehouse for ocean or air freight deliveries or CPT (Incoterms 2010) for road freight as agreed between the Parties in writing. The delivery date shall be specified in the order confirmation.
 - 3.2. If the Purchaser fails to take delivery of the goods or fails to give Eaton adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Purchaser's reasonable control or by reason of Eaton's fault) then, without prejudice to any other right or remedy available to Eaton, Eaton may:
 - 3.2.1. 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;
 - 3.2.2. store the goods until actual delivery at the sole cost and risk of the Purchaser and charge the Purchaser for the reasonable costs (including handling and insurance) of storage; or
 - 3.2.3. sell the goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Purchaser for the excess over the price under these terms or charge the Purchaser for any shortfall below the price under these terms; and
 - 3.2.4. payment of any amounts contemplated in clauses 3.2.1, 3.2.2 or 3.2.3 shall be due by the Purchaser within thirty (30) days from the date of Eaton's invoice.
 - 3.3. If Eaton holds any of the goods contemplated in clause 3.2 on the Purchaser's behalf in excess of 3 (three) months from the time stated for delivery, Eaton shall be entitled to terminate the agreement in respect of such goods. In the event that any part of the price for such goods was paid by the Purchaser prior to such termination, Eaton shall repay such amounts after deducting all costs incurred by Eaton in respect of such goods prior to termination.
 - 3.4. Inspection and release by the Purchaser shall take place within a period of 7 (seven) days after delivery, failing which goods shall be deemed to be accepted by the Purchaser.
4. **Packaging**
 - 4.1. Eaton shall adequately and securely pack all Goods in accordance with Eaton's standard practices so as to prevent loss or damage in transit.
 - 4.2. Should the Purchaser require special packaging for the Goods, the Purchaser will accordingly inform Eaton. The Purchaser will be liable for any additional special packaging requirements
5. **Payment Terms**
 - 5.1. Where the order value is below R1 000 000 (one million rand), subject to prior credit approval, invoicing shall be 100% (one hundred percent) upon date of delivery.
 - 5.2. Where the order value exceeds R1,000,000.00 (one million rand), subject to prior credit approval, invoicing shall be based on the completion of the following milestone activities:
 - 5.2.1. 10% (ten percent) of the contract value upon approval of the certified drawings;
 - 5.2.2. 40% (forty percent) of the contract value upon receipt, by Eaton, of all major bought out components;
 - 5.2.3. 40% (forty percent) of the contract value upon factory acceptance testing at Eaton's premises, and
 - 5.2.4. 10% (ten percent) of the contract value upon delivery.
6. **Liability for delay**
Eaton shall not be liable for any liquidated damages or penalties for delay.
7. **Title and risk**
 - 7.1. Risk in the Goods shall pass to the Purchaser in relation to the applicable Incoterm (where Installation & Commissioning is applicable, Risk will pass upon completion of such Installation and Commissioning).
- 7.2. Ownership in and to the Goods shall pass from Eaton to the Purchaser upon full payment of the goods delivered.
8. **Inspection and Tests**
 - 8.1. Standard Factory Acceptance Testing will be performed on the Goods.
 - 8.2. If tests other than these are required, then these will be for the Purchaser's account.
 - 8.3. In the event of any delay on the Purchaser's part in attending such tests after reasonable notice that Eaton is ready to perform such tests, the tests will proceed in the Purchaser's absence and shall be deemed to have been made in the Purchaser's presence.
 - 8.4. At this point Goods will be ready for delivery and provisions for delivery will be made by the Parties, failing which the Eaton will arrange for storage or be entitled to charge Purchaser for the related costs including but not limited to, insurance, transport to an offsite storage facility. Risk will then immediately transfer to Purchaser on delivery as stated above.
 - 8.5. Factory Acceptance Testing is scheduled for 3 (three) days, should testing be prolonged the delivery date shall be adjusted by the additional days.
9. **Variations**
 - 9.1. Eaton shall not be obliged to accept any variations, modifications, alterations or additions to any Order if such variations, modifications, alterations or additions are requested after the date of acceptance of the Order by the Purchaser.
 - 9.2. No variations, modifications, alterations or additions to any Order shall be of any force or effect unless agreed to in writing by Eaton.
 - 9.3. Subject to this clause, in the event of variation or suspension of work as a result of the Purchaser's instructions or lack of instructions,
- 5.3. These are none the less open for negotiation.
- 5.4. All invoices shall be net 30 (thirty) days from date of statement without discount.
- 5.5. Without prejudice to the right of Eaton to payment in terms of this clause, the Purchaser shall pay interest on any sum due to Eaton at the ruling prime rate as confirmed by the Purchaser's bankers plus 2% (two percent), from the due date of such payment until payment is actually made.
- 5.6. The Purchaser shall pay any amount due to Eaton in terms of this clause by way of electronic transfer into the current account designated by Eaton in the tender for that purpose, unless otherwise agreed to in writing by Eaton.
- 5.7. Offsetting of receivables due is only permissible if it relates to this contract.
- 5.8. If after Factory Acceptance Testing (FAT) it is found that alterations need to be done to the completed unit, based on additional requirements of the clients, the original contract value will still be payable. The modification will be invoiced on the completion thereof.
- 5.9. Eaton shall only issue Bank Guarantees for Contract values exceeding R1,500,000.00.



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Eaton shall be entitled to extend the delivery date and increase the Contract Price by a sum of money reasonably sufficient to cover all additional expenses incurred or sustained by Eaton as a direct or indirect consequence of such variation or suspension.

11.3. 11.3The warranty does not cover reimbursement for transportation, gaining access to, removal, installation, temporary power, or any other expenses which may be incurred in connection with repair or replacement.

otherwise transferred without Eaton's express prior written consent.

Purchaser shall obtain from that third party a provision affording Eaton the protection of this clause vis-à-vis that third party.

10. Intellectual Property Rights

10.1. Neither Party shall acquire any right, title and interest (without the prior written consent of the other) entitling it to use the trademarks, trade names, brand names, logos, designs, branding, signage and/or identifying insignia of the other.

11.4. The warranty does not cover failure or damage due to storage, installation, operation or maintenance not in conformance with Eaton's recommendations and industry standard practice or due to accident, misuse, abuse or negligence.

12. Latent Defects

12.1. In no event shall Eaton be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of goods or products provided or serviced by Eaton in terms hereof (unless such discovery or repair is normally discoverable by tests expressly specified in the scope of work under these Conditions) or caused by the use of goods or products by the Purchaser against the advice of Eaton.

14. Limitation of Liability

14.1. Save as otherwise explicitly stated in the Conditions, in no event, whether as a result of breach of contract, indemnity, warranty, delict (including negligence), strict liability or any other cause arising, shall Eaton's total liability to the Purchaser or its insurers for any loss or damage arising out of, or resulting from these Conditions, or from the performance or breach thereof, or from the goods or products or services furnished hereunder, exceed 5% (five percent) of the total Contract Price.

10.2. The Parties undertake in favor of one another not to perform any act, which would injure the reputation or goodwill attaching to their respective names or trademarks or which would prejudice their rights in and to such names and trademarks.

11.5. Any obligations of Eaton in terms of this warranty shall, to the fullest extent permitted by law and without prejudice to or any extension of the 12 (twelve) and 18 (eighteen) month time periods specified above, be suspended for the duration of any failure or default by Purchaser in making any payments due to Eaton in terms hereof.

12.2. The Purchaser may not alter such goods or products at all or contrary to the instructions of Eaton, or after those goods or products have left the control of Eaton.

14.2. Furthermore, any liability or obligation of the Purchaser of whatsoever nature (whether in terms of these Conditions or otherwise) shall terminate upon the expiration of the warranty period.

10.3. Except as necessary to deliver the Services in accordance with this Agreement, on expiry or termination of this Agreement the Parties will cease to use in any way whatsoever and shall return to the other any trademarks, trade names, brand names, logos, designs, branding, signage and/or identifying insignia.

11.6. The liability of Eaton in terms of this clause shall be in lieu of any warranty or condition implied by law as to the quality or fitness for any particular purpose of the goods or products and, save as provided in this clause, Eaton shall not be under any liability, whether in contract, delict or otherwise, in respect of or for any injury, damage or loss resulting from such defects or from any work done in connection therewith.

12.3. If Eaton furnishes the Purchaser with advice or other assistance which concerns any product serviced or supplied hereunder or any system or equipment in which any such product may be installed and which is not required pursuant to this agreement, the furnishing of such advice or assistance will not subject Eaton to any liability, whether in contract, indemnity, warranty, delict (including negligence), strict liability or any other cause arising.

15. Cession, Assignment and Disposal
Neither Party shall be entitled, without the prior written consent of the other Party, to cede, assign or encumber any of its rights or obligations under this Agreement.

11. Warranty

11.1. Eaton shall make good, by repair or, at its option, by the supply of a replacement, defects which, under proper use, appear in the goods or products and which defects are notified by Purchaser to Eaton in writing within a period of 12 (twelve) months after the goods or products have been accepted by Purchaser or, if delivery is delayed for any reason other than as a result of default on the part of Eaton, within a period of 18 (eighteen) months after the goods have been delivered to Purchaser (whichever period expires the earlier) and arising solely from faulty materials or workmanship or design (fair wear and tear excluded).

11.7. In respect of parts or components not manufactured or designed by Eaton, Eaton guarantees such parts or components provided that such guarantee shall be equivalent to the guarantee (if any) which Eaton may have received from its suppliers or manufacturer of such parts or components in respect thereof and shall not, in respect of such parts or components, impose on Eaton a liability greater than that imposed on Eaton by the provisions of this clause.

13. Consequential Damages

13.1. In no event, whether as a result of breach of contract, indemnity, warranty, delict (including negligence), strict liability or other cause arising, shall Eaton be liable for any special, consequential, incidental or exemplary damages whether foreseeable or not including, but not being limited to, loss of profit or revenues, loss of use of the goods or products or any associated equipment, damage to associated equipment, cost of capital, cost of substitute goods or products, facilities, services or replacement power, downtime cost, or claims of customers of the Purchaser for such damages.

16. Force Majeure

16.1. Eaton shall not be liable for any delay in performing or any failure to perform any of its obligations in terms of the Contract due to any cause beyond its reasonable control, including but without being limited to any of the following:
16.1.1. strikes, lock-outs, labour disputes or other industrial action;
16.1.2. sabotage, terrorism, civil commotion, riot, invasion, war, threat of or preparation of war; fire, explosion, storm, flood, subsidence, epidemic or other natural physical disaster or act of God;
16.1.3. impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
16.1.4. failure of electricity or any other supplies, failure of telecommunications or failure, theft or default of any computer hardware or software;

11.2. Eaton shall not be liable for any expenses, apart from the cost of the repair or replacement of the goods or products, as the case may be.

11.8. Any and all warranties and representations given by Eaton are "person specific" in that any such warranties and representations are personal and may not be sold, ceded or

13.2. Should the goods or products or services being provided by Eaton in terms of these Conditions be provided, sold or otherwise made available by the Purchaser to any third party, then the



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- 16.1.5. any act or policy of any state or government or other authority having jurisdiction over either party;
- 16.1.6. any liability on the part of Eaton to obtain or receive any imported item from any supplier due to any failure on the part of such supplier to deliver the item in question for any reason beyond the reasonable control of Eaton, including without being limited to, any act of such supplier's own government or any boycott or sanction or embargo which such supplier chooses to observe and which is directed at the RSA or its government or any national of the RSA or anyone connection with the RSA.
- 16.2. Upon the occurrence of any delay or failure referred to in this clause, the provisions of the Contract which are affected shall be suspended for as long as the cause in question continues to operate, provided that if the delay or failure referred to in this clause :
- 16.2.1. has not ceased to operate within a period of 6 (six) months from the date upon which it arose, the Contract may be terminated by either party;
- 16.2.2. affects the Purchaser and not Eaton, then the Purchaser shall pay to Eaton, on written demand, any and all costs and expenses hereby incurred by Eaton during the period in which the Contract is suspended.
- 17. Termination**
- 17.1. Either Party shall have the right to terminate this Agreement forthwith upon the happening of any one or more of the following events:
- 17.1.1. the liquidation or judicial management of either Party, whether provisional or final or the passing of any resolution or its winding up;
- 17.1.2. the commission of any act of insolvency by either Party, by any member or director thereof;
- 17.1.3. the compromise by either Party of any of its debts or any attempt to compromise with its creditors;
- 17.1.4. the failure to satisfy a judgment granted against either Party or rescind such judgment granted against it within 21 (twenty one) days from the date upon which it should reasonably have expected to have knowledge of such judgment;
- 17.1.5. the willful or fraudulent misrepresentation of any fact required by it in terms of this Agreement, including but not limited to the submission of any report or statement which willfully reflects incorrect information.
- 17.2. Should either Party: fail to comply or adhere to the provisions of this Agreement (including, but without limiting the generality of the foregoing, any failure by either Party (the "defaulting party") to pay any amount owing by it to the other Party for any cause arising) and fail to remedy such breach within 7 (seven) days after the posting or delivery of a written notice by the other party to the defaulting party requiring it to do so (provided that the other Party shall be entitled to exercise its rights to cancel hereunder without giving such notice if it has given such notice on 2 (two) previous occasions during any calendar year in question), the other party shall be entitled to terminate this Agreement without further notice to the defaulting party.
- 17.3. It is specifically recorded that in the event of either Party committing a breach of its obligations in terms of this Agreement, the defaulting party shall be liable to the other party for all legal costs incurred by the other party in respect of such breach and/or event, on the scale as between attorney and own client irrespective of whether or not legal proceedings or arbitration proceedings have been instituted or commenced.
- 17.4. On termination of this Agreement:
- 17.4.1. all rights and obligations between the Parties under this Agreement shall forthwith terminate, save for those obligations of the defaulting party which specifically or by their nature survive the termination of this Agreement; and
- 17.4.2. the defaulting party shall immediately discontinue the use of all names, logos, marks, trademarks, trade names, signs, structures, and forms of advertising indicative of the other party's brand, and will cause to be made such changes. If the defaulting party fails or omits upon request to make such changes or cause them to be made, the other party shall be entitled at the expense of the defaulting party to take whatever steps it deems necessary to do so.
- 17.4.3. All supplies, signage and packaging materials bearing the name, logo or mark of the other party's brand, shall, on demand and at no payment of the cost price thereof, be returned by the defaulting party to the other party.
- 18. Arbitration**
- 18.1. Any Party claiming any question or dispute on any matter arising out of, or in connection with, the Order including any question regarding its existence, validity or termination (Dispute) must give the other Party a notice setting out brief details of the Dispute.
- 18.2. The Parties shall use all reasonable endeavors to resolve that Dispute amicably as soon as possible.
- 18.3. If the Parties cannot resolve the dispute within 14 calendar days of the notice, the Dispute shall be referred for resolution by way of mediation in accordance with the current rules of the Arbitration Foundation of Southern Africa ("AFSA").
- 18.4. In the event of the mediation failing in terms of the rules of AFSA, the matter must, within 15 (fifteen) business days thereafter, be referred to arbitration.
- 18.5. Such arbitration shall be held in Johannesburg or Sandton with proceedings in the English language unless otherwise agreed to and shall be held in a summary manner with a view to it being completed as soon as possible.
- 18.6. The arbitrator shall have the powers conferred upon an arbitrator under the Rules.
- 18.7. The decision of the arbitrator shall, in the absence of manifest error, be final and binding on the Parties, and may be made an order of any court of competent jurisdiction.
- 18.8. Each of the Parties hereby submits itself to the South Gauteng High Court, Johannesburg, should any other Party wish to make the arbitrator's decision an order of Court.
- 19. Rate of Exchange Local Portion**
- 19.1. Eaton reserves the right to claim Purchase order price Adjustment ("CPA") escalation as per the Steel and Engineering Industries Federation of South Africa ("SEIFSA") should any variations occur between the base month and a month prior to the month in which the work in question was executed or delivered in the following indices:
- Copper Portion - table F
Steel portion - table E-EX
Labour portion - table C-3
If applicable : Road freight cost – table L-2
- The base month used shall be one month prior to the month in which the tender was submitted.
- Further to this, Eaton reserves the right to SEIFSA variation should variations to contract extend beyond the contractual delivery dates.
- Imported Portion (General)**
- All imported items will be subject to Rate of Exchange Variation. This variation will be for the account of the Purchaser. The imported goods will be subject to variation using the base rate as defined below and the end rate being the actual rate of exchange applicable to the payment made by Eaton to its overseas supplier.
- The base rate is:
- ZAR _____ : EUR 1.00**
ZAR _____ : USD 1.00
ZAR _____ : GBP 1.00
- Once a written order is actually received and acknowledged by Eaton, Eaton can, on further written instruction from the Purchaser to do so,



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negotiate a fixed exchange rate with Eaton's bankers on the Purchaser's behalf. It must be clearly understood that any such resulting rate will be at a premium determined by the bank.

If no forward cover rate is negotiated or accepted, then the rate of exchange quoted in our offer, and the conditions attached thereto, will apply for any order resulting out of this offer. The rate of exchange variation invoice will be issued by Eaton as a separate charge.

20. Applicable Law

The General Conditions and each Contract shall be governed by and construed in accordance with the Laws of the Republic of South Africa.

21. Export Regulations and Anti-Corruption

21.1. The Purchaser shall comply with all applicable laws, regulations, provisions and acts on export (which may apply at the Signature Date or which may come into operation at any time thereafter) adopted by the United Nations, the European Community, the government of the United States of America and any other government to which Eaton or Eaton Corporation is subject to from time to time. This shall include (but shall not be limited to) the U.S. Export Administration Act, Trading with Enemy Act, the International Traffic in Arms Regulation (ITAR) and any embargos or boycotts. The Purchaser 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.

21.2. The Purchaser shall not – without the prior written consent of Eaton – support or sell, directly or indirectly, products to customers in the military sector or to customers, which may use the products for military purposes.

21.3. The Purchaser agrees to comply fully with all applicable anti-corruption laws and regulations, including (but not limited to) those in the jurisdiction in which the Purchaser is registered, the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act. The Purchaser agrees to

comply with Eaton's Worldwide Anti-Corruption Policy and Worldwide Gift & Entertainment Policy, copies of which have been provided to the Purchaser and which are available on request.

21.4. The Purchaser shall observe all other policies, procedures and requirements as Eaton may reasonably establish for buyers similar to the Purchaser from time to time for the effective marketing, promotion, distribution, sale and servicing of the Products, including but not limited to Eaton's Code of Ethics.

21.5. The Purchaser acknowledges that the failure to comply with all applicable laws and/or Eaton's policies as contemplated in this clause 21 will be deemed a material breach of this Agreement, and shall entitle Eaton to terminate this Agreement (in addition to any other remedies it may have). The Purchaser agrees to indemnify, defend and hold Eaton harmless from any breach of the Purchaser's obligation under this clause 21.